

ENFORCEMENT MEASURES FOR FISHERIES LAW VIOLATION IN THE EXCLUSIVE ECONOMIC ZONE

**Expert Lecture on Regulation of Fishing Activities by Foreign Vessels in
EEZ of Coastal State, Gujarat Maritime University, 25 October 2024**

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INTRODUCTION

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The Necessity of Indonesia's Measures to Sink Vessels for IUU Fishing in the Exclusive Economic Zone

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MARITIME ZONES

Areas under sovereignty

- Internal waters
- Territorial sea
- Archipelagic waters

Sovereignty

Areas outside of sovereignty but within national jurisdiction

- Contiguous zone
- Exclusive Economic Zone
- Continental Shelf

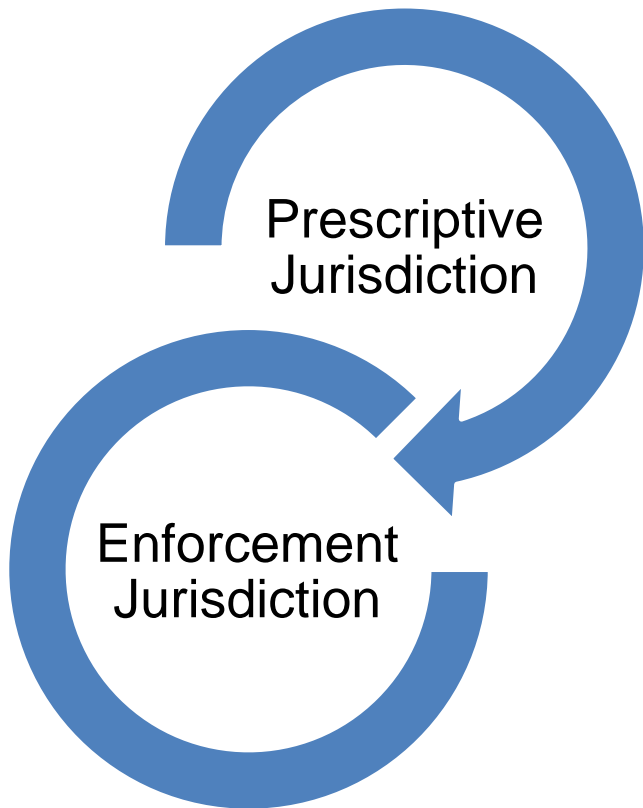
Sovereign
Rights &
Jurisdiction

Areas beyond national jurisdiction

- High Seas
- Deep Seabed (The Area)

Freedom of
the Seas

Common
Heritage of
Mankind



Power of a state *to prescribe laws* to govern persons or activities, regardless of their location

Power of a state to prescribe laws *to enforce its laws* by arresting, prosecuting and imprisoning persons

Sovereign rights include ‘all rights necessary for and connected with the exploration and exploitation of the natural resources,’ including ‘jurisdiction in connection with the **prevention and punishment of violations of the law**’

*Article 73**Enforcement of laws and regulations of the coastal State*

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

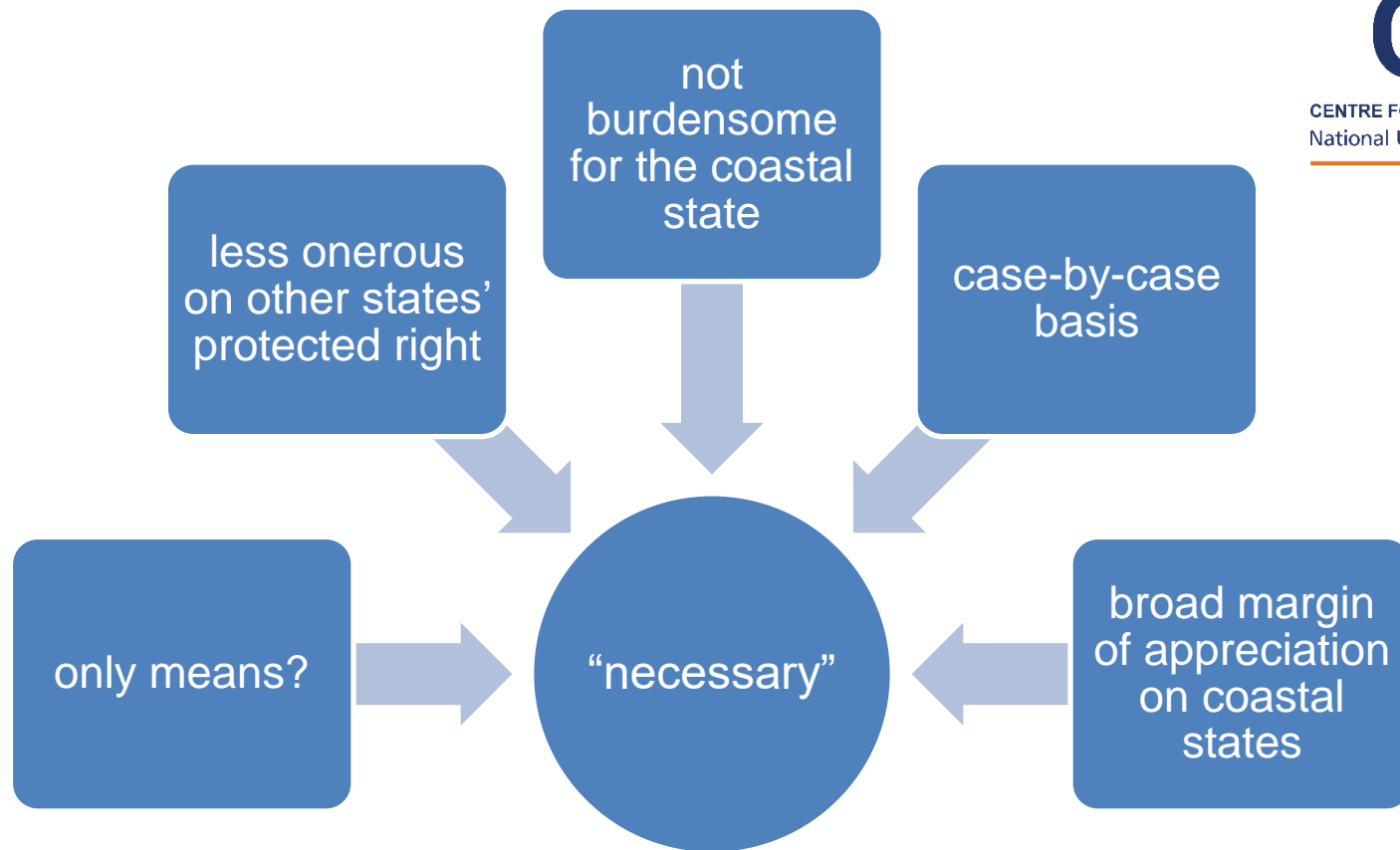
SOME SAFEGUARDS

Where a vessel is arrested or detained, the coastal state is required to notify the flag state

The arrested vessel and crew may be released upon reasonable bond or other security

When violations are established, coastal states shall notify the flag state of the punitive measures imposed

Penalties may not include imprisonment or any other forms of corporal punishment, unless otherwise agreed with the relevant state



reasonable contribution

absolute necessity

ITLOS ADVISORY OPINION ON IUU FISHING (2015)

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Flag states should apply sanctions “sufficient to deter violations and to deprive offenders of the benefits accruing from their IUU fishing activities”

Action taken by the flag states in this regard is without prejudice to the rights of the coastal state to take measures under Article 73 of UNCLOS

PROPOSED “NECESSITY” TEST

contribution of the measure to the objective sought, i.e., to ensure compliance to laws and regulations

impact of the measure on both the coastal state and other states

- Due regard to the rights and duties of other states
- Act in a manner that does not amount to an abuse of right



Contribution to the objective sought

- Higher fines since 2014 but Indonesia still struggles with IUU fishing and recovering payments from offenders

Impact on Indonesia and other states

- Challenges in enforcing fines, coupled with the difficulty identifying vessel owners and limited access to ownership information

IMPRISONMENT



Contribution to the objective sought

- Prohibited measure under domestic and international law
- Ambiguous domestic law provisions regarding applicability of imprisonment/confinement as a secondary punishment (for fine default)

Impact on Indonesia and other states

- Legal and logistical challenges in enforcing imprisonment as a substitute for unpaid fishing fines in the EEZ due to conflicting domestic laws, lack of uniform court rulings, and inadequate detention facilities on remote islands

CONFISCATION



Contribution to the objective sought

- Objects or tools used in or derived from a fisheries offence can be confiscated, including fishing gear, catches, and vessels
- Confiscated vessels are often auctioned, but this often lacks deterrence, leading to courts' preference for vessel destruction to deter repeat offenses

Impact on Indonesia and other states

- Confiscation may affect prompt release actions
- Safety and practical considerations (durability of objects, storage space, etc) while trial or investigation is still ongoing

DESTRUCTION OF VESSELS



Contribution to the objective sought

- Vessel destruction and moratorium policies have helped reduce foreign fishing in Indonesian waters since 2014



Impact on Indonesia and other states

- This measure may limit the flag state's right to release its vessel or crew by posting a bond, if taken before the domestic court's final decision on the merits (see *Tomimaru case*)

INDONESIA'S PRACTICE



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Subjective Requirements

resistance or dangerous manoeuvres by the vessel's Captain or crew

weather conditions preventing safe transport to port; OR

severe vessel damage posing a danger to the accused and the patrol vessel

Objective Requirements

the vessel lacks a valid permit

the vessel is clearly involved in illegal fishing or fish transport in Indonesia's fisheries zone (including EEZ); and

the vessel is a foreign vessel with an all-foreign crew

Additional or Alternative Requirements

the foreign vessel has low economic value, AND/OR

the foreign vessel can't be transported due to safety risks, hazardous cargo, too many vessels, or high costs

INDONESIA'S PRACTICE

Crew Safety Measures

- warn crew to abandon the vessel
- ensure all personnel are saved
- remove the flag
- document and record the sinking location

Sinking Safety

- set a safe shooting range, considering wind and current
- target the engine room using explosives or other methods

Environmental Precautions

- conduct impact assessments
- avoid explosives, when possible, to minimise harm

SHIFTING PRACTICE



Direct Vessel Destruction

- Patrol vessels may stop, inspect, and detain suspected illegal fishing vessels and take “special measures” such as burning or sinking foreign fishing vessels with ‘sufficient preliminary evidence’ (Article 69)



Vessel Destruction through Judicial Recourse

- Vessel destruction (burning or sinking) only **after a final and binding court decision**
- Destruction of an object or tool of fisheries crimes, including vessels (Article 76A)

CONCLUSION

- Coastal States with large EEZs and limited policing capacity, like Indonesia, will seek innovative ways to tackle fisheries violations.
- While coastal states may determine other necessary measures not explicitly mentioned in UNCLOS and have a broad margin of appreciation in selecting their preferred enforcement measures, such measures must be implemented with due regard to the rights of other states in the EEZ. Particularly, such measures must not limit the flag state's right to prompt release.

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THANK YOU

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