



ENFORCEMENT ROLE OF INDIA AS A COASTAL STATE UNDER LAW OF SEA CONVENTION

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As quoted by George Macartney, “The sun never sets on British empire” the main reason why Britishers were able to colonize the world was because of their naval superiority that helped them to establish their footholds in many overseas countries. The main reason why countries larger in size and militarily robust succumbed to British colonization was because of their failure to assert their legitimacy and jurisdictional enforceability over their coastal waters. The reason they entered easily under the guise of trade, easily assimilated into the administrative systems of many nations, and eventually took control of their country was "FAILURE OF STATES TO ESTABLISH JURISDICTIONAL COMPETENCE OVER ITS SEAS," although other factors like lack of unity, lack of modernization, and others were also to blame.

India, along with nations like China and the USA, is on its path to becoming the next maritime powerhouse. (The author does not think that the USA is currently the world's leading marine power.) The current efforts of India to not only increase and sharpen its defense and naval superiority but also to simultaneously assert its supreme authority over its coastal waters are part of the race to determine who will be the next maritime superpower and in whose favor the balance of power will tilt in the near future. Since China has proclaimed its supreme control

over both international waterways and other states' coastal waters, it is one step ahead.

II] Assertion of India as a supreme authority over its coastal waters

India's sovereignty extends even to its coastal waters is an established practice and principle of International Maritime Law as well as under Law of Sea Convention. This is also reiterated by International Court of Justice in three landmark cases of North Sea Continental Cases - Federal Republic of Germany v Denmark, Federal Republic of Germany v the Netherlands of 1969, Aegean Sea Continental Shelf (Greece v Turkey) [1978] and Maritime delimitation and territorial questions between Qatar and Bahrain (Qatar v Bahrain) [2001] is **“the land is the legal source of the power which a State may exercise over territorial extensions to seaward.”**¹ By exercising absolute control in its coastal water, India is simply demonstrating its manifestations of its strongest will by asserting its authority over its coastal waters.

II] Constitution for the oceans – UNCLOS and Enforcement jurisdictions of India as a Coastal State

The primary legal framework guiding the role of the Coastal State in marine regulation and enforcement is provided by the 1982 United Nations Convention on the Law of the Sea (LOSC), which is widely regarded as the "constitution for the oceans."² The LOSC continues to serve as the comprehensive, fundamental framework connecting other subsequent conventions, particularly those within the International Maritime Organisation (IMO), on the technical aspects of shipping, safety at sea, and environmental protection, with the rules of international law relating to the scope and limits of the powers



of Coastal States in the various maritime areas.³ The law of the sea has consistently included the assertion of Coastal State authority and control over natural resources and activities across vast areas of waters surrounding their coasts.⁴

III] Jurisdictional Competence of India as a Coastal states

One facet of marine sovereignty is the broad ability of the Coastal State to exercise authority, pass laws, and properly execute them. This authority derives from its exercise of sovereignty over its landmass, internal waters, territorial sea, and, for certain, constrained uses; over other marine zones. This acknowledges the Coastal States' natural right to defend their coastlines. For infractions occurring inside its marine zones, the Coastal State may use enforcement actions at sea or at ports.

Enforcement and regulatory powers of INDIA - Coastal State in the various maritime zones of jurisdiction

A] Internal Waters

Over its internal waterways, the Coastal State has complete and unrestricted authority. Internal waters, which are defined as those that are landward of the territorial sea baseline, often comprise bays, lakes, canal and river mouths, estuaries, harbours, and ports.⁵ Over all criminal and civil actions in this marine zone, the Coastal State has full prescriptive and adjudicative authority. Internal waters are not subject to specific control under the LOSC since they have the same status as the State's land territory and the Coastal State's power is essentially unhindered inside this maritime zone.

The Coastal State has complete sovereignty and authority over its internal seas, and as

such, has the power to regulate foreign vessels' access to those waters, including its ports, and to even forbid them from doing so. In reality, a Coastal State does, however, offer access to its ports in exchange for allowing its own commerce boats access to other ports. In any instance, if the Coastal State's peace, good order, or security is in jeopardy or if the commercial vessel is travelling under the flag of a nation it is at war with, the Coastal State has the right to refuse entrance to its ports.

According to the UNCLOS, the Coastal State may impose restrictions on access to its internal waters.⁶ Except in exceptional circumstances described in Article 8(2) of the UNCLOS, where the establishment of a straight baseline under Article 7 of the UNCLOS has the effect of enclosing areas not previously considered to be internal waters, the right of innocent passage does not exist in internal waters.⁷

It is undeniable that the Coastal State has the authority to control who has access to its interior waterways. Under some restrictions that apply to sovereign and diplomatically immune vessels, such as warships, this includes the authority to impose its laws over the ship and over any property or people on board.⁸ The Coastal State often does not enforce its laws in situations involving just the internal affairs of the ship, unless those situations have an impact on the Coastal State. In circumstances involving a non-crew member or where the captain or the consul of the Flag State requests the Coastal State's participation, the Coastal State will also step in or claim authority.⁸

The Coastal State shall also exercise authority over foreign vessels and execute its laws, including those pertaining to pollution, pilotage, and navigation, including by seizing



ships during civil processes in the Coastal State.⁹ This is clearly stated in Article 220 (1) of the LOSC, which grants the Coastal State enforcement authority over vessels entering its port or an offshore terminal on their own volition and the ability to initiate legal action for any violations of national laws, regulations adopted in accordance with the LOSC, or applicable international rules and standards on vessel source pollution committed in the territorial sea or the exclusive economic zone (EEZ).¹⁰ As a result, the Coastal State has broad discretion to enforce maritime environmental rules against foreign boats making a lawful passage within these zones.

b) Territorial Sea

The sovereignty the Coastal State exercises over the territorial sea is inextricably linked to its rights and obligations, especially its legislative and enforcement authority over the water.¹¹ The powers of the Coastal State must be interpreted in light of other LOSC provisions as well as pertinent international law, such as IMO conventions governing shipping and vessel-source pollution, despite the fact that these powers are broad, expansive, and nearly absolute within the territorial sea.

The right of innocent passage is the main restriction on the exercise of Coastal State authority. Ships from all States are granted the right of innocent passage through the territorial waters.¹² This right's foundation is the idea that free navigation promotes free trade.¹³ Certain restrictions that establish the boundaries of Coastal State authority over the territorial sea apply to the nautical regime of innocent passage within it.¹⁴

The Coastal State may pass laws and regulations in accordance with the LOSC and other principles of international law that cover a variety of topics, including customs, fiscal, immigration, and sanitary issues.¹⁵ These topics include the safety of navigation, maritime traffic, facilities, and installations, living resources like fisheries, marine scientific research, and hydrographic surveys.¹⁶ The design, building, personnel, or equipment of foreign ships shall not be subject to such rules and regulations unless they are giving effect to commonly recognised international rule or standards, and such laws and regulations should be given proper publicity.¹⁷

The Coastal State has the authority to take the necessary measures in the territorial waters to obstruct any unjustified passage.¹⁸ Article 19 (2) of the LOSC lists a list of actions that are deemed non-innocent and detrimental to the peace, good order, or security of the Coastal State. These activities include, among others, any threat or use of force, the use of weapons of any sort, surveillance, any act of propagandizing, fishing, research, or surveying.¹⁹ The list, which focuses on activities rather than just the presence or passage of ships, is not meant to be exhaustive. In accordance with customary international law, it is permissible to exclude boats that are not engaged in passage.

The Coastal State is also prohibited from passing legislation that restricts or punishes ships that are exercising their right of innocent passage.²⁰ For specialised services like rescue and pilotage, the Coastal State may charge foreign boats sailing through the territorial waters, but without prejudice.²¹ To maintain its security, particularly during military drills, the Coastal State may temporarily ban innocent passage in some



parts of the territorial sea, but only after giving adequate notice and without prejudice.²²

To defend its security, including conducting weapons training exercises, the Coastal State may temporarily ban innocent passage in some parts of the territorial sea, but only after giving adequate notice and without prejudice.²³ The Coastal State may designate or impose sea lanes and traffic separation schemes, including requiring tankers, nuclear-powered ships, and ships carrying toxic or inherently dangerous substances to restrict their passage to such lanes, as well as requiring such vessels to carry documents and adhere to special precautionary measures stipulated by international agreements.²⁴ The Coastal State may also mandate that such ships carry documents and adhere to such precautions.²⁵

The LOSC outlines the conditions under which Coastal States may exert criminal and civil jurisdiction over government ships and commercially operated merchant vessels in order to implement their laws. Only in extreme instances when the repercussions of the crime extend to the Coastal State may the Coastal State exercise criminal authority to arrest a person on board or launch an inquiry into a crime committed on board a foreign ship transiting the territorial sea.²⁶ Even more restricted, the Coastal State's civil authority over foreign ships in the territory water is confined to civil responsibility resulting from debts incurred by the ship while it is transiting the territorial sea.²⁷

Additionally, there are regulations under the LOSC that govern how Coastal States may exercise their control over battleships and other government ships used for non-commercial purposes while adhering to and respecting the privileges enjoyed by these

ships.²⁸ However, the LOSC grants the Coastal State the authority to request that such ships depart immediately if they fail to abide by its laws and regulations regarding passage after receiving such a request.²⁹ It also grants the Flag State of such vessels the authority to assume international liability for any losses or damages sustained by the Coastal State as a result of such failure to abide by its laws and regulations or other international legal requirements.³⁰

Adoption of these international standards by India

According to Article 3 of the Indian Maritime Zones Act of 1976, the position is the same as in the 1982 Convention, and the line with each point 12 nautical miles from the baselines serves as the territorial sea limit.

According to Section 4, Paragraph 1 of the Indian Maritime Zones Act, 1976, India's position with regard to the "right of innocent passage" is the same as in the 1982 Convention. Regarding the issue of warships with submarines and underwater vehicles passing through Indian territorial waters without incident, the law states that such ships/vehicles may only do so after giving prior notice to the Central Government.

c) Contiguous Zone

These constrained capabilities are compatible with the contiguous zone's uniqueness and the Coastal State's lack of sovereign authority over it, notwithstanding the zone's coterminousness with the EEZ and continental shelf. In this sense, the navigational freedoms that exist on the high seas and in the EEZ up to the edge of the territorial sea must be taken into consideration when interpreting the rights of the Coastal State over the contiguous zone.³¹



A threat to the freedom of navigation has been seen in the expansion of Coastal State legislative and enforcement authority over the contiguous zone to address security problems. Another point of debate is whether the Coastal State has the authority to tow foreign ships within the Contiguous Zone in order to prevent them from approaching its territorial sea, particularly in cases where the foreign ships are carrying asylum seekers and intend to enter the Coastal State's territorial sea. International law prevents the towing of unseaworthy boats from the contiguous zone to be abandoned at sea in such circumstances in order to safeguard the safety of the individuals on board the vessel.

Adoption of these international standards by India

India also abides by the 24 nautical mile norm under Section 5 of the Maritime Zones Act of 1976, and in contrast to the 1982 Convention, security of state is included as one of the areas where India may take authority. The word "Security" has been added to the list of contiguous zone purposes, and India's courts have broad power to take cognizance of any offence.

d) Exclusive Economic Zone

The EEZ, which extends up to 200 nautical miles from the baseline and is a region outside and adjacent to the territorial sea, is where the Coastal State exercises sovereign rights over the natural resources.³² The Coastal State has sovereign rights over the EEZ to investigate, utilise, protect, and manage both living and non-living resources found on the seafloor, beneath the surface of the earth, and in nearby seas.³³ On the other hand, third countries are free to navigate, fly overhead, and install underwater cables and pipelines.³⁴

It is important to keep in mind that the Coastal State's rights and obligations regarding the EEZ are not only unique and limited to those that are clearly stated in the LOSC87, but also that they largely pertain to the resources inside the EEZ. The Coastal State is required under the LOSC to "act in a manner compatible with the requirements of this Convention" and to "give due attention to the rights and obligations of other States" in the EEZ.³⁵

As stated in Part XII of the LOSC, the Coastal State has legislative and enforcement authority with respect to the preservation and conservation of the maritime environment in the EEZ under the LOSC. This includes the authority to control contamination in the EEZ caused by ship-related operations on the seabed, trash disposal, and other types of pollution. The Coastal State's authority over operational vessel-source pollution is more constrained, and any law it passes that applies to the EEZ must follow universally recognised international norms and regulations, such as those established by the IMO.³⁶

Furthermore, the LOSC stipulates that only officials, warships, military aircraft, other ships, or aircraft that are clearly marked and recognizable as being in government service and authorized to that effect may exercise enforcement against foreign vessels within the EEZ for marine environmental infringement.³⁷ The Coastal State is responsible for any harm or loss brought on by improper or unreasonable enforcement actions.³⁸

The freedoms of navigation and overflight enjoyed by third States on the high seas are comparable to those in the EEZ.³⁹ However, other clauses in the LOSC grant the Coastal State broad regulatory authority. These



include the authority to board, examine, detain, and bring legal action against fishing vessels and their personnel in order to verify adherence to fisheries rules approved in accordance with LOSC.⁴⁰ After paying a fair bail, the detained vessels and their personnel will be swiftly freed.⁴¹

Commentators have raised the concern of "creeping jurisdiction"—the growing claim of coastal state authority in the EEZ on issues that are not primarily of an environmental or resource nature. For instance, some States have interpreted the authority of the Coastal State to regulate marine pollution to include the need for "prior notification" and even "prior informed consent," which may equate to denying access to the EEZ. Another point of dispute is the Coastal States' claim of security jurisdiction over the EEZ, particularly divisive arguments about claims to conduct military drills and other military operations in the EEZ as part of high seas freedoms protected by the LOSC.

Adoption of these international standards by India

Additionally, the 200 nautical mile EEZ is adopted by Section 7 of the Indian Maritime Zones Act, 1976. To change the EEZ limit, however, the notice must be authorised by both houses of Parliament and published in the official gazette while taking into account the international EEZ limit.

The rights of India in her EEZ are further outlined in Section 7. With a few minor exceptions, the rights are essentially the same as those stipulated in the UNCLOS of 1982. For instance, Union has been granted sole authority to manage maritime pollution and to safeguard and maintain the marine environment. Furthermore, the Central government has the authority to designate

any EEZ territory as such. Fishing by foreign vessels is regulated in India's marine zones by the Maritime Zones of India Act (Regulation of Fishing by Foreign Vessels Act) of 1981.

e) High Seas

The legal system of the high seas is traditionally the purview of exclusive Flag State jurisdiction and traditional high seas freedoms, such as freedom of navigation, overflight, laying of submarine cables and pipelines, and fishing. This is in contrast to the extensive powers of the Coastal State to regulate activities and resources within waters that encircle their coasts. The high seas are accessible to all States and cannot be governed by a State's sovereignty.⁴²

As the "cornerstone of contemporary international law," Churchill and Lowe refer to this customary international law norm. Every State has the right to fly its flag over the high seas and exercise the non-exhaustive list of high seas freedoms enumerated in Article 87 of the LOSC, subject to the "due regard obligation" to protect the interests of other States exercising the same freedoms as well as other rights under the LOSC in regard to activities in the Area.⁴³

The Flag State generally has exclusive legislative and enforcement authority over ships that fly its flag on the high seas.⁴⁴ However, the LOSC's codification of customary international law recognises a number of exceptions to the exclusive Flag State jurisdiction that occur when the Coastal State shares legislative or enforcement authority, or both, with the Flag State. The slave trade, illegal commerce in narcotic narcotics, unlawful broadcasting on the high seas, illegal traffic in psychoactive substances, and piracy are among these exclusions. States also have the right to



inspect and enforce their laws against their own ship, against ships of undetermined nationality, or against stateless ships under the precise circumstances stated in Article 110 of the LOSC.⁴⁵

The Coastal State may also exercise its right of hot pursuit to follow a foreign ship that has disobeyed its rules and regulations in its territorial sea or internal waterways and to apprehend it at sea. When a ship is being chased reaches its own territorial sea or the sea of a third State, the right of hot pursuit ends. Under the idea of constructive presence, customary international law also gives the coastal state the authority to detain foreign ships that have violated the territorial sea while still at sea.⁴⁶

The right of Coastal States to adopt and enforce steps to protect their coastlines from real or threatened damage from pollution in the wake of a marine tragedy is another acknowledged exception to exclusive Flag State jurisdiction. In any case, Coastal States find reason to legitimately exercise jurisdiction over foreign ships on the high seas due to need or self-defense, or as granted by specific treaties.⁴⁷

Enforcement Challenges that India will have to tackle

Coastal States currently confront a variety of difficulties in maintaining the seas' security, safety, and environmental protection. Increasing strain on marine ecosystems and resources as a result of a continually growing global population, along with the health of the world's marine environment, provide tremendous issues that are both urgent and significant.

Among the threats include piracy and armed robbery, illegal drug and substance trafficking, garbage smuggling, management

of maritime resources, protection of the marine environment, and significant problems related to climate change. Due to the transnational character of many of these challenges, action must be done at the international and regional levels, necessitating capacity-building and multilateral cooperation to support coastal states in implementing marine regulatory and enforcement measures.

The LOSC and other international accords place a growing burden on Coastal States to guarantee safety and security at sea. In order to meet these duties, Coastal States require financial and technical help from Flag States, Port States, and international organisations. For instance, the LOSC imposes on its parties specific deposit and due publicity requirements. Many coastal States, nevertheless, still haven't sent the Secretary-General any maps or lists of coordinates.⁴⁸

It is impossible to overstate the significance of this seemingly unimportant requirement as a vital part of maritime law and enforcement. In reality, carefully delineated and properly announced maritime zone boundaries would not only give jurisdictional clarity for enforcement reasons, but also—and perhaps more importantly—allow for the exploration and exploitation of the coastal state's seas and the resources they contain.

Other, more complex challenges include the legality of the use of force by Coastal States to enforce their constabulary or policing functions, or military uses of the sea during peacetime, such as military operations, exercises, or manoeuvres, or the deployment of militarised vessels,¹²⁷ or the consistency of "multilateral hot pursuit" with the LOSC when two or more Coastal States are engaged in the hot pursuit that results in the arrest of a delinquent vessel.



On the other hand, there are problems that persist over time, such as the issue of creeping Coastal State jurisdiction that was already mentioned or the ambiguity in how Part V of the LOSC operates, which includes the question of whether the EEZ qualifies as a sui generis and sui juris maritime zone. 130 These matters, while crucial, cannot be covered in length in this chapter. To resolve these issues, new norms or standards of international law may emerge, although it is realistic to predict that there will still be significant differences in State practise.

Conclusion

The number of current and upcoming concerns that coastal states must address will keep expanding, both in complexity and urgency. While the LOSC will continue to be useful as a framework document addressing all ocean-related concerns, many of these issues were not taken into consideration or thoroughly explored at the time the LOSC was drafted. Bioprospecting for marine genetic resources, the installation of offshore wind farms for the growth of energy, and even the urgent worry about the crucial role of the seas in climatic processes are a few of these concerns.

References

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2. Myron Nordquist (ed), United Nations Convention on the Law of the Sea 1982: A Commentary (Martinus Nijhoff, 1985) Volume I, 11.
3. Robin Churchill and Vaughan Lowe, The Law of the Sea (Manchester University Press, 1999).
4. Rothwell and Stephens, above n 5, 27. This gradual encroachment or assertion of jurisdiction over their adjacent maritime domain has been referred to as ‘creeping jurisdiction’ or ‘territorialisation’ of the oceans. See for example, Barbara Kwiatkowska, ‘Creeping jurisdiction beyond 200 miles in the light of the 1982 Law of the Sea Convention and state practice’ (1991) 22 Ocean Development & International Law 153–187, and Stuart Kaye, ‘Freedom of Navigation in a Post 9/11 World: Security and Creeping Jurisdiction’ in David Freestone, Richard Barnes and David M. Ong (eds), The Law of the Sea: Progress and Prospects (Oxford University Press, 2006), 347–364.
5. Article 8 (1), LOSC. Churchill and Lowe clarify that foreign ships may seek access to international rivers which flow through the territory or constitute the boundary of more than one State. Churchill and Lowe, above n 9, 64.
6. Article 25(2), 211 (3) and 255, United Nation Convention on Law of Sea.
7. Article 5(2), Convention on the Territorial Sea and the Contiguous Zone.
8. The LOSC exempts sovereign immune vessels from the legal regime of jurisdiction over vessel-source pollution (Article 236, LOSC). However, the Flag State of sovereign immune vessels may be held liable for any loss or damage to Coastal States (Articles 31, 42(5) and 54).



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9. Articles 2 and 3, International Convention on Arrest of Ships.
 10. Article 220 (1), UNCLOS
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 14. Yoshifumi Tanaka, The International Law of the Sea
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 21. Article 26, UNCLOS
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 28. Article 32, UNCLOS
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 31. Articles 58(1) and 87, UNCLOS
 32. Article 56(1)(a), UNCLOS
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 35. Article 56(2), UNCLOS
 36. Article 208, 214, 210, 216,211,220,234 UNCLOS
 37. Article 224, UNCLOS
 38. Article 232, UNCLOS
 39. Article 58(1), UNCLOS
 40. Article 73(1), UNCLOS
 41. Article 73(2), UNCLOS
 42. Article 87&89, UNCLOS
 43. Article 90, UNCLOS
 44. Article 92(1), UNCLOS
 45. Article 100,109, 108,99, UNCLOS
 46. Article 111, UNCLOS
 47. Article 221, UNCLOS
 48. Articles 16 (2), 47 (9), 75 (2) and 84 (2), LOSC. See also Articles 21 (3) and 42 (3), UNCLOS

