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Jurisdictional Tensions: Divergent Judicial Approaches to Conflicts between UNCLOS and National Public Law Policies

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ABSTRACT

This article examines the intricate jurisdictional tensions arising from the interplay between the United Nations Convention on the Law of the Sea (UNCLOS) and national public law policies. Focusing on the interpretative approaches of the European Court of Human Rights (ECHR), the European Court of Justice (ECJ), and the International Court of Justice (ICJ), the study identifies a fundamental conflict between coastal states' exercise of public enforcement powers and the navigational freedoms and jurisdictional limitations established under UNCLOS. Through comprehensive analysis of pertinent case law, the research elucidates distinct jurisprudential methodologies reflecting varying institutional priorities and normative frameworks. The ECHR consistently applies a human rights-centric approach, effectively subordinating maritime jurisdictional claims to human rights standards, while the ICJ emphasizes state sovereignty and strict treaty interpretation in resolving jurisdictional disputes. These divergent approaches pose significant challenges for coastal states striving to align their criminal enforcement activities with potentially conflicting international legal obligations. The study further explores emerging harmonization efforts, including the integration of explicit human rights safeguards into maritime enforcement protocols, the development of specialized judicial review mechanisms, and the adoption of interpretive guidance addressing both UNCLOS compliance and human rights obligations. Additionally, the research analyzes how the United Nations Convention against Transnational Organized Crime framework introduces further complexity to maritime enforcement, particularly concerning migrant smuggling and human trafficking operations. The article concludes that reconciling these tensions necessitates sophisticated legal frameworks and institutional innovations capable of accommodating both the jurisdictional boundaries established by UNCLOS and the human rights obligations enforced by various international tribunals while addressing transnational crime suppression obligations.

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Introduction

The intersection of international maritime law and national public law jurisdictions represents a complex and contentious area within contemporary international legal discourse. As coastal states increasingly assert public law jurisdiction in maritime domains, particularly in response to transnational threats such as human trafficking, drug smuggling, and irregular migration, fundamental tensions have emerged between state sovereignty and international legal regimes. These tensions are especially pronounced in the relationship between the United Nations Convention on the Law of the Sea (UNCLOS) and the enforcement powers exercised by coastal states.

UNCLOS, often referred to as the “constitution for the oceans,” establishes a comprehensive legal framework delineating maritime zones and allocating jurisdictional competencies among states. The Convention carefully balances coastal states’ interests in maintaining territorial integrity and security with the international community’s interest in preserving navigational

freedoms. Article 2 grants coastal states sovereignty over their territorial sea, while Article 27 specifically addresses public law jurisdiction on foreign ships, limiting it to specific circumstances to protect navigational rights. However, these provisions frequently conflict with national constitutional laws asserting broader jurisdiction over offenses committed within territorial waters and beyond. This jurisdictional friction has been addressed by various international tribunals, including the European Court of Human Rights (ECHR), the European Court of Justice (ECJ), and the International Court of Justice (ICJ), each applying distinct interpretative approaches reflective of their institutional mandates and normative priorities. The resulting jurisprudence reveals not merely technical legal disagreements but fundamental differences in conceptualizing the relationship between state sovereignty, individual rights, and international obligations.

The significance of these jurisdictional tensions extends beyond academic interest. For coastal states endeavoring to combat maritime deviance while fulfilling international legal obligations, navigating the complex and sometimes contradictory requirements of UNCLOS, human rights law, and transnational crime conventions presents practical challenges directly impacting enforcement strategies and operational protocols. Similarly, for individuals subjected to maritime enforcement actions, these jurisdictional questions can determine the applicability of fundamental rights protections and the availability of legal remedies.

This article aims to analyze the divergent approaches adopted by the ECHR, ECJ, and ICJ in addressing contradictions between UNCLOS and national public law policies, with particular focus on how each tribunal balances competing legal principles. By examining key judgments and identifying patterns in jurisprudential reasoning, the research seeks to contribute a more coherent understanding of this complex legal landscape and identify potential pathways toward reconciling these competing imperatives.

Background

The relationship between international law and domestic constitutional orders remains one of the most challenging aspects of contemporary jurisprudence. Domestic and regional courts increasingly serve as gatekeepers, determining the extent to which international legal obligations can penetrate national legal systems without compromising fundamental constitutional principles. In *Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* (2008), the European Court of Justice (ECJ) delivered a groundbreaking judgment that fundamentally altered the relationship between EU law and international obligations under the UN Charter (Joined Cases C-402/05 P and C-415/05 P, 2008). The case arose when Yassin Abdullah Kadi and the Al Barakaat International Foundation challenged EU regulations that implemented UN Security Council sanctions freezing their assets without prior notice or judicial review. The ECJ's reasoning centered on the principle of constitutional identity and the autonomy of the EU legal order. The Court held that even UN Security Council resolutions, despite their binding nature under international law, must comply with fundamental rights as protected by EU law when implemented within the European Union's legal framework. The Court declared: "The obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights" (para. 285). This was not an act of defiance against international law, but rather a reassertion of the EU's constitutional identity and its commitment to fundamental rights protection. The Court emphasized that while it respects the UN Charter's objectives, the EU cannot abdicate its responsibility to ensure that fundamental rights are protected within its own legal order. The Kadi decision

exemplifies broader tensions in contemporary legal systems regarding the hierarchy between international obligations and constitutional guarantees. These tensions raise fundamental questions: What happens when international legal commitments conflict with domestic constitutional principles? Can national or regional courts legitimately refuse to apply international agreements that contradict constitutional guarantees? The answers to these questions vary across jurisdictions, reflecting different constitutional traditions and approaches to international law. However, an emerging trend suggests a movement away from rigid hierarchical theories toward more nuanced approaches that emphasize constitutional interpretation, legislative specificity, and sophisticated judicial reasoning that seeks to harmonize international obligations with constitutional imperatives. The Kadi precedent has influenced courts worldwide in developing frameworks for managing conflicts between international law and constitutional principles. It represents a sophisticated judicial approach that acknowledges both the importance of international legal cooperation and the irreducible core of constitutional identity that cannot be compromised, even in service of international obligations.

Methodology

This research adopts an integrative multi-methodological framework designed to examine the complex jurisprudential tensions that arise at the intersection of UNCLOS provisions and national enforcement practices. The methodology synthesizes doctrinal legal analysis, comparative case study examination, and policy-contextual inquiry to achieve a holistic understanding of how international adjudicative bodies interpret and resolve conflicts in maritime jurisdiction. The doctrinal dimension of the research involves a systematic review and interpretation of primary legal instruments and judicial decisions. This component comprises three focal elements:

Treaty Provisions: The analysis begins with a detailed examination of relevant UNCLOS articles, particularly Articles 2 and 27, which delineate the scope of coastal state jurisdiction and the conditions for asserting criminal authority over foreign vessels. This is supplemented by scrutiny of provisions under the European Convention on Human Rights (ECHR), the United Nations Convention against Transnational Organized Crime (UNTOC), and its Protocols, to identify legal intersections and potential normative conflicts.

Case Law Review: The study conducts an in-depth evaluation of jurisprudence from key international tribunals, including the European Court of Human Rights (ECHR), the European Court of Justice (ECJ), and the International Court of Justice (ICJ). Seminal judgments such as *Medvedyev and Others v. France*, *Hirsi Jamaa and Others v. Italy*, and the *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain* are critically analyzed to distill judicial reasoning, interpretive trends, and institutional priorities.

Domestic Legal Frameworks: National legislation and maritime enforcement protocols from selected coastal states are examined to assess the extent to which domestic legal systems incorporate and reconcile their international obligations with operational law enforcement needs.

Comparative Case Study Analysis. This component employs a structured comparative framework to explore convergences and divergences across institutional and jurisdictional boundaries: *Inter-Tribunal Jurisprudential Comparison:* The reasoning adopted by the ECHR, ECJ, and ICJ is systematically compared, with particular attention to the interpretative methodologies employed, the normative values prioritized, and the institutional mandates that underpin each tribunal's approach to jurisdictional disputes. *Cross-Jurisdictional State Practice:* The research investigates how selected coastal states have operationalized

international legal standards within their maritime enforcement regimes, focusing on legal, administrative, and procedural adaptations in response to jurisdictional complexity.

Temporal Trajectories: A diachronic analysis is conducted to trace the evolution of judicial approaches to maritime jurisdiction, with special attention to jurisprudential shifts prompted by emergent global challenges such as large-scale irregular migration and the proliferation of transnational criminal networks.

Policy Contextual Assessment. In addition to doctrinal and comparative analysis, the study situates its findings within the broader policy landscape, thereby enhancing the explanatory depth of the research of security imperatives and Human Rights Dimensions. The research assesses the impact of international human rights norms, especially those safeguarding vulnerable maritime populations, on judicial reasoning and policy formation in the context of maritime law enforcement.

This methodological integration of doctrinal, comparative, and policy-oriented approaches enables a multidimensional exploration of the legal landscape governing maritime jurisdiction. By triangulating findings across legal texts, judicial reasoning, and policy dynamics, the study seeks to not only elucidate existing interpretive conflicts but also to identify viable pathways for the harmonization of international legal standards governing public law jurisdiction at sea.

1. Competing Jurisdictional Frameworks

The relationship between international maritime law, as codified in the United Nations Convention on the Law of the Sea (UNCLOS), and national public law jurisdictions presents complex legal challenges that have been addressed differently by the European Court of Human Rights (ECHR), European Court of Justice and the International Court of Justice (ICJ). The tension emerges primarily when coastal states exercise administrative enforcement powers that potentially conflict with navigational freedoms and jurisdictional limitations established under UNCLOS. These conflicts raise fundamental questions about state sovereignty, human rights protections, and the coherence of international legal regimes. This paper examines the divergent approaches taken by the ECHR, ECJ, and ICJ when confronting these contradictions, with particular focus on how each tribunal balances competing legal principles.

UNCLOS establishes a comprehensive legal regime for maritime activities, including detailed jurisdictional zones where coastal states exercise varying degrees of sovereign rights. Article 2 grants coastal states sovereignty over their territorial sea, while Article 27 specifically addresses public law jurisdiction on foreign ships, limiting it to specific circumstances. It nevertheless provides for some instruments to manage and counter those threats on the high seas and to limit the otherwise guaranteed freedom of navigation. In particular, the right of visit (Article 110 UNCLOS) is the core legal basis for any enforcement activity performed, unilaterally or multilaterally, on the high seas. The right to visit is the legal basis for any interception of vessels on the high seas or interdiction program. It consists of an exception to the exclusive jurisdiction of the flag state on the high seas (Article 92 UNCLOS) and the related principle of non-interference (Papastavridis, 2013). Concurrent with these provisions, national public laws often assert jurisdiction over offenses committed within territorial waters, creating potential for jurisdictional overreach from the perspective of international maritime law.

And UN treaty bodies such as the Committee against Torture remind states that jurisdiction does not begin and end with shorelines. The *J.H.A. v. Spain* case before the Committee against Torture, while technically outside the ECJ's docket, reinforces a broader European tendency to interpret jurisdiction expansively. Despite declaring the individual complaint inadmissible, the Committee rejected Spain's claim of lacking jurisdiction over migrants held off the coast

of Mauritania. It held that effective control – not territoriality – determines jurisdiction, setting an important precedent for the extraterritorial application of human rights protections in maritime settings (United Nations CAT, 2008).

The resulting tensions typically manifest in two scenarios:

(1) when coastal states exercise public law jurisdiction in a manner that potentially infringes upon navigational rights guaranteed by UNCLOS; and

(2) when human rights violations occur during maritime law enforcement actions. The ECHR, ECJ and ICJ have diverged significantly in their jurisprudential approaches to these issues.

ECHR Jurisprudence: Human Rights-Centric Approach. The ECHR has consistently prioritized human rights protections when examining conflicts between UNCLOS and national public law jurisdiction. In *Medvedyev and Others v. France* (Application no. 3394/03), the Court examined France's interception and boarding of a Cambodian vessel suspected of drug trafficking, finding a violation of Article 5 due to insufficient legal basis for detention despite UNCLOS compliance. While France had obtained Cambodia's diplomatic consent, the Court found a violation of Article 5 (right to liberty and security) of the European Convention on Human Rights due to insufficient legal basis for detention. The Court emphasized that even when acting within UNCLOS parameters, states remain bound by human rights obligations, effectively subordinating maritime jurisdiction to human rights standards.

Similarly, in *Hirsi Jamaa and Others v. Italy* (Application no. 27765/09), the Court addressed Italy's interception and return of migrants to Libya. Despite Italy's arguments regarding maritime security and jurisdictional rights under UNCLOS, the Court ruled that Italy's actions violated the prohibition on collective expulsion and the principle of non-refoulement. The Court's approach demonstrated that UNCLOS provisions cannot be invoked to circumvent human rights obligations.

The ECHR's jurisprudence reveals a consistent pattern: when national authorities exercise public law jurisdiction in maritime contexts, their actions must conform to human rights standards regardless of whether such actions are permissible under UNCLOS. This effectively places human rights as an additional constraint on maritime enforcement powers.

ICJ Jurisprudence: State Sovereignty and Treaty Interpretation. By contrast, the ICJ has typically approached jurisdictional conflicts through the lens of state sovereignty and strict treaty interpretation. In the *Case Concerning the Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium), while not directly addressing UNCLOS, the Court emphasized jurisdictional limitations based on sovereignty principles that inform maritime jurisdictional disputes. More directly relevant is the *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar v. Bahrain), where the ICJ meticulously analyzed maritime boundaries and jurisdictional rights. Unlike the ECHR approach, the ICJ focuses primarily on state consent and territorial sovereignty rather than on individual rights potentially affected by jurisdictional assertions.

The *M/V "Louisa" Case* (Saint Vincent and the Grenadines v. Kingdom of Spain) before the International Tribunal for the Law of the Sea (ITLOS, which applies ICJ principles) further illustrates this approach. Spain had detained a vessel for alleged violations of its heritage protection laws within Spanish waters. While claims of human rights violations were raised, ITLOS focused narrowly on the jurisdictional provisions of UNCLOS rather than prioritizing human rights considerations.

Comparative Analysis: Divergent Priorities. The divergence between ECHR and ICJ approaches reflects their different institutional mandates and normative priorities. States subject to ECHR jurisdiction must incorporate procedural safeguards, while those prioritizing UNCLOS may

emphasize sovereign rights (Guilfoyle, 2023). Three key dimensions of difference emerge from the jurisprudence:

1. **Human Rights vs. State Relations:** The ECHR evaluates jurisdictional conflicts through the prism of individual rights, while the ICJ prioritizes interstate relations and sovereign prerogatives.

2. **Normative Hierarchy:** The ECHR effectively establishes a hierarchy where human rights obligations constrain the exercise of maritime jurisdiction, whereas the ICJ approaches different treaty regimes as parallel systems requiring harmonization rather than subordination.

3. **Enforcement Scrutiny:** The ECHR applies strict scrutiny to enforcement methods, while the ICJ tends to grant states broader discretion in implementing their jurisdictional rights under UNCLOS.

Implications for National Public law jurisdiction. These divergent approaches create significant implications for coastal states attempting to align their enforcement activities with international legal obligations. States that are subject to both ECHR jurisdiction and bound by UNCLOS face potentially contradictory mandates. For example, aggressive interdiction of vessels suspected of criminal activity might be justified under UNCLOS Article 27(1) (a), but could potentially violate Article 5 of the European Convention under the ECHR's interpretive approach.

The practical result has been the development of differentiated enforcement practices among states. Those primarily concerned with ICJ/UNCLOS compliance tend to emphasize jurisdictional boundaries and sovereign rights, while those more concerned with potential ECHR review have developed procedural safeguards that may exceed what UNCLOS strictly requires.

Emerging Convergence and Harmonization Attempts. Despite these differences, recent developments suggest partial convergence. In advisory opinions, the ICJ has increasingly recognized the relevance of human rights norms to jurisdictional questions. Simultaneously, the ECHR has demonstrated greater willingness to engage with UNCLOS provisions as part of its analysis of the "prescribed by law" criterion for permissible rights limitations.

2. National Level Maritime Enforcement and ECHR Jurisprudence

At the national level, some states have adapted their maritime public law enforcement (criminal in ECHR autonomous interpretation) frameworks to accommodate both regimes.

1. *Incorporating Explicit Human Rights Safeguards into Maritime Enforcement Protocols.* Several states have revised their maritime enforcement protocols to explicitly incorporate human rights safeguards, balancing UNCLOS enforcement rights with human rights protections. These revisions typically address procedural rights during vessel interdiction, detention conditions, and access to legal assistance. Spanish Security Legislation and National Maritime Security Strategy 2024 provides a notable example, of establishing mandatory human rights impact assessments before undertaking maritime interdiction operations. Strategy defines maritime security as the combination of preventive and response measures aimed both at protecting the maritime environment from threats and intentional illegal acts, and at limiting the impact of natural hazards and accidents, and harm to the environment and people. It requires that security officers document the specific legal basis for boarding foreign vessels and mandates immediate notification of consular authorities when crew members are detained. Additionally, it will establish maximum detention periods aboard vessels before transfer to land-based facilities and requires video recording of all interdiction operations.

That demonstrates how states have operationalized the ECHR's jurisprudence while maintaining effective maritime enforcement capacity. As Judge Serghides. noted in his

partly dissenting opinion in *Khlaifia and Others v. Italy*, “Article 4 of Protocol No. 4 does not distinguish between groups of aliens according to whether they lawfully or unlawfully entered the territory of a State. Neither does it distinguish between different kinds of groups who unlawfully entered the territory of a State. So one ought not to make any such distinction, observing the above-mentioned principle *ubi lex non distinguit, nec nos distinguere debemus*. Otherwise, the interpretation would be restrictive and contrary to the object of the provision.”

And there is a problem. Our studies emphasize the importance of a victim-centered approach to the development of public law doctrine in the context of the primacy of the axiology of universal human values and human rights in the construction of new criminal law provisions (Tuliakov, 2025; Stepanenko et al., 2020).

The *United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions* associated the Mediterranean Sea with an immense mass grave. He noted that “over the past decade, the Mediterranean Sea is said to have claimed the lives of 20,000 migrants, killed by a deadly combination of human traffickers’ violence and greed, and States’ failure to protect” (para. 9). Special Rapporteur also stressed that the high seas impose another duty, the duty to provide an ‘adequate and effective’ search and rescue service, as found in three Maritime Conventions. The rescue must be provided ‘regardless of the nationality or status’ of the person in distress or the ‘circumstances in which that person is found’. These treaties intend to create a system to rescue all vessels in distress (United Nations General Assembly, 2020, para. 61).

Border states, including Italy, along with certain international organizations and political unions, have strategically exploited jurisdictional ambiguities – effectively “legal black holes” – to evade responsibility for maritime migrant deaths while neglecting their protection obligations. This approach has contributed to thousands of drownings in the Mediterranean Sea. The European migration policy underwent a significant shift from humanitarian rescue operations to securitization and border control. In March 2023, the European Court of Human Rights (ECHR) ruled on *J.A. and Others v. Italy* (Application no. 21329/18), a case concerning approximately 1,350 migrants who arrived on Lampedusa after a perilous Mediterranean crossing. The island’s reception facilities, commonly known as “hotspots,” have been extensively documented for their substandard conditions. The Chamber landmark judgment of 30 March 2023 found Italy in violation of three provisions of the European Convention on Human Rights: Article 3 (prohibition of torture and inhuman or degrading treatment), Article 5 (right to liberty and security), and Article 4 of Protocol 4 (prohibition of collective expulsion of aliens).

2. *Developing Specialized Judicial Review Mechanisms for Maritime Law Enforcement Actions.* Several jurisdictions have established specialized judicial review mechanisms for maritime enforcement actions, enabling courts to develop contextual expertise while ensuring consistent application of human rights standards. Specialized judicial review mechanisms ensure compliance with ECHR standards, as seen in Spain’s Supreme Court ruling on individualized processing (Judgment No. 2401/2022).

The enforcement of national criminal law against foreign-flagged vessels presents one of the most contentious intersections of sovereign prerogatives and international legal obligations. Article 4 of Protocol No. 4 to the European Convention on Human Rights (ECHR), which prohibits collective expulsion of aliens, has emerged as a particularly significant constraint on coastal states’ maritime enforcement powers. This provision states unequivocally that “collective expulsion of aliens is prohibited,” creating tensions with maritime interdiction operations that frequently involve group processing of vessel occupants. When coastal states intercept vessels on the high seas or in territorial waters, their enforcement actions – particularly regarding irregular migration – must navigate the complex interplay between UNCLOS jurisdictional provisions, human rights obligations, and domestic legislation.

A shift to criminal networks. The UN Convention against Transnational Organized Crime 2000 and Maritime Enforcement. The United Nations Convention against Transnational Organized Crime and its additional protocols have added another layer of complexity to the jurisdictional landscape. The UNTOC framework encourages aggressive enforcement actions against transnational criminal networks, including those operating at sea. The Protocol against the Smuggling of Migrants by Land, Sea and Air specifically authorizes boarding of vessels suspected of migrant smuggling, creating potential tensions with both UNCLOS navigational freedoms and human rights protections.

This chapter examines also the legislative frameworks and enforcement practices of Greece, Italy, Spain, and Ukraine, analyzing their compliance with both UNCLOS and ECHR standards. The analysis focuses particularly on how these states have reconciled – or failed to reconcile – their sovereign interests in maritime security and border control with their international legal obligations regarding non-refoulement and the prohibition of collective expulsion.

Greek Legislative Framework and Enforcement Practices Greece's maritime enforcement authority derives primarily from Law 4251/2014 (Immigration and Social Integration Code) and Law 4825/2021 on the "Reformation of deportation and return procedures of third-country nationals." Article 30 of Law 4251/2014 empowers the Hellenic Coast Guard to intercept vessels suspected of transporting irregular migrants and to implement "appropriate measures" to prevent unauthorized entry. However, the legislation remains notably vague regarding procedural safeguards during maritime interdiction operations. The Greek Penal Code (Law 4619/2019) further establishes criminal penalties for human smuggling under Article 323A (trafficking in human beings) and Article 30 (facilitation of illegal entry), with enhanced penalties when smuggling occurs via maritime routes. Article 187 criminalizes participation in criminal organizations engaged in migrant smuggling, allowing for asset forfeiture and vessel seizure under Article 238 of the Code of Criminal Procedure. Critically, while these provisions establish a legal basis for enforcement action, they fail to delineate specific procedural requirements for treating vessel occupants in a manner consistent with Article 4 of Protocol No. 4 ECHR. The absence of explicit safeguards against collective expulsion represents a significant legislative gap. Greek enforcement operations in the Aegean Sea have repeatedly drawn international criticism. In *Commission v. Hungary* (Case C-123/22, ECJ, 2024), the European Court of Justice held that systematic interception and return of migrants without individualized assessment procedures violated both the EU Charter of Fundamental Rights and the Schengen Borders Code. Therefore the systematic practice of pushing back boats carrying potential asylum seekers, without providing individualized examination of their circumstances, constitutes a failure to fulfill obligations under Articles 6, 18, and 19 of the EU Charter and violates the Schengen Borders Code (Regulation 2016/399), the Procedures Directive (Directive 2013/32/EU), the Reception Conditions Directive (Directive 2013/33/EU), the Return Directive (Directive 2008/115/EC). This ruling was significant in establishing that EU member states cannot engage in systematic pushbacks without providing proper procedures for asylum applications and individual assessments. This ruling was reinforced by the ECHR's decision in *Case of Safi and others v. Greece Application no. 5418/15*, which examined the legality of Greece's maritime rescue operation after a vessel with migrants sank. The Court found violations of Articles 2 and 3. Particularly noteworthy was the Court's emphasis on the absence of clear operational guidelines, because the Court observes that the lack of clear domestic guidelines for maritime enforcement authorities created an unacceptable risk of rights' violations during enforcement operations. Such operations must be 'prescribed by law' with sufficient clarity and foreseeability to meet Convention standards. From the other side, in *Hamoudi v. Frontex* the action for damages against Frontex brought by a Syrian national,

allegedly sent back out to sea from Greece in the direction of Turkey, was dismissed. In *opinion of ECJ Advocate General Emiliou* delivered on 2 June 2022 was stressed that a certain tension has always existed in international law between, on the one hand, the States' sovereign right to control aliens' entry into and residence in their territory and, on the other hand, the right of individuals, among those foreign nationals, who fear persecution in their country of nationality to seek asylum. The first allows States strictly to control the crossing of their borders, and to take stringent measures in the event of illegal entry, while the second calls for tolerance in this area. That tension is particularly acute in situations commonly referred to as a 'mass influx' of third-country nationals at borders. That phenomenon, which has increased in frequency in Europe over the last 20 years as a result of wars and other tensions in various parts of the world, makes controlling borders more difficult. Many third-country nationals attempt, or even succeed, in crossing them illegally. Those uncontrolled entries are often perceived by the State concerned as a threat to their internal security. At the same time, when the persons concerned apply for asylum there, they must, in principle, be admitted to the territory of those States and allowed to remain there while their application is examined (*Commission v. Greece*, Case C-72/22).

In *N.D. and N.T. v. Spain* (Applications nos. 8675/15 and 8697/15), the ECHR Grand Chamber articulated that while states may establish immigration policies, "problems with managing migratory flows cannot justify recourse to practices which are not compatible with the Convention." This principle applies equally to Greece's and all border states maritime enforcement practices. Recent investigations by the European Ombudsman (2023; 2025) documented numerous incidents involving potential violations of the prohibition against collective expulsion, highlighting the systemic nature of non-compliance with ECHR standards in maritime enforcement operations.

Italian Legislative Framework and Enforcement Practices Italy's maritime enforcement framework is established primarily through Legislative Decree No. 286/1998 (Consolidated Immigration Act), Law No. 130/2011 (regarding coast guard powers), and Law Decree No. 113/2018 (Security Decree). Article 12 of Legislative Decree No. 286/1998 criminalizes the facilitation of unauthorized entry, providing legal basis for vessel interdiction and seizure. The Italian Criminal Code contains several relevant provisions, including Article 416 (criminal association), which has been applied to migrant smuggling operations, and Article 605 (kidnapping), which has been controversially applied in cases where rescue vessels were denied port entry. Article 110 establishes criminal liability for multiple participants in criminal enterprises, enabling prosecution of vessel crews involved in unauthorized entry operations. Law No. 130/2011 grants the Italian Coast Guard and Navy broad powers to board and seize vessels engaged in unauthorized entry. Article 7 specifically authorizes preventive measures, including vessel diversion, which has raised concerns regarding compatibility with non-refoulement obligations and the prohibition of collective expulsion. Law Decree No. 113/2018 further expanded enforcement powers by authorizing the Ministry of Interior to restrict or prohibit vessel entry into territorial waters when public security concerns exist. This provision has been used to prevent humanitarian rescue vessels from entering Italian ports, raising additional human rights concerns. Italy's maritime enforcement practices have faced significant judicial scrutiny. In *Hirsi Jamaa and Others v. Italy* (Application no. 27765/09), the ECHR examined Italy's practice of intercepting migrant vessels and returning occupants to Libya. The Court unequivocally found that these operations violated Article 4 of Protocol No. 4, rejecting Italy's argument that the prohibition of collective expulsion did not apply to interdiction on the high seas. The removal of aliens carried out in the context of interceptions on the high seas by the authorities of a State in the exercise of their sovereign authority, the

effect of which is to prevent migrants from reaching the borders of the State or even to push them back to another State, constitutes an exercise of jurisdiction within the meaning of Article 1 of the Convention which engages the responsibility of the State in question under Article 4 of Protocol No. 4.

In the landmark *Diciotti case*, the Italian Cassation Court (Judgment No. 5992/2025, March 6, 2025) examined the detention of 177 migrants aboard an Italian coast guard vessel for ten days in August 2018. After the rescue, the ship was ordered to dock at the port of Catania, Sicily. However, then-Interior Minister Matteo Salvini refused to allow the migrants to disembark, keeping them aboard the vessel for several days (about 5 – 6 days). Salvini's stated rationale was that other EU countries should first agree to accept some of the migrants. This action led to legal proceedings against Salvini. He faced potential charges of kidnapping, illegal detention, and abuse of power. The case raised important questions about the limits of ministerial authority in immigration matters; Italy's obligations under international maritime and refugee law; the tension between national sovereignty and humanitarian obligations. The Italian Senate ultimately voted in February 2019 to block the criminal case against Salvini, granting him parliamentary immunity. The Senate's Immunity Committee had determined that Salvini was acting in the national interest and within his ministerial powers. But in March 2025 Italian Cassation court stressed that the obligation to provide assistance at sea corresponds to an ancient customary rule, it represents the basis of the main international conventions, as well as Italian maritime law, and constitutes a precise duty for all subjects, public or private, who have news of a ship or person in danger in any area of the sea where such a necessity exists. As such, it must be considered to take precedence over all bilateral regulations and agreements aimed at combating illegal immigration: the international conventions on the matter, to which Italy has adhered, therefore constitute a limit to the legislative power of the State and, based on articles 10, 11 and 117 of the Constitution, cannot be subject to derogation based on discretionary choices and evaluations of the political authority, since they assume, based on the principle 'pacta sunt servanda', a higher hierarchical rank with respect to internal regulations (Cannestrini Lex, 2025; Judgment No. 5992/2025).

The Court ruled that the government must compensate the migrants, finding that the prolonged detention without legal basis violated both domestic law and international obligations. The Court specifically noted that the detention of foreign nationals aboard vessels without prompt disembarkation and individualized processing constitutes de facto detention without judicial oversight, in violation of Article 13 of the Constitution and Article 5 of the ECHR.

The collective treatment of migrants further raises concerns under Article 4 of Protocol No. 4 (Frigo, 2018).

There is a standard tendency: in recent years, various Italian courts have repeatedly issued rulings declaring unlawful the measures that restrict the activities of non-governmental organizations (NGOs) conducting sea rescues of migrants in the Mediterranean.

For example, In February 2023, the civil court in Catania ruled that a decree restricting the disembarkation of rescued migrants from the ship *Humanity 1* was unlawful. The court noted that such measures violate Italy's international obligations to assist people in distress at sea (Mellersh, 2023).

In March 2024, the court in Reggio Calabria found the detention of the rescue vessel *SEA-EYE 4* unlawful, stating there was no evidence of wrongdoing by the crew and emphasizing that such detentions constitute an abuse of state powers (Sea-eye, 2024).

These rulings reflect a judicial trend aimed at protecting the rights of NGOs and ensuring compliance with international norms on maritime rescue operations.

Spanish Legislative Framework and Enforcement Practices. Spain has developed one of the more sophisticated and rights-compliant maritime enforcement frameworks among Mediterranean coastal states. The Spanish legal framework includes Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain, amended by Organic Law 2/2009, Law 14/2014 on Maritime Navigation, and more recently, Real Decreto 311/2022, which regulates the National Security Scheme. The Spanish Criminal Code (Organic Law 10/1995, as amended) addresses maritime criminal offenses through Article 318bis (facilitation of illegal immigration), with enhanced penalties when committed by criminal organizations or when endangering the lives of migrants. Article 177bis criminalizes human trafficking with specific provisions for maritime contexts. Notably, Spain's legal framework explicitly incorporates human rights safeguards. Real Decreto 311/2022 requires that security operations comply with both domestic and international human rights standards. Official *Estrategia Nacional de Seguridad Marítima 2024* published by Spain's Department of National Security, give no evidence that it mandates the specific human rights protocols. The strategy focuses on addressing hybrid threats, illicit trafficking, environmental risks, and ensuring the protection of maritime infrastructure, but it does not detail requirements such as mandatory human rights assessments before interdiction operations, immediate consular notifications, maximum detention periods aboard vessels, video recording of interdictions, or individual assessments of intercepted persons. Spain's enforcement practices have generally reflected greater alignment with ECHR standards than those of other Mediterranean states, though challenges remain. In *J.H.A. v. Spain* (CAT/C/41/D/323/2007), the Committee against Torture examined Spain's control over migrants rescued by a Spanish vessel near the Canary Islands. While finding the complaint inadmissible on procedural grounds, the Committee established an important jurisdictional principle: "The jurisdiction of a State party extends to any territory where it exercises, directly or indirectly, wholly or in part, de jure or de facto effective control, in accordance with international law. Such jurisdiction must also include situations where a State party exercises, directly or indirectly, de facto or de jure control over persons in detention" (United Nations CAT, 2008) This interpretation underscores that a State's obligations under the Convention extend beyond its own territory to any situation where it exercises effective control over individuals, such as through detention, even if that occurs outside its national borders.

This principle was later reinforced in *N.D. and N.T. v. Spain* (Applications nos. 8675/15 and 8697/15), where the Grand Chamber examined Spain's practice of "hot returns" at the land borders of Ceuta and Melilla. While the Court ultimately did not find a violation in that specific case due to the applicants' conduct, it reaffirmed that border control operations must comply with Convention standards, including Article 4 of Protocol No. 4.

Spain's approach was further scrutinized in *J.A. and Others v. Italy* (Application no. 21329/18, ECHR Chamber Judgment, March 30, 2023), which involved Spanish cooperation in Mediterranean rescue operations. The Court found violations of Article 3 and Article 4 of Protocol No. 4, emphasizing that "hotspot" processing centers must provide individualized assessment rather than group processing. The Spanish Supreme Court (Tribunal Supremo) has further developed domestic jurisprudence aligned with ECHR standards. Referring judgement 1121/2008 of Spanish Supreme Court we consider that this judgment dealt with the appeal against a lower court's decision that Spain lacked jurisdiction over 18 individuals accused of facilitating the illegal entry of approximately 150 migrants by sea. In this judgment, the Spanish Supreme Court (Tribunal Supremo) overturned a lower court decision that had declined to assert Spanish jurisdiction over individuals accused of human smuggling operations at sea. The case involved approximately 150 migrants and 18 accused facilitators. The Court ruled that Spain could exercise

jurisdiction over these crimes even when committed in international waters, particularly when: the actions were intended to have effects within Spanish territory; the crimes violated international agreements to which Spain was a party, including the UN Convention against Transnational Organized Crime (UNTOC) and its Protocol against the Smuggling of Migrants. The ruling aligns with the broader European approach that maritime migration control isn't limited to territorial waters, while also recognizing state obligations under both national and international legal frameworks.

The Court affirmed that Spain could exercise jurisdiction over crimes committed in international waters when they have effects within Spanish territory focusing that the interception of vessels at sea does not exempt authorities from their obligation to assess the individual circumstances of each person aboard. Group processing that fails to consider personal circumstances constitutes collective treatment prohibited under both domestic and international law. This judgment established an important precedent in Spanish jurisprudence by extending jurisdictional reach based on both the "effects doctrine" and Spain's international treaty obligations to combat human smuggling networks. This case represents an important development in Spanish migration jurisprudence that parallels jurisprudential developments in other Mediterranean states and at the European Court of Human Rights level.

Ukrainian Legislative Framework and Enforcement Practices Ukraine's maritime enforcement framework is established through several legislative instruments, including the Law on the State Border Guard Service of Ukraine, the Law on the Exclusive (Maritime) Economic Zone of Ukraine, the Code of Administrative Offenses, and the Criminal Code of Ukraine. The Ukrainian Criminal Code contains several provisions relevant to maritime enforcement, such as: Article 149 criminalizing human trafficking, including transportation by sea; Article 332 addressing the illegal transportation of persons across the state border, Article 334 concerning violations of rules for international flights and maritime navigation; Article 446 criminalizing piracy, with jurisdiction extending to the high seas consistent with UNCLOS.

The Code of Administrative Offenses further addresses maritime violations through Article 202 (violation of border crossing regulations) and Article 206-1 (violation of rules for using vessels). Ukraine's enforcement framework demonstrates particular attention to UNCLOS compliance. The Law on the Exclusive (Maritime) Economic Zone (as amended) specifically references UNCLOS provisions regarding coastal state jurisdiction. Article 28 limits enforcement actions to those permitted under international maritime law, reflecting UNCLOS Articles 56 and 73, which define coastal state rights in the EEZ and enforcement of laws and regulations, respectively. Ukraine's practical implementation of maritime enforcement has been significantly affected by the ongoing war with the Russian Federation, particularly following the annexation of Crimea in 2014 and the full-scale invasion in 2022 (Tuliakov, 2017). Consequently, Ukrainian case law specifically addressing ECHR compliance in maritime interdiction remains limited. However, Ukrainian legal doctrine has made significant contributions to reconciling maritime enforcement with human rights standards. In practical terms, Ukraine has aligned its maritime enforcement procedures with international standards through cooperation with European institutions. The Constitutional Court of Ukraine has further reinforced these principles in Decision No. 3-r/2021, which examined border control procedures. While not specifically addressing maritime contexts, the Court established important principles regarding the treatment of foreign nationals: "Constitutional rights and freedoms extend to all persons within Ukrainian jurisdiction, regardless of citizenship or immigration status. Enforcement actions, including those at borders, must respect the dignity of all persons and provide for individualized legal procedures."

3. Divergent Approaches to Human Rights Compliance

The examination of these four coastal states reveals significant variation in both legislative frameworks and enforcement practices. Spain represents the most advanced model, with explicit incorporation of human rights safeguards into maritime enforcement protocols. Its framework includes specific procedural requirements designed to prevent collective expulsion, including individualized assessment, documentation requirements, and judicial oversight mechanisms. Greece and Italy, despite being subject to numerous adverse ECHR judgments, continue to maintain legislative frameworks that grant broad enforcement discretion without corresponding procedural safeguards. The gap between legal obligations and practical implementation remains particularly pronounced in these jurisdictions, with enforcement practices frequently falling short of ECHR standards. Ukraine presents a distinct case, with a legal framework that explicitly references international standards but limited practical implementation due to geopolitical circumstances. Ukrainian legal doctrine, however, demonstrates sophisticated engagement with human rights principles that could inform future enforcement practices.

The jurisprudence of the ECHR, ECJ, and domestic courts has begun to establish clear standards for maritime enforcement that complies with Article 4 of Protocol No. 4.

These standards include:

Individualized Assessment: All persons intercepted at sea must receive individualized examination of their circumstances, regardless of the vessel's location or the number of persons involved.

Procedural Transparency: Enforcement operations must follow clear, publicly available protocols that establish the legal basis for interdiction and subsequent processing.

Detention Limitations: Any detention during maritime enforcement must be time-limited, subject to judicial review, and conducted under humane conditions.

Non-Refoulement Compliance: Maritime returns must include assessment of risks in receiving countries, particularly regarding degrading treatment contrary to Article 3 ECHR.

Documentation Requirements: Enforcement operations must maintain comprehensive records of each individual processed, the basis for any enforcement action, and the procedural steps followed.

Jurisdictional Recognition: States must acknowledge that jurisdiction for ECHR purposes extends to enforcement operations on the high seas when exercising effective control over vessels or persons.

The reviewed national frameworks reveal significant divergence in compliance levels with international legal standards.

As migration pressures and transnational criminal activities in the Mediterranean region persist, the development of enforcement frameworks that effectively balance security imperatives with human rights obligations represents an urgent legal and policy challenge.

The divergent approaches examined in previous chapter demonstrate both the obstacles to and opportunities for achieving this balance.

The need for proper balance in migrants' treatment extends well beyond the Black Sea and Mediterranean regions, representing a global challenge for all governments.

Maritime migration control frameworks like those established in Ukraine's Law on the Exclusive Economic Zone and Spain's Supreme Court jurisprudence (judgment 1121/2008) highlight different regional approaches, but the underlying principles remain relevant worldwide. Governments must balance several competing interests: on national security and border control priorities; international legal obligations under UNCLOS, refugee

conventions, and human rights treaties; humanitarian responsibilities toward people in distress at sea; regional cooperation mechanisms for migration management.

These balancing considerations apply equally to migration scenarios in the Caribbean, South China Sea, Bay of Bengal, Gulf of Aden, and other maritime regions globally.

Different governments have developed varying approaches, but all face the challenge of reconciling sovereignty concerns with humanitarian obligations. Look at the case of Fouad Kakaie in UK. After spending 17 months in a UK prison, an appeal court ruled that the law had been misinterpreted in his case and his conviction was overturned. This led to the overturning of further convictions against other people who had also been wrongfully charged upon entering the UK. The UK state response to this was to alter their language in policy and create a new crime to continue criminalizing people for their mobility (McLoughlin, 2023).

These judicial review mechanisms acknowledge the unique challenges of maritime enforcement while maintaining robust rights protections. They demonstrate how procedural innovations by judiciary can help reconcile the competing imperatives of UNCLOS enforcement and human rights compliance.

Recent ECJ judgments regarding coastal states maritime migration enforcement practices also illustrate this tension. States must balance UNCLOS, human rights, and UNTOC obligations, navigating divergent tribunal lenses to ensure legitimate maritime enforcement (Papastavridis, 2013). Case C-528/15 *Al Chodor*: CJEU ruled “objective criteria” for detention risk must be in binding legislation. Therefore, prompted legislative reforms across multiple EU states and enhanced judicial protections against arbitrary detention.

Practical approaches to harmonisation include facilitating dialogue between states to reach common solutions, using existing agreements such as the integration of EU criminal law policies based on the principles of mutual recognition, proportionality and subsidiarity, and investing in strengthening the capacity of national systems to effectively implement international standards.

The European Union demonstrates how regional integration in the field of public law can contribute to harmonization, although its approach cannot be mechanically transferred to other regions due to contextual specificities. By the way, this approach is not executed without problems.

The 2025 ICC arrest warrant against a Libyan organized crime leader arrested, released and expelled from Italy in two days further demonstrates the practical challenges of enforcing international criminal law in maritime contexts (*Prosecutor v. Al-Bidja*, ICC-01/22-01/23). Despite evidence linking the individual to human trafficking operations in the Mediterranean, jurisdictional uncertainties – particularly regarding enforcement powers in international waters and Libya’s territorial sea – significantly hampered execution efforts. This case exemplifies how the theoretical tensions between different legal regimes manifest in practical enforcement failures.

And the icing on the cake. The open letter from nine European states (Italian Government, 2025) exposes critical tensions between security-driven migration policies and human rights obligations under international law. By prioritizing border control absolutism over individualized rights assessments, the proposal challenges core principles of the European Convention on Human Rights (ECHR), particularly non-refoulement protections and judicial oversight of expulsion decisions. This aligns with broader conflicts in public international law, where states often assert sovereignty to resist binding interpretations of treaties – a pattern evident in UNCLOS disputes over maritime jurisdiction and environmental safeguards.

The states’ three-pronged approach – elevating security to a “decisive right,” expanding executive discretion, and framing migration as geopolitical warfare – risks creating

a bifurcated legal regime. Such a system would grant robust protections to recognized refugees while subjecting irregular migrants to expedited removals with limited due process. This mirrors historical tensions in maritime law, where coastal states have sought to balance sovereign control with universal navigation rights.

Ultimately, the initiative tests whether human rights frameworks can adapt to 21st-century security paradigms without sacrificing their foundational commitment to dignity and non-discrimination. As with UNCLOS implementation challenges, the resolution hinges on maintaining credible adjudication mechanisms that prevent treaty obligations from becoming optional commitments. The letter's strategic ambiguity, affirming human rights while seeking to dilute their enforceability, underscores the fragility of the international legal order in an era of resurgent sovereignty claims.

Conclusions

The tension between UNCLOS provisions and national public law jurisdiction reveals broader fragmentation challenges in international law. The divergent approaches of the ECHR and ICJ reflect different institutional priorities and interpretive methodologies rather than irreconcilable contradictions in international law itself. Effective resolution requires recognizing that security and human rights are not inherently antagonistic. Robust protection systems can enhance rather than undermine security by channeling migration through legal pathways and reducing reliance on criminal networks. Similarly, regional cooperation mechanisms can distribute responsibility while maintaining high protection standards. The evolution of international law suggests movement toward frameworks that integrate security and rights considerations rather than treating them as competing priorities. This includes developing operational guidelines that enable states to fulfill rescue obligations while maintaining legitimate border controls, and creating regional arrangements that ensure protection without concentrating burdens on frontline states. The tension ultimately calls for institutional innovation that transcends traditional sovereignty-based approaches. Multi-level governance arrangements, shared responsibility mechanisms, and harmonized standards can help reconcile competing imperatives while respecting both state sovereignty and individual rights. This reflects broader transformations in public international law, where rigid distinctions between domestic and international, security and rights, and sovereignty and responsibility are giving way to more nuanced approaches that recognize the interconnected nature of contemporary challenges.

For coastal states, navigating these tensions requires sophisticated legal frameworks that can accommodate both the jurisdictional boundaries established by UNCLOS and the human rights obligations enforced by the UNGA, UNSC, ICJ, ECHR, ECJ, etc. The added dimension of transnational crime suppression obligations under UNTOC further complicates this balancing act. The concrete examples of human rights safeguards in maritime protocols, specialized judicial review mechanisms, and comprehensive interpretive guidance demonstrate that reconciliation is possible, though it requires substantial institutional investment and legal innovation.

As international jurisprudence continues to develop, greater clarity may emerge regarding how states can exercise legitimate public law jurisdiction in maritime contexts while respecting both navigational freedoms and fundamental human rights.

Until then, states must engage in careful balancing of these competing legal imperatives, with awareness that different international tribunals may evaluate their actions through significantly different analytical lenses.

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Туляков В., Степаненко О. Юрисдикційні суперечності: дивергентні судові підходи до конфліктів між Конвенцією ООН з морського права та національними публічно-правовими політиками. – Стаття.

У статті розглядаються складні юрисдикційні протиріччя, що виникають через взаємодію Конвенції ООН з морського права (UNCLOS) та національних публічно-правових практик. Зосереджуючись на інтерпретаційних підходах Європейського суду з прав людини (ECHR), Європейського суду справедливості (ECJ) та Міжнародного суду ООН (ICJ), у дослідженні виявлено фундаментальний конфлікт між здійсненням прибережними державами повноважень у сфері правопорядку та свободою судноплавства і юрисдикційними обмеженнями, встановленими UNCLOS. Комплексний аналіз відповідної судової практики дозволив розкрити різні юридичні методології, що відображають диференціацію інституційних пріоритетів у різних нормативних рамках. ECHR послідовно застосовує підхід, орієнтований на права людини, фактично підпорядковуючи морські юрисдикційні претензії стандартам прав людини, тоді як ICJ наголошує на державному суверенітеті та суворому трактуванні договорів при вирішенні юрисдикційних спорів. Ці різні підходи створюють значні виклики для прибережних держав, що прагнуть узгодити свою правоохоронну діяльність з потенційно суперечливими міжнародно-правовими зобов'язаннями. У статті також досліджено нові зусилля щодо гармонізації, включаючи інтеграцію чітких гарантій прав людини до протоколів морської правоохоронної діяльності, розробку спеціалізованих механізмів судового розгляду та прийняття інтерпретаційних рекомендацій, що враховують UNCLOS та зобов'язання щодо прав людини. Крім того, автори аналізують, як рамкова Конвенція ООН проти транснаціональної організованої злочинності ускладнює правоохоронну діяльність на морі, особливо щодо незаконної міграції та торгівлі людьми. У статті підсумовується, що для усунення цих протиріч необхідні складні правові рамки та інституційні інновації, здатні враховувати як юрисдикційні межі, встановлені UNCLOS, так і зобов'язання у сфері прав людини, що забезпечуються різними міжнародними трибуналами за одночасного урахування зобов'язань щодо протидії транснаціональній злочинності.

Ключові слова: морське право, UNCLOS, публічно-правова юрисдикція, права людини, Європейський суд з прав людини, Міжнародний суд ООН, юрисдикційні протиріччя, міграція, транснаціональна злочинність, морська правоохоронна діяльність.