

## **JURISDICTION OF COASTAL STATE IN INTERNAL WATERS NEXTUS WITH CASE LAWS**

*Mazharul Islam\**

### **ABSTRACT**

Coastal state having sovereignty of the territorial sea, of the air space over the territorial sea, and of its bed and subsoil, mentioned in article 2 of UNCLOS. In a similar way coastal state also having unconditional jurisdiction 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 this Convention and to other rules of international law. This paper will analyze the development of flag state and third states jurisdiction of an offence committed in internal water. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary steps to prevent any breach of the conditions mentioned in UNCLOS as well as other international rules. The paper will examine the cases related with internal waters, and how they reconcile the interest of others. It also will discuss the appropriate time when (an individual, coastal and the flag, coastal as well as flag and third state) can perform their jurisdiction of any offence in internal waters.

### **INTRODUCTION**

Maritime jurisdictions are now governed by the 1982 UN Convention on the Law of Sea (UNCLOS)<sup>1</sup>. 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

---

\* Master of International Laws, South Asian University (A University established by SAARC Nations), New Delhi, India. talukderlaw@gmail.com

<sup>1</sup> The United Nations Convention on the Law of the Sea (UNCLOS), also called the Law of the Sea Convention or the Law of the Sea treaty, is the international agreement that resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III), which took place between 1973 and 1982. The Law of the Sea Convention defines the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. The Convention, concluded in 1982, replaced four 1958 treaties.

and maritime scientific research has been covered in the UN Convention, but it has not mentioned in detail provisions regarding internal waters.

This paper will analyze the development of flag state and third states jurisdiction of an offence committed in internal waters. It will examine the cases related with internal waters and how they reconcile the interest of others. It also will discuss the appropriate time when (an individual, flag, coastal and third state) can perform their jurisdiction of any offence happened in an internal waters.

## **INTERNAL WATERS**

Internal waters are the waters (for example, bays and rivers) on the landward side of the baseline from which the breadth of the territorial sea is measured. Each coastal State has full sovereignty over its internal waters as if they were part of its land territory. The right of innocent passage does not apply in internal waters.<sup>2</sup>

Article 8 Internal waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.<sup>3</sup> Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.<sup>4</sup>

## **ACCESS AND PASSAGE**

Subject to the rights of passage sanctioned either by usage or by treaty, a coastal State may deny access to its internal waters to foreign vessels except where they are in distress.<sup>5</sup>

## **POWER OF COERCION**

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. However, according to widely accepted practice, the exercise of the power of coercion is not generally applied to foreign vessels in internal waters except with regard to acts committed on the vessel which are likely to disturb public order.<sup>6</sup>

## **JUDICIAL COMPETENCE**

The coastal State may exercise its judicial competence over delictual acts committed on board a vessel during its sojourn in the internal waters of that State. In civil matters, if the

---

<sup>2</sup> The NOAA General Counsel serves as the chief legal officer for the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce. The position of the NOAA General Counsel was established in section 2(e) (1) of Reorganization Plan No. 4 of 1970 that created NOAA. Available at-<http://www.gc.noaa.gov/about.html>

<sup>3</sup> The United Nations Convention on the Law of the Sea (UNCLOS) 1982

<sup>4</sup> Ibid

<sup>5</sup> Mr Frede Castberg, *The Distinction Between the Régime of the Territorial Sea and the Régime of Internal Waters*, *Justitia Et Pace*, Institute De Droit International, Session of Amsterdam-1957,

<sup>6</sup> Ibid

seizure of the vessel has taken place in accordance with the laws of the coastal State and of international conventions civil proceedings may be instituted against the owner of the vessel even if the vessel and its conduct have given no occasion for the proceedings.<sup>7</sup>

## **JURISDICTION OF INTERNAL WATERS**

By entering foreign ports and other internal waters, ships put themselves within the territorial jurisdiction of the coastal state. Accordingly, that the 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 warship.<sup>8</sup>

While the detail enforcement policy may vary from state to state, the foregoing statement is a serviceable summary of the general practice of states.<sup>9</sup> Coastal states also assert jurisdiction where their intervention is requested by the captain, or the consul of the flag state, of the ship. For analyzing the jurisdiction of the coastal state in internal waters following cases are very important...

### **WILDENHUS CASE, 1887<sup>10</sup>**

#### **FACTS**

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.

#### **ISSUES**

Does murder in foreign vessel in the port affect only member of the foreign crews nobody else?

Does it constitute a disturbance to the tranquillity of the port?

Thereby justify the assertion of the jurisdiction by the local law enforcement agencies?

---

<sup>7</sup> Ibid

<sup>8</sup> R. R. Churchill and A. V. Lowe, The Law of the Sea, third edition, Jurist publishing, Manchester 1824, Manchester University Press 1999

<sup>9</sup> Ibid

<sup>10</sup> 120 U.S. 1 (1887), Argued December 7, 1886, Decided January 10, 1887

## **DECISION**

In the decision the court mentioned the sole jurisdiction of USA as coastal state.

## **REASONING**

The crime such as murder disturbs the tranquillity and public order on the shore or in the port.

Such crime should be regarded as failing to be in compliance of general rules, in which local authorities have a right to interfere and investigate.

In general only the flag state has territorial jurisdiction over the ship but when it is anchored in any foreign port then the coastal state has jurisdiction to adjudge matter if it interferes with the peace and tranquillity of the shore or the port.

### **R VS ANDERSON, 1868<sup>11</sup>**

## **FACTS**

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 Garonne, on its way to the French city of Berdeaux, some ninety miles from the coast 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 judgement of the criminal court was appealed.

## **ISSUE**

Which country had jurisdiction to try the accused under the condition described?

## **DECISION**

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

## **REASONING**

---

<sup>11</sup> (1868) 11 Cox Crim Cases 198 (Court of Criminal Appeal, England)

The court of criminal appeal found that the accused under the subject to American jurisdiction as an American citizen. At the same time he was under the France jurisdiction as for having committed an offence in the France territory and also the British jurisdiction as the ship was registered in Britain. A British court extends the protection of British vessel no matter where those vessels might be at given time. The France authorities could have enforced laws arresting Anderson and placing him on trial for his offence. France had not arrests its right to prosecute Anderson for disturbing the tranquillity of its port and public order. Great Britain had the control over the vessel and exercised its authority by prosecuting Anderson.

### **STATE VS YANNOPULOUS<sup>12</sup>**

#### **FACTS**

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

#### **ISSUE**

Weather Italy had the jurisdiction to try Mr. Yannopulous for the said offence?

#### **DECISION**

The Italian court acquitted Mr. Yannopulous with honour and set him free.

#### **REASONING**

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 evidence in this case that the act of Yannopulous disturbed the peace, tranquillity and good order of the port Nepales. Although Mr. Yannopulous was found with the drugs but his council argued that he only possessed it and had no intention to sell. It would be determined unilaterally by the coastal state whether an act of an aliens affects the peace, tranquillity and good order of that port or that country.

---

<sup>12</sup> Italy vs. Greece, 1974

## CONCLUSION

Coastal states will, of course, exercise their jurisdiction in matters which do not concern solely the 'internal economy' of foreign ships. Pollution, pilotage and navigation laws are routinely enforced against such vessel and, as I have mentioned, ships may be arrested in course of civil proceedings in the coastal state.<sup>13</sup> But coastal state do not exercise their jurisdiction in respect of internal affairs of foreign ships in their port even though as matter of strict law, they would be entitle to do so because of the voluntary entry of those ships within their territorial jurisdiction.

In first WILDENHUS case the crime such as murder disturbs the tranquillity and public order on the shore or in the port so coastal state having sole jurisdiction over it.

In second R VS ANDERSON case three state having jurisdiction, the accused under the subject to American jurisdiction as an American citizen, At the same time he was under the France jurisdiction as for having committed an offence in the France territory and also the British jurisdiction as the ship was registered in Britain.

In third STATE VS YANNOPULOUS case it shows the discretion of coastal state, 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. It would be determined unilaterally by the coastal state whether an act of an aliens affects the peace, tranquillity and good order of that port or that country.

So we can easily draw a conclusion from the above discussion of the cases is that, not only coastal state but also flag and the third state (where the ship is registered) having similar jurisdiction of an offence committed in internal waters.

### **Postal Address:**

Mazharul Islam  
Master of International Laws  
South Asian University  
Room No 631, Akbar Bhawan,  
Chanakyapuri, New Delhi, India-110021  
Email [talukderlaw@gmail.com](mailto:talukderlaw@gmail.com)  
Cell-9716683979

---

<sup>13</sup> Mr Graham Perrett MP, Appendix D – Legal Advice, Chair House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, 10 May 2013, available at [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=spla/crimes%20at%20sea/report/appendixd.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=spla/crimes%20at%20sea/report/appendixd.htm)

