CHAPTER 11

Under-Utilized Coastal State Jurisdiction: Causes and Consequences

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Introduction

The first half of the title of this chapter clearly raises definitional issues. One can go further and say that it is question-begging. It presupposes that coastal state jurisdiction, or at least some forms of it, is under-utilized. This, in turn, assumes that it is clear what is meant by “under-utilized”—what degree of non-utilization by coastal states would amount to “under-utilization”? It may also assume that the information is available to make a judgment about these matters. As will be seen, none of these assumptions is necessarily correct.

I begin by developing these points further, starting with some definitions. The term “coastal state” is used ubiquitously in the UN Convention on the Law of the Sea (UNCLOS), although nowhere is it defined. Nor, as far as I am aware, is the term defined in any other treaty, although it is widely used. The nearest that UNCLOS comes to a definition is in article 2(1), which states that “the sovereignty of a coastal State extends, beyond its land territory . . . , to an adjacent belt of sea, described as the territorial sea.” This captures the essential idea of the “coastal state”, which is the state having sovereignty, sovereign rights or jurisdiction in certain maritime areas adjacent to its coast. Moving on to the term “jurisdiction”, this term is generally understood, as far as matters that are criminal and administrative in nature are concerned (and this chapter, like most of UNCLOS, is not concerned with jurisdiction in civil matters), as having

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1 1833 UNTS 397.
2 The definition of the coastal state given by the Virginia Commentary is “the State from the coastline or baselines of which the breadth of the territorial sea is measured”: see M.H. Nordquist (ed.) United Nations Convention on the Law of the Sea: A Commentary, Vol. 11 (Martinus Nijhoff, Dordrecht: 1993) 46. This is an overly narrow definition.
three components: the competence to legislate (legislative jurisdiction); the competence to arrest those suspected of having breached legislation (arrest jurisdiction); and the competence to try those arrested (judicial jurisdiction). This last form of jurisdiction can be disregarded for the purposes of this chapter because it is almost never exercised at sea. By contrast, both legislative and enforcement jurisdiction (as arrest jurisdiction will be referred to from now on) are. These two forms of jurisdiction need to be distinguished because they are not always, or indeed often, co-extensive.

In this chapter, and in keeping with the general theme of this book, I confine my discussion of coastal state jurisdiction to that conferred by UNCLOS, and do not consider whether coastal states have jurisdiction under any other treaties or customary international law. UNCLOS endows coastal states with a variety of forms of legislative and enforcement jurisdiction, depending on where jurisdiction is being exercised, in relation to what subject matter, and in respect of whom; or, for those who like these things in Latin, jurisdiction *ratione loci, ratione materiae* and *ratione personae*. In terms of place, coastal states have jurisdiction, of varying kinds, in internal waters; the territorial sea, including territorial sea comprising international straits subject to transit passage; archipelagic waters (in the case of archipelagic states); the contiguous zone; the EEZ; and the continental shelf. In terms of subject matter, coastal states have jurisdiction in relation to, *inter alia*, navigation, fishing, the extraction of minerals from the seabed, customs and fiscal matters, immigration control, the conduct of marine scientific research, the control of pollution, the conservation of marine biodiversity, and the conduct of archaeological activities. In terms of persons, coastal states may exercise their jurisdiction in respect of ships and those on board, overflying aircraft and those on board, and artificial islands, installations and structures and those persons on them.

In keeping with the general theme of this book, only coastal state jurisdiction in respect of ships will be addressed in this chapter. It is important to note that such jurisdiction is entirely permissive. UNCLOS endows coastal states with various competences to legislate and enforce their legislation, including setting parameters to the exercise of those competences, but it does not ever

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3 In this chapter the competence to enforce legislation is considered to include not only the use of traditional criminal procedures but also administrative enforcement measures and sanctions.

4 A rare example of the exercise of judicial jurisdiction at sea that has been drawn to my attention by my colleague, Dr Jacques Hartmann, is the practice of Italian judges sometimes being taken out to sea to examine whether alleged pirates who have been arrested and kept at sea should continue to be detained.