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RESEARCH ARTICLE

THE PRESCRIPTIVE AND ENFORCEMENT JURISDICTION OF A COASTAL STATE IN RELATION TO SHIP SOURCE POLLUTION OCCURS IN ITS VARIOUS MARITIME ZONES, UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND THE CUSTOMARY INTERNATIONAL LAW

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Abstract

The coastal state jurisdiction is the jurisdiction enjoyed by a coastal state in relation to breaches of regulations and laws by foreign flagged ships that take place within its various maritime zones. The prescriptive and enforcement jurisdiction comprise the main power of a coastal state. Prescriptive is the jurisdiction to prescribe laws and regulations, while enforcement is the jurisdiction to enforce such laws. The rights and obligations of a state in relation to navigation and pollution are determined primarily by international conventions and customary international law. The 1982 Law of the Sea Convention (UNCLOS) is the most widely ratified convention in this field of law, outlining the rights and obligations of the states in relation to their various maritime zones as well as with respect to environmental protection. States have under UNCLOS the obligation to protect and preserve the marine environment and they are also under an obligation to take measures jointly or individually to reduce and prevent, control and reduce pollution of the marine environment from any source including the atmosphere and from vessels. In relation to ship source pollution there are various obligations for the coastal states.

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Introduction:-

Coastal state jurisdiction is the jurisdiction enjoyed by the coastal state in relation to breaches of regulations and laws by foreign flagged ships that take place within its various maritime zones. The prescriptive and enforcement jurisdiction comprise the main power of a coastal state. Prescriptive is the jurisdiction to prescribe laws and regulations, while enforcement is the jurisdiction to enforce such laws.

The rights and obligations of a state in relation to navigation and pollution are determined primarily by international conventions and customary international law. The United Nations Convention on the Law of the Sea 1982 (UNCLOS) is the most widely ratified convention in this field of law, outlining the rights and obligations of states in relation to their various maritime zones, as well as with respect to environmental protection.

The Customary International Law:

The Customary International Law is one of the main sources of international law, involving the principle of custom. Article 38(1)(b) of the International Court of Justice (ICJ) Statute defines customary international law as an "evidence

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of a general practice accepted as law". This is generally determined through two factors: the general practice of the states (the objective element) and the *opinio juris* i.e. what the states have accepted as law (subjective element).

The North Sea Continental Shelf cases confirmed that both the state practice (the objective element) and the *opinio juris* (the subjective element), are essential pre-requisites for the formation of a customary law rule.

The United Nations Convention on the Law of the Sea 1982 (UNCLOS Convention):

As mentioned above, UNCLOS is the most widely ratified convention in this field of law. States have under UNCLOS the obligation to protect and preserve the marine environment pursuant to Article 192. They are also under an obligation to take measures jointly or individually to reduce and prevent, control and reduce pollution of the marine environment from any source including the atmosphere and from vessels.

In relation to ship source pollution there are various obligations for the coastal states. A first obligation is that of cooperation through the International Maritime Organization (IMO) or other general international conference to *"establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary"*.

It is noticeable to say that Article 1(4) UNCLOS defines what the pollution of marine environment is. According to the aforementioned article, pollution of the marine environment means *"the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities"*.

Moreover, Article 237 UNCLOS includes specific provisions as to the relationship between UNCLOS and other conventions on the protection and preservation of the marine environment. Thus, the obligations under other conventions regarding the prescriptive and enforcement jurisdiction of a coastal state, are without prejudice the UNCLOS' provisions, however, should be carried out in a manner consistent with the general principles and objectives of the UNCLOS convention.

Territorial sea:

Prescriptive jurisdiction:

In territorial sea there is a general position that the jurisdiction of a coastal state extends to 12 nautical miles, in an area called territorial sea (Article 3), while Article 2 states the legal status of such sea. This means that if any foreign vessel sails within the territorial sea, the coastal state has rights to prescribe law for its entry (Article 25). The most significant constrain of this area is the concept of "innocent passage" (Article 17). Article 18 refers to the meaning of the innocent passage, emphasising that the foreign vessels enjoy a contiguous and expeditious passage, which in accordance with Article 19, is not prejudicial to the peace, good order or security of the coastal state. It is interesting to say that the innocent passage applies also to warships and therefore, they are entitled to enjoy the right of innocent passage, during peace (this was seen in *the Corfu Channel* case, judgement on merits). More specifically, Article 19(2) defines the meaning of the non-innocent passage. The coastal state according to Article 24 shall not hamper the innocent passage of foreign vessel, nor impose requirements impairing it. However, through Article 21 a coastal state has the right to prescribe and adopt laws regarding the innocent passage. In addition, Article 22(1) gives the right to the coastal state to prescribe regulations with respect to sea lanes and traffic separation scheme. Another restriction is in paragraph 1(1) of Article 21, where the coastal state cannot prescribe laws or regulations, regarding the equipment, construction, design and manning (ECDM standards given by IMO) of foreign ships. Hence, one can argue that the violation of such laws in Article 21 it is likely to make the passage non-innocent. Similarly, under Article 211(4), regarding the measures that a coastal state can adopt in relation to the pollution from vessel, the coastal state may exercise its sovereignty within the territorial sea, adopting laws and regulations, including the vessels exercising the right of innocent passage. Nevertheless, such laws and regulations shall not hamper the innocent passage of the foreign vessels, constraining the power of coastal state as to the innocent passage.

Enforcement jurisdiction :

As far as the enforcement power of a coastal state is concerned, as mentioned above the foreign ships within the territorial sea enjoy the right of innocent passage subject to the requirements contained in Articles 17 and 19. This means that the coastal state cannot have any enforcement right on such ships. However, if the correct interpretation of Article 21 is that any violation of such laws makes the passage non-innocent, then the coastal state has enforcement jurisdiction as per Article 25(1). According to Article 25(1) a coastal state may take the necessary measures in its territorial sea to prevent its passage which is not innocent (for instance it could deny the access of the ship in its territorial sea). Article 25(3) refers to the right of a coastal state to suspend temporarily in specified areas of its territorial sea the innocent passage, if such suspension is required for security measures and provided that it is duly published. Additionally, pursuant to Article 220(2), when there is an indication that a vessel navigating in the territorial sea has acted in violation of the national laws and regulation of that state (Article 19 and 21), as well as in violation of the international rules and standards under IMO, the coastal state may take steps, including search, arrest and detention of the ship, without prejudice to the provisions of Part II, Section 3, regarding the innocent passage. The only case that a coastal state can hamper a vessel being on innocent passage is in the event of a serious incident of pollution. Lastly, under Article 230(2) monetary penalties may be imposed, with respect to marine pollution violations committed by foreign vessels in the territorial sea.

Customary International Law:

Regarding the prescriptive jurisdiction, under customary international law, the right of innocent passage for foreign vessels pre-existed. In *the Corfu Channel* case, the ICJ held that the right of innocent passage through territorial seas existed for warship.

Furthermore, it is of great importance to be mentioned that the non-innocent passage before 1982 included environmental threats. Generally, the UNCLOS' provisions on the territorial sea did not change, in essence, the pre-existing norms of customary international law described in the 1958 Territorial Sea Convention, which defines the "foundations of the territorial sea regime". Also, the customary international law can be seen in territorial sea at the Hague Codification Conference of 1930.

Similar with the prescriptive jurisdiction, the coastal state did have enforcement jurisdiction regarding the innocent passage. There are old cases where, vessels were arrested in territorial sea by the coast guard, but not for environmental reasons. Also, there were enforceable rights that affected the innocent passage, however, it is not 100% clear when someone can interfere a vessel under customary international law and thus, the position is unclear.

In addition, one can argue that UNCLOS exists now and the customary international law has been modified because UNCLOS has been widely ratified (168 countries have ratified UNCLOS, including the European Union). The particular provisions in the territorial sea before UNCLOS (1958 Territorial Sea Convention) are not doubted, but are part of the customary international law. Hence, one other can argue that the customary international law is not binding anymore.

Ports:**Prescriptive jurisdiction:**

The ports as a part of the internal waters are exclusively under the coastal state sovereignty. This means that the coastal state has absolute (maximum) jurisdiction on ports and can prescribe its own national legislation, imposing measures. Furthermore, Article 211(3), provides that states may establish particular requirements (e.g. national ECDM standards) for the prevention, reduction, and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters, however, providing publicity to such requirements and communicate them to the competent international organization, such as the IMO (*the New Zealand* case). Regarding the ECDM standards applied in ports, further to Article 211(3), Articles 25(2) and 219 are relevant to the port state's competence to prescribe and enforce ECDM standards to foreign vessels in ports. Moreover, following the reasoning of Article 220, it occurs that it is acceptable for a coastal state to prescribe national rules and laws, as well as applicable international law in relation to pollution prevention.

Enforcement jurisdiction:

Under Article 219, a state can take administrative measures to prevent a vessel from sailing in reaction to the violations of seaworthiness within its ports. Also, according to Article 220(2), the coastal state may undertake physical inspection of the vessel, when there are clear grounds that the vessel navigating in the territorial sea of a state, has during its passage violated laws and regulations of that state (national law), and where the evidence so warrants can include the detention

of such vessel. Additionally, paragraph 3 of Article 220 includes violation of international rules (IMO rules and standards) in the exclusive economic zone and in that scenario the coastal state may require the vessel to give information regarding its identity and port of registry. Thus, the coastal state has the right to enforce its national rules and laws as well as applicable international law in relation to pollution prevention under Article 220. Moreover, Article 226(1)(c) mentions that during the investigation of a foreign vessel, when a release of a vessel it would present an unreasonable threat of the damage to the environment may a coastal state refuse it and detain the vessel. Furthermore, the state can enforce the ECDM standards to foreign vessels in ports based on Articles 211(3), 25(2) and 219.

Apart from UNCLOS, Regulation 8 of Annex V and Article 5(2) of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (**MARPOL 73/78**), provide that the port state during its inspection on the foreign vessel (port state control), when there is a clear grounds that the vessel is not in substantial compliance with the Convention, has the right to detain the vessel in its port.

Furthermore, except for Article 220 UNCLOS (enforcement rights by a coastal state), under Article 218(1), the port state can have enforcement rights over a vessel which is voluntarily within its port in respect of any discharge from that vessel outside of its jurisdiction and after the request by that state, or the flag state or a state damaged or threatened by the discharge violation, or unless these violations have caused or are likely to cause pollution in the jurisdictional zones of the state instituting the proceedings (paragraph 2). Additionally, paragraph 3 states that the state of which into its ports there is voluntarily a vessel, shall comply with requests from any state, for investigation of discharge violation refers to paragraph 1, which believed to have occurred in or caused or threatened damage to its jurisdictional zones. This request can also be requested by the flag state, irrespective of the location of the occurred violation.

Customary International law:

Under customary international law a coastal state has sovereign rights over its ports and internal waters. It is on the basis of this sovereignty that the coastal state regulates access to its ports. *The Barcelona Traction* case, suggests that there is a right to exercise jurisdiction on ships voluntarily entering the ports of a state.

There is no right of entry into ports of foreign states in customary international law, reasoning from *the Nicaragua* case, where it was held that a state can deny the entrance of a foreign vessel to its port (i.e. the coastal state is not under any obligation to permit access its port). However, for humanitarian and safety reasons, it is generally recognised that any foreign vessel in distress or when there is a human life at stake, has the right of entry to any foreign port under customary international law (e.g. *the Nicaragua* case para. 123, *the Creole 1853* case, *the Carlo-Alberto 1832* case, *the Eleanor 1808* case).

In addition, despite the fact that UNCLOS is silent as to whether foreign ships have the right to access a coastal state's port, however, there is a general principle that a state does not have unlimited power to prohibit access to its port. In *Saudi-Arabia v Aramco* arbitration, the arbitrator observed that: according to a great principle of public international law, the ports of every state must be opened to foreign merchant vessels and can only be closed when the vital interests of the state so require. Also, in *the Nicaragua* case the ICJ also referred to certain rights linked to the freedom of communications and maritime commerce conferring a right of free access enjoyed by foreign ships to ports.

Moreover, a state has the generally recognised right to decide which of its ports are to be opened to international maritime commerce. This right of port nomination to a coastal state has been well established in state practice in cases *Newcastle v Trimmouth* and *Attorney General v Bates [1610]*. It is also generally accepted that under certain circumstances states are entitled to close ports which are normally open to international traffic. The right of closure for national security is well established.

However, the state has the duty to give notice of closure, otherwise the state is responsible for any damage caused by the inefficient notice of the closure (*the Martini* case).

Last but not least, the right of innocent passage does not extend to general navigation within the internal waters. Nevertheless, foreign ships which are sovereign immune enjoy the privilege whilst within internal waters (*Argentina v. Ghana* case and *the Schooner Exchange* case).

Internal Waters:**Prescriptive jurisdiction:**

In the internal waters the coastal state has absolute jurisdiction and sovereignty and thus, the right of innocent passage is not applied. Therefore, the coastal state can prescribe its own national legislation, imposing measures regarding the entry of a ship. Internal waters are defined in Article 8 and the ports are part of the internal waters. Thus, a state can deny or restrict access to its ports for foreign vessels, impose conditions for access and use its port, impose fines on a vessel in its port, and detain the vessels.

Enforcement jurisdiction:

Article 220(1) states that a vessel voluntarily within a port may be subject to proceedings arising from pollution incident which took place in the coastal state's territorial sea (Article 220(2); violation of national law) or within its exclusive economic zone (violation of international rules i.e. IMO rules and standards).

Customary International Law:

Since internal waters fall within the sovereign territory of a coastal state (*the Nicaragua* case), the state has recognised sovereignty over those waters fully encompassing prescriptive and enforcement jurisdiction, subject only to the limitation imposed by national law. A coastal state possesses absolute sovereignty over their internal waters. In *the Nicaragua* case, it was held that the state can deny the entrance of foreign vessels to its port.

Also, the right of innocent passage does not extend to general navigation within the internal waters. Nevertheless, foreign ships which are sovereign immune enjoy the privilege whilst within internal waters (*Argentina v. Ghana* case and *the Schooner Exchange* consistent with Article 7).

Straits:**Prescriptive jurisdiction:**

According to Article 38(1) the ships in straits enjoy the right of "transit passage". Transit passage is the concept which a vessel enjoys the freedom of navigation, having, without delay (Article 39(1)), continuous and expeditious transit (Article 38(2)), from the straits to either the exclusive economic zone, or the high sea (Articles 37 and 38(2)), however, it does not apply to ships entering, leaving or returning from a state bordering the strait. Furthermore, a ship in transit must comply at the same time with international generally accepted regulations and procedures for navigation and pollution from ships (Article 39(2)), such as the International Convention for the Safety of Life at Sea 1974 (SOLAS) and the IMO pollution conventions. The transit passage is at least as liberal as the innocent passage, but it does not have the character of those waters (Article 45(1)). These straits are used for international navigation (Article 37). Also, according to Article 45(1)(b) the regime of innocent passage, shall apply in straits used for international navigation, between a part of the high seas or the exclusive economic zone and the territorial sea of a foreign state. During the transit passage, the ship should not be hampered, nor can be suspended (Article 45(2) regarding innocent passage and Article 44 regarding the states bordering straits) and the coastal state must give appropriate notification of any dangers to navigation (Article 44). Additionally, pursuant to Article 42(1) the coastal state has the prescriptive jurisdiction to establish sea lanes and traffic separation schemes, conforming to generally accepted international regulations, for the purposes of the safety of navigation. Nevertheless, such laws and regulations shall not hamper the right of transit passage of the foreign vessels.

Lastly, regarding the straits used not for international navigation (any activity which does not include the right of transit passage), Article 38(3) mentions that these straits remain subject to the other applicable provisions of UNCLOS. Thus, the prescriptive jurisdiction of that straits and their legal regime are completely different and the coastal state has to activate other applicable provisions, in order to prescribe its jurisdiction.

Enforcement jurisdiction:

The level of enforcement action is not made clear by UNCLOS. Regarding the straits used for international navigation, Article 38(1) states that all ships enjoy the right of transit passage, which gives to a vessel the right to enjoy the freedom of navigation, having, continuous and expeditious transit (Article 38(2)). During the transit passage, the ship enjoys the regime of innocent passage, thus, it should not be hampered, nor can be suspended (Article 45(2) regarding innocent passage and Article 44 regarding the states bordering straits). According to Article 45(1), the enforcement provisions of innocent passage in territorial sea, seem to have analogous application in straits used for international navigation (Articles 17-26). Thus, according to Article 25(3), which defines the regime of innocent passage in territorial sea, the coastal state has the enforcement jurisdiction and right to temporarily suspend innocent passage of a foreign vessel (in

transit passage), if this is essential for the security of the coastal state. In addition, Article 34 states that straits used for international navigation do not affect the legal status of the waters of the strait nor the coastal state's sovereignty and jurisdiction over such waters and their air space.

Regarding the straits used not for international navigation, Article 38(3) makes clear that ships not undergoing transit passage will be subject to other applicable provisions of UNCLOS. Thus, the enforcement jurisdiction of that straits and their legal regime are completely different and the coastal state has to activate the applicable enforcement provisions, of the non-innocent passage in territorial sea, in order to enforce its jurisdiction (Articles 25(1), 220(2) and 230(2)). Lastly, under Article 233, ships that commit marine environment violations, during their transit passage are subject to "appropriate enforcement measures" by strait states.

Customary International Law:

There are straits, which are regulated by UNCLOS, but also there are straits, which are regulated by other separated conventions. For instance, the **Turkish** straits, the straits of **Gibraltar**, the straits of **Malacca** and **Singapore**, the **Torres** strait and lastly the **Bering** strait are regulated by other separated regional or international conventions. Therefore, these specific international straits may have different regulations regarding the prescriptive and enforcement jurisdiction.

The coastal state has very limited rights regarding the closing of the straits to ships. The rule of transit passage through straits used for international navigation was introduced by customary international law in *the Corfu Channel* case. In the aforesaid case the ICJ made clear that in a time of peace states had a right to send their warships through straits used for international navigation between the two parts of the high seas. Thus, the decision made clear that the right of innocent passage existed in straits.

Archipelagic waters:

Prescriptive jurisdiction:

UNCLOS recognised a new type of jurisdictional zone applicable to archipelagic states. Article 46 defines what an archipelagic state is, while, Article 49 states the legal status of archipelagic waters, where the sovereignty of an archipelagic state extends to the waters enclosed by the archipelagic baselines. Article 47, gives the prescriptive right to an archipelagic state to draw its baselines. According to Article 52(1), all ships enjoy the right of innocent passage through archipelagic waters subject to the right of the archipelagic state to designate archipelagic lanes (Article 53). Where archipelagic lanes are designated, passing ships enjoy rights and have obligations equal to transit passage (Article 54). These rights are equal to those ones of the coastal state within an international strait (Articles 39, 40, 42, 44). Therefore, according to Article 42, the archipelagic state has the right to prescribe laws, relating to transit passage.

Moreover, where an archipelagic state has not designated archipelagic lanes then the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation (Article 53(12)). Thus, passage through archipelagic sea lanes must only conform with international standards for navigation and pollution and coastal state laws will not be applicable. Also, according to Article 211(1), regarding the pollution from ship, an archipelagic state can derive prescriptive jurisdiction establishing international rules and standards.

An archipelagic state has as much capacity to control and regulate innocent passage of foreign ships within its archipelagic waters as does the coastal state have within its territorial sea (Articles 17-32). This extends to stoppage, detention, arrest and prosecution of vessels engaging in actions which are contrary to the legitimate laws and regulations of the archipelagic state and also, taking necessary steps, to prevent passage which is not innocent.

However, the only limitation which may exist upon the archipelagic state in this regard would arise from the recognition of traditional fishing rights and other legitimate activities of neighbouring states within the archipelagic waters (Article 51).

Enforcement jurisdiction:

There is no clear and express enforcement jurisdiction to archipelagic waters under UNCLOS, however Article 52(1) states that all ships enjoy the right of innocent passage, which gives to a vessel the right to enjoy the freedom of navigation, having, continuous and expeditious transit. Thus, it should not be hampered, nor can be suspended. The enforcement provisions of innocent passage in territorial sea (Articles 17-26), seem to have analogous application in archipelagic waters, (similar with straits used for international navigation, Article 45(1)). Thus, according to Article

25(3) (regime of innocent passage in territorial sea), the coastal state has the enforcement jurisdiction and right to temporarily suspend innocent passage of a foreign vessel, if this is essential for the security of the coastal state.

Regarding the archipelagic waters which do not enjoy the right of innocent passage, it makes sense that are subject to other applicable provisions of the convention. Thus, in order for the archipelagic state to enforce its jurisdiction, has to activate the applicable enforcement provisions, of the non-innocent passage in territorial sea (Articles 25(1), 220(2) and 230(2)). In addition, someone can argue that the archipelagic state derives enforcement jurisdiction from Article 233, where ships that commit marine environment violations, during their transit passage, are subject to "appropriate enforcement measures" by strait states.

Lastly, regarding the archipelagic sea lanes passage (Article 53), the rights of the archipelagic states to engage in enforcement within those waters are equated with the rights of the coastal state within an international strait (Article 54).

Customary International Law:

As far as the customary international law is concerned, due to archipelagic waters is a new type of jurisdictional zone and did not exist before UNCLOS, there is no source or customary international law, describing what it was enforceable and what it was not.

However, in the case on merits *Qatar v Bahrain 2001*, Bahrain had not declared its self as an archipelagic state and was therefore unable to avail itself of the provisions of Part IV of UNCLOS. The ICJ in *Qatar v Bahrain*, made clear that part IV, regarding the archipelagic baselines, can only be relied upon by a state which has declared itself as an archipelagic state.

Also, there are some state practises regarding the archipelagic waters. For instance, **Indonesia** and **Philippines** follow and share common principles with respect to the drawing of straight baselines, different than those lied in both Articles 7 and 47. Furthermore, some archipelagic states such as **Australia, Cuba, Iceland, Ireland, Japan, Malta, New Zealand, Singapore** and **the United Kingdom** prevented from drawing archipelagic baselines under Article 47, because they could not enclose an area of water equal to the area of land. However, this does not bar those states from drawing straight baselines consistent with Article 7.

Exclusive Economic Zone:

Prescriptive jurisdiction:

It is worth mentioning the fact that the Exclusive Economic Zone (EEZ) did not exist before UNCLOS. The EEZ was a part of the high sea. According to Article 55, the EEZ is an area beyond and adjacent to the territorial sea, which shall not extend beyond 200 nautical miles from the baselines, from which the breadth of the territorial sea is measured (Article 57). All states enjoy several freedoms in the EEZ including freedom of navigation in the same way as in the high seas (Article 58(1)). However, exercising such freedoms they shall have due regard to the rights and duties of the coastal state and shall comply, pursuant to Article 58(3), with the laws and regulations adopted by the coastal state. Article 56(1)(b)(iii) gives to the coastal state the prescriptive jurisdiction with regard to the protection and preservation of the marine environment. However, this prescriptive jurisdiction is restricted by the Article 211(5), which refers that the laws and regulation adopted have to conform and give effect to generally accepted International rules and standards which have been established by the IMO (a competent international organization).

Enforcement jurisdiction:

The EEZ is perhaps the most complex of the maritime zones with respect to maritime enforcement. This because of the unique but limited sovereign rights and jurisdiction a coastal state possesses over this area. Article 73 defines the enforcement jurisdiction (boarding, inspection, arrest and judicial proceedings) of a coastal state relating to its rights under Article 58, and specifically the sovereign rights to explore, exploit, conserve and manage living sources.

According to Article 220(3) the coastal state where there are clear grounds for believing that a foreign vessel navigating in EEZ has committed in EEZ or in the territorial sea of the costal state a violation of any applicable international standards, the coastal state may ask the vessel to provide information. Such information includes the ship's identity, port of registry, last and next port of call and other relevant information relevant to establishing the existence of the violation. According to Article 220(5), where there are clear grounds that it has taken place substantial discharge, causing or threatening significant pollution, the coastal state can physically inspect the vessel if the required information

is not provided or where it is evident that it is not true. Furthermore, in case there is a clear objective evidence that a ship has committed a violation of international standards that has resulted in a discharge which caused major damage or threat of major damage to the coastal state, the coastal state can institute proceedings and detain the vessel if needed as per Article 220(6).

It is noticeable to say that the coastal state will decide what "clear ground" is. The IMO has also guidance and standards regarding the definition of the clear ground. However, if there is a dispute whether an action of a state to stop a vessel or ask for information is in violation with the UNNCLOS' provisions, then the arbitration on dispute resolution under UNCLOS between the states will resolve the issue.

Customary International Law:

There is not any customary international law, since EEZ is a new area, which was not pre-exist UNCLOS. The 200 nautical mile exclusive economic zone was formally developed and adopted for first time in 1982 and before that this area was a part of the high sea. Therefore, no one can make statement regarding what it was enforceable and what it was not before UNCLOS.

However, one other can argue that as early as 1984 a Chamber of the International Court held in the case *Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States)*, [1984], para. 94 that the concept of the EEZ was customary international law. Similarly, in the *1985 Libya v Malta* case, the court held that Article 57 is customary international law (par. 34). Also, the ICJ in its decision on merit in *the Nicaragua* case stated that the high seas freedoms of navigation apply in the EEZ, citing Article 58.

In addition, one other can argue that as per *the Lotus* case (paras. 46-47), within its territory, a state may exercise its jurisdiction, on any matter, even if there is no specific rule of international law permitting it to do so, however, it cannot exercise its power in any form outside its territory, unless, an international treaty or customary law permits it to do so (para. 45).

Last but not least, a coastal state does not have plenary regulatory and enforcement powers in its EEZ and their actions must be based upon these rights attributed in Article 56 subject also to Article 59. This point was emphasised in *the M/V Saiga (No2)*, where the International Tribunal for the Law of the Sea (ITLOS) rejected the attempt by **Guinea** to apply its customs laws to the EEZ as being contrary to UNCLOS. This case highlights that the enforcement jurisdiction within the EEZ is subject to general principles on the use of force and related relevant provisions found in the Convention.

High Sea:

Prescriptive jurisdiction:

There is limited jurisdiction by a coastal state on the high sea under the Customary International Law and UNCLOS. The basic regime is the exclusive flag state jurisdiction as per Articles 91, 92 and 94. Therefore, the flag state jurisdiction is the jurisdiction exercised by the flag of the vessel. Coastal states do not have prescriptive rights for foreign flag ships. Every state can sail ships flying its flag (Article 92), however, every state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag (Article 91). Ships have the nationality of the state, whose flag they are entitled to fly. Thus, there must exist a genuine link between state and the ship.

Article 86 defines the area within of which the provisions of the high sea apply and this area does not include the EEZ, territorial sea, internal waters and archipelagic waters. Therefore, the high sea is beyond the jurisdiction of a coastal state, since it is beyond of its maritime zones, where a coastal state has prescriptive jurisdiction. According to Article 87, the high sea is open to all states, and the freedom of the high sea is exercised under the provisions of UNCLOS and by other rules of international law. The prescriptive jurisdiction can be seen in Articles 211(1-2) and 212. Article 211(1-2) refers that states shall establish compulsory international rules and standards through competent international organizations, such the IMO, to prevent, reduce and control pollution of marine environment from vessels flying their flag or of their registry. Article 212 mentions that the states shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere. In addition, one can argue that the flag state according to Article 94(3), has prescriptive jurisdiction, ensuring the safety at sea. Last but not least, states have the right to take and enforce measures (both prescriptive and enforcement rights) beyond their jurisdictional zones in

order to protect their coastline or related interests from pollution or the threat of pollution arising from maritime casualties.

Enforcement jurisdiction:

Within the high sea the coastal state enjoys no specific rights on maritime regulations and enforcement other than the continuing right of hot pursuit under that *sui generis* regime, and the capacity to intervene in case of a maritime disaster of the coastal state, including fishing (Article 221).

According to Article 92(1), the flag state has exclusive enforcement jurisdiction on ships (sailing under its flag) on high seas. It is jurisdiction enforceable anywhere in the world and is practically limited by the capacity of a state to board and inspect ships which may be anywhere around the world. A flag state effectively exercises its jurisdiction and control administrative, technical and social matters over the ships flying its flag as per Article 94, which expresses the duties of the flag state. Article 97, refers to the penal enforcement jurisdiction a flag state has in matters of collision or any other incident of navigation. Also, one can argue that the flag state according to Article 94(3), has enforcement jurisdiction, ensuring the safety at sea. In addition Article 217 (enforcement by the flag state) mentions that states need to ensure compliance by vessels flying their flag or their registry with applicable international rules and standards established by the competent international organization (e.g. the IMO) or general diplomatic conference, and with their laws and regulations adopted in accordance with UNCLOS. Thus, states can inspect and detain/ restrict vessels from sailing, provide immediate investigation for particular breaches, institute proceedings and ensure sufficiently high fines in case of breaches.

Last but not least, Article 218(1) refers to the enforcement jurisdiction by a port state. Non-flag port states are empowered to investigate and take proceedings (enforcement rights) against vessels voluntarily within their ports, in respect of any discharge by such vessel beyond their jurisdictional zones in violation of applicable international rules and standards.

Customary International Law:

Overall, there is limited jurisdiction by a coastal state on the high seas under customary international law and UNCLOS. The basic regime is exclusive flag state jurisdiction as per Art 94. Coastal states do not have prescriptive rights for foreign flag ships. Nor do they have enforcement rights except for particular circumstances (e.g. Article 110(2)).

The most important authority, regarding the high sea is *the Lotus* case, which established two (2) principles. The first principle mentions that a state cannot exercise its jurisdiction in any form outside its territory unless an international treaty or customary law permits it to do so (para. 45). This is what it is called the first principle of *the Lotus* case. The second principle states that within its territory, a state may exercise its jurisdiction, in any matter, even if there is no specific rule of international law permitting it to do so (paras. 46-47). In these instances, the states have a wide measure of discretion, which is only limited by the prohibitive rules of international law. However, the crucial question on here is whether *the Lotus* case can be applicable or not, since it refers to a crime occurred on high seas and not for violations of marine pollution laws and regulations. If so, then *the Lotus* case is applicable, if not, then it cannot be considered as a customary law for this specific case.

The same consideration with the application of *the Lotus*, exists in *the Poulsen* case, where a Danish port enforced its port jurisdiction, confiscating 22 tons of Salmon caught outside the waters of a European member state.

In *the New Zealand* case held that it was an essential feature of the freedom of the high seas and the freedom of navigation that the state of nationality of a ship (the flag state) had exclusive jurisdiction over the ship when it was on the high seas. In addition, under the rules of international law a port state had no general power to unilaterally impose its own requirements on foreign ships relating to their construction, their safety and other equipment and their crewing if the requirements were to have effect on the high seas. Any requirements could not go beyond those generally accepted, especially in the maritime conventions and regulations.

In addition, customary international law can be seen in the High Seas Convention 1958, in the 1958 Geneva Conventions on the Law of the Sea and in 1969 International Convention relating to intervention on the high seas in case of oil pollution casualties.