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THE EXERCISE OF STATE JURISDICTION IN RELATION TO STATELESS VESSELS ON THE HIGH SEAS

Abstract

This article examines the international legal grounds and limits for the exercise of state jurisdiction over stateless vessels on the high seas. The topic has gained practical importance due to the increasing use of vessels lacking or unable to prove nationality in contexts such as irregular migration, smuggling, trafficking in persons, IUU fishing, and other forms of transnational maritime crime. At the same time, legal uncertainty persists regarding the permissible scope of maritime enforcement measures against such vessels. The purpose of the article is to clarify when states may lawfully conduct visit, inspection, detention, and seizure in relation to stateless vessels and to identify the minimum safeguards required to ensure compliance with international human rights obligations and, in migration-related operations, the principle of non-refoulement. The study employs doctrinal legal analysis and treaty interpretation of the law of the sea, comparative assessment of competing scholarly approaches to the status of stateless vessels, and an analysis of relevant judicial and operational practice. The findings propose practical criteria for establishing statelessness, distinguish between prescriptive and enforcement jurisdiction, and articulate necessity, proportionality, and procedural good faith as baseline requirements for lawful intervention on the high seas.

Keywords: stateless vessel, high seas, state jurisdiction, right of visit, maritime enforcement.

Introduction

In contemporary maritime governance, vessels that fail to display or substantiate a genuine link to any flag State—commonly referred to as stateless vessels—have become a recurrent operational and legal challenge. Although the law of the sea is built upon the flag-State paradigm, where nationality connects a ship to a single jurisdictional framework, the practical reality of vessels operating without reliable registration, documentation, or flag identification has expanded. Such vessels are frequently encountered in contexts associated with irregular migration by sea, smuggling of migrants, trafficking in persons, narcotics and arms trafficking, and illegal, unreported, and unregulated (IUU) fishing. Against this background, coastal, flag, and third States increasingly face the question of how to respond to stateless vessels in a manner that is both effective for maritime security and consistent with international legality.

The problem is not merely operational; it is fundamentally normative. While it is widely accepted that a vessel without nationality cannot claim the full protection of the flag-State regime, it is far less settled what this absence of nationality positively authorizes other States to do. Practice demonstrates

a persistent tension between two broad positions. One view treats statelessness as opening the vessel to extensive enforcement actions by any State, on the theory that the ship falls outside the framework of exclusive flag-State jurisdiction. The alternative view cautions that the absence of nationality does not, by itself, create unlimited competence; rather, States must still demonstrate a lawful basis for enforcement jurisdiction and observe limits derived from treaty law, customary international law, and general principles, including the requirements of necessity and proportionality. The divergence between these approaches produces legal uncertainty and risks inconsistent enforcement, jurisdictional overreach, and avoidable human-rights violations. This uncertainty becomes particularly acute when measures taken against stateless vessels directly affect individuals on board. Interdiction, boarding, detention, diversion, and seizure are coercive acts that engage international human rights standards, especially concerning liberty and security of person, due process, and protection from inhuman or degrading treatment. In migration-related operations, additional constraints arise from the principle of non-refoulement and broader obligations under international refugee and human rights law, which require that interdiction practices do not result-directly or indirectly-in returning individuals to places where they face persecution, torture, or other serious harm. Consequently, any legal framework governing the treatment of stateless vessels on the high seas must address not only the permissibility of enforcement measures but also the procedural safeguards and accountability standards that accompany them. The article therefore focuses on the international legal grounds and limits for the exercise of State jurisdiction over stateless vessels on the high seas. Its purpose is twofold: first, to clarify under what conditions States may lawfully undertake measures such as visit, inspection, detention, and seizure in relation to vessels lacking nationality; and second, to identify the minimum safeguards that should govern such measures in order to ensure compliance with applicable human rights obligations and, where relevant, the principle of non-refoulement. Methodologically, the study relies on doctrinal legal analysis and treaty interpretation of the law of the sea, complemented by comparative engagement with competing scholarly approaches and a review of relevant judicial and operational practice. By articulating criteria for establishing statelessness and by distinguishing between prescriptive and enforcement jurisdiction, the article seeks to reduce conceptual ambiguity and contribute to a more coherent, rights-compatible framework for maritime enforcement on the high seas.

Materials and methods

This study draws on a set of primary and secondary sources relevant to the legal status of stateless vessels and the exercise of jurisdiction on the high seas. The primary materials include: (i) treaty law of the sea instruments establishing the high seas regime, flag-State competence, and the rules on boarding and verification of nationality; (ii) customary international law principles concerning jurisdiction, the use of force at sea, and responsibility for wrongful acts; and (iii) applicable international human rights norms that constrain coercive maritime operations, including standards on deprivation of liberty, procedural guarantees, and protection from ill-treatment. Where the operational context concerns maritime migration, the analysis also takes into account the interaction between interdiction practices and the principle of non-refoulement as developed in human rights and refugee law. Secondary materials comprise scholarly literature addressing the concept of “statelessness” in the maritime setting, competing theories of enforcement competence over vessels lacking nationality, and doctrinal debates regarding the “genuine link” requirement and its consequences. In addition, the study considers policy and operational materials to the extent that they reflect consistent State practice, including publicly available guidelines and reports on maritime interdiction and law-enforcement operations, insofar as they help identify the contours of emerging practice and its legal rationales.

Selection rationale. Judicial materials, doctrinal sources, and operational references are used on a representativeness basis rather than exhaustively. In particular, the study prioritizes sources that (i) are frequently invoked in debates on high-seas nationality verification and enforcement escalation; (ii) illustrate distinct legal characterizations of vessel “statelessness” (or inability to substantiate a claimed flag); and (iii) address-directly or by implication-the interaction between maritime enforcement and the protection of individuals on board. This selection approach is intended to capture recurring reasoning patterns and legally relevant fact-scenarios in contemporary interdiction practice, rather than to provide a comprehensive survey of all available materials.

The research is conducted through a doctrinal and analytical legal methodology, combining several complementary methods.

Methodological sequence. The analysis proceeds in four successive steps, applied in the following order:

1. Treaty interpretation and doctrinal analysis. The core provisions governing nationality, the high seas regime, and the right of visit are examined through systematic legal interpretation. The analysis emphasizes the relationship between exclusive flag-State jurisdiction and recognized exceptions, as well as the legal consequences of a vessel's failure to establish nationality through flag, registration documents, or other admissible evidence.

2. Conceptual and comparative analysis of doctrinal positions. To address the persistent ambiguity in the treatment of stateless vessels, the study compares and evaluates the principal doctrinal approaches: (a) the permissive approach, which regards statelessness as a sufficient trigger for broad enforcement action by third States; and (b) the restrictive approach, which requires an additional jurisdictional basis or demonstrable nexus beyond statelessness, and subjects enforcement measures to tighter legal constraints.

3. Case-law and practice analysis. The study reviews relevant judicial and quasi-judicial practice (international, regional, and national, where accessible) and examines how courts and decision-makers have treated boarding, seizure, detention, or transfer operations in analogous contexts. This method is used to identify legal tests applied to determine nationality, to assess standards of evidence, and to evaluate the legality of enforcement measures and the treatment of individuals affected by them.

4. Human-rights compliance assessment. Recognizing that measures against stateless vessels can directly affect persons on board, the study applies a compliance lens to evaluate whether asserted enforcement powers are accompanied by minimum procedural safeguards. This includes assessing the requirements of legality, necessity, proportionality, and due process, and where interdiction relates to maritime migration-examining operational outcomes through the framework of non-refoulement and protection obligations.

The analysis distinguishes between prescriptive jurisdiction (the authority to regulate conduct) and enforcement jurisdiction (the authority to take coercive measures), treating the latter as the central issue in high seas operations involving stateless vessels. The geographical scope is limited to the high seas, while recognizing that interdiction operations may have factual links to contiguous zones or exclusive economic zones; such links are considered only insofar as they affect jurisdictional arguments. The study focuses on the legal status and treatment of the vessel and persons on board, rather than on technical maritime registration procedures as such.

Scope limitations. Given its doctrinal orientation, the study does not provide empirical measurement of interdiction outcomes, operational statistics, or a technical assessment of ship-registration systems and documentary practices beyond what is necessary to evaluate international legality. Nor does it examine detailed domestic criminal-procedure frameworks except insofar as they bear on the lawfulness of coercive measures under international law.

By combining doctrinal interpretation, comparative analysis, and practice-based evaluation, the methodology aims to produce a coherent account of when-and under what safeguards-States may lawfully exercise enforcement measures against stateless vessels on the high seas.

Results and discussion

A core premise of the law of the sea is that every ship must possess a nationality and sail under the flag of a single State, thereby anchoring regulatory authority and responsibility in the flag State. In doctrinal terms, "statelessness" at sea is therefore not simply the absence of a flag in a factual sense, but a legal finding that a vessel cannot validly claim the nationality of any State. This distinction matters because the classification of a vessel as "without nationality" is frequently treated as the legal gateway for intrusive measures on the high seas, including boarding, search, detention, seizure, or diversion. Accordingly, the status determination must be approached as a structured verification process rather than an assumption driven by operational convenience.

From a legal-technical perspective, a vessel may reasonably be treated as lacking nationality in at least three recurrent scenarios. First, no outward claim of nationality exists: the vessel does

not fly a flag, displays no registration marks, and cannot produce registration documents or other credible evidence of nationality. Second, a claimed nationality collapses under verification: the master asserts a flag, but the asserted State denies the claim or fails to confirm nationality when consulted through competent channels within a reasonable timeframe. Third, nationality is rendered legally ineffective by inconsistency: the vessel uses multiple flags “as convenient,” produces contradictory documentation, or presents mismatched identifiers (e.g., hull markings, name, call sign, MMSI/IMO-related information where applicable), making it impossible to establish a stable legal link to a single flag State. In these circumstances, the legal conclusion of statelessness is grounded not only in missing formalities, but in the failure of the vessel to meet the minimum conditions of the flag-State system—namely, a verifiable and exclusive attribution to one State [1].

The evidentiary threshold is the decisive safeguard against arbitrariness. Because statelessness can unlock enhanced enforcement options, setting the threshold too low risks unjustified interference with the freedom of navigation and with the rights of individuals on board, especially where interdiction is coupled with restraint of movement or transfer. The appropriate standard is best articulated as “reasonable grounds based on objective indicia” supported by a good-faith verification sequence. At minimum, the boarding State should be able to show that it: (i) requested identification of nationality from the master (flag-State claim); (ii) inspected available documentary evidence (registration certificate, crew list, logbooks, port clearance, insurance, radio license, charter documents, and any other papers typically used to evidence nationality and ownership/control); (iii) checked physical and technical identifiers to assess consistency (name/home port markings, registration number, call sign; and, where relevant, electronic identity signals and equipment data); (iv) sought confirmation from the claimed flag State through competent authorities where feasible; and (v) recorded contemporaneously the steps taken, the evidence reviewed, the inconsistencies identified, and the reasons for concluding that nationality is not established [2].

In practice, operational constraints may prevent immediate flag-State confirmation (e.g., time-sensitive safety risks, communication barriers, or lack of timely response). In such cases, the legality of further coercive measures beyond nationality verification should not rest on “non-confirmation” alone. Rather, it depends on whether the boarding State can demonstrate that, even absent a formal response, there were objective indicators sufficient to justify escalation. These indicators may include, for example: repeated contradictions in the master’s statements; presentation of manifestly invalid or mismatched documents; the absence of any credible registry trace; deliberate concealment or alteration of hull markings; and other conduct suggesting intentional evasion of flag attribution. Conversely, where documentary gaps can plausibly be explained by non-criminal circumstances (e.g., loss at sea, emergency, or administrative irregularities) and other identifiers are consistent, escalation to detention or seizure should be treated as legally and evidentially fragile.

The structured approach outlined above yields two operationally relevant consequences. First, it protects the legality of interdiction by ensuring that the statelessness determination is defensible *ex post* before courts, oversight bodies, or international mechanisms. Second, it disciplines escalation: verification boarding is one legal question; coercive enforcement is another, and the transition requires a demonstrable legal basis and an evidentiary record showing both (a) why the vessel is properly treated as stateless and (b) why the chosen measure was necessary and proportionate in the circumstances. This evidentiary discipline is not merely procedural formalism; it is the central mechanism that prevents “statelessness” from becoming an overbroad label used to justify intrusive action on the high seas without adequate legal justification [3].

The analysis confirms that the absence of nationality weakens the practical operation of exclusive flag-State jurisdiction, but it does not convert the high seas into a space of unlimited enforcement discretion. A vessel without nationality may not benefit from the ordinary protective and regulatory structure attached to a valid flag, yet this “jurisdictional deficit” does not, by itself, generate a blanket “jurisdictional surplus” for all other States. The study therefore distinguishes two analytically separate dimensions—prescriptive and enforcement jurisdiction—and treats their conflation as a major source of doctrinal and operational error [4].

First, with respect to prescriptive jurisdiction, States retain the classical bases for regulating conduct through domestic law: territoriality (including objective territoriality where conduct produces

effects in the State), nationality (active and passive personality), and protection of essential State interests. In this context, statelessness mainly complicates attribution: it removes an easy route to link the vessel's conduct to a flag State and may affect evidentiary pathways for jurisdictional claims, but it does not create a universal legislative competence for all States to prescribe law for any activity connected to a stateless vessel. Put differently, a State may criminalize migrant smuggling, trafficking, or certain fisheries violations for acts connected to its territory, nationals, or protected interests, but it cannot rely on statelessness alone as a general prescriptive "hook" for regulating all behavior of a vessel on the high seas. Where domestic criminalization is asserted absent a recognized jurisdictional link, the resulting prosecutions risk being characterized as extra-territorial overreach rather than legitimate regulation. This distinction is especially important because the presence of a stateless vessel can be operationally suggestive of illegality, but prescriptive jurisdiction still depends on the nature of the conduct and the accepted jurisdictional bases, not on the vessel's administrative status alone [5].

Second, the more contested and operationally consequential dimension is enforcement jurisdiction—the authority to take coercive measures such as boarding, searching, detaining persons, seizing property, diverting a vessel, or arresting individuals. On the high seas, enforcement jurisdiction remains exceptional by design, because the system aims to prevent competing coercive claims in areas beyond national jurisdiction. Statelessness can expand the scope of legally permissible verification measures—most notably by supporting visit, inspection, and other steps required to determine nationality. However, it does not automatically authorize coercive enforcement in the stronger sense. The permissibility of detention, seizure, diversion, or arrest must still rest on a lawful basis under international law and remain constrained by general requirements such as necessity, proportionality, and due regard for the rights of persons affected. The practical implication is that a State may be on firm legal ground to board a vessel in order to resolve a nationality doubt, but it is not automatically entitled to treat the vessel as if it were within its own enforcement jurisdiction for all purposes once statelessness is suspected or even established [6].

A key result of the study is that the strongest legal consensus—and the least controversial operational competence—concerns boarding for the purpose of verifying nationality. This includes the limited right of visit and inspection aimed at establishing whether the vessel is entitled to fly a flag and, if so, which one. The consensus is strong because nationality verification is functionally necessary to preserve the flag-based system: without a limited mechanism to test nationality claims, the regime would be vulnerable to systematic evasion. Yet the study emphasizes that verification has an internal limit: the aim is to establish status, not to "bootstrap" full enforcement authority absent additional grounds.

Beyond verification, coercive measures become lawful only through one of two pathways. The first is a recognized jurisdictional basis under international law, such as established treaty-based suppression regimes or categories widely treated as warranting robust high seas action (depending on the legal instrument and the specific offence). The second pathway is a demonstrable nexus connecting the operation to the enforcing State's legitimate interests—such as territorial effects, the nationality of perpetrators or victims, or protection of core security interests—provided that the measure is necessary and proportionate. In both pathways, statelessness may play a supporting role (for example, by removing the barrier of exclusive flag-State authority), but it is not a substitute for the legal basis itself. This is precisely where disciplined analysis matters: statelessness may answer the question "why is flag-State exclusivity not decisive here?", but it does not by itself answer "why may this particular State detain, seize, divert, or arrest on the high seas in this case?" [7].

The findings support conceptualizing measures directed at stateless vessels as a graduated spectrum of interference, in which legality is determined not only by the end objective (e.g., suppressing crime or preventing unsafe navigation), but by how escalation is controlled, what legal basis is invoked at each step, and whether the decision-making trail is documented in a manner that permits *ex post* review. This spectrum approach reflects the reality that maritime operations often develop dynamically: initial situational awareness actions can evolve into verification boarding, and verification can, in turn, lead—sometimes improperly—to coercive enforcement. Treating these stages as legally distinct is therefore essential to prevent "status ambiguity" from becoming a blanket justification for intrusive action on the high seas.

1. Non-coercive measures (hailing, questioning, requests for documents). At the lowest level of interference, authorities may employ non-coercive measures such as radio hailing, visual signaling, requesting the vessel to identify its flag State, and asking for documentation or voyage information. These steps are generally permissible as routine components of maritime situational awareness and risk assessment, and they are particularly important where a vessel's nationality is unclear or inconsistently presented. Legally, their permissibility rests on the fact that they do not amount to the exercise of coercive enforcement jurisdiction: they are forms of communication and information gathering that, when conducted in a non-threatening manner, do not materially impair the freedom of navigation. Operationally, however, the study stresses that these measures should be conducted in a way that preserves voluntariness at this stage—avoiding implicit compulsion unless and until a lawful basis for escalation is established. Importantly, even at this low level, documentation of the initial indicators (e.g., absence of a flag, evasive maneuvers, contradictory answers) is valuable because it often becomes the evidentiary foundation for subsequent “reasonable grounds” assessments [8].

2. Visit and boarding for nationality verification. The next level is visit and boarding undertaken specifically to verify nationality. This stage becomes lawful where there are reasonable grounds to suspect that the vessel is without nationality or is concealing its status. The legal rationale is narrowly tailored: boarding is justified as a functional mechanism to test and confirm nationality claims that cannot be resolved through non-coercive means. The key constraint is purpose limitation. Verification boarding must remain directed to establishing (i) whether the vessel is entitled to fly a flag and, if so, which one; and (ii) the basic factual elements necessary to make that determination. The boarding team's scope of inquiry should therefore be limited to registration papers, identifying marks, and other evidence relevant to nationality. The study emphasizes that this limitation is not merely formal: it is the line separating legally accepted verification activity from enforcement measures that require additional authority. If, during verification boarding, authorities encounter indications of other offences, escalation is not automatic; it requires identification of a separate legal basis for further measures and an updated necessity–proportionality assessment [9].

3. Search, detention, seizure, and diversion as higher-intensity enforcement. Measures such as searching compartments beyond what is required for nationality verification, detaining the vessel or persons on board, seizing cargo or the ship itself, or diverting the vessel to port represent a substantially higher intensity of interference. The study's results indicate that statelessness alone is an insufficient justification for this level of enforcement. Instead, three cumulative requirements must be satisfied. (i) Confirmed or well-supported statelessness through good-faith process. Escalation must be anchored in a defensible status determination supported by objective indicia and documented verification steps. A bare assumption based on the absence of a flag is not a sufficient foundation for prolonged control of the vessel. (ii) Specific legal authority to enforce. Coercive measures require a distinct legal basis derived from treaty law (e.g., a suppression regime applicable to the suspected conduct), customary international law (where it clearly supports enforcement), or a demonstrable jurisdictional nexus connecting the operation to the enforcing State's lawful interests (territorial effects, nationality links, protective interests). Statelessness may remove exclusive flag-State objections, but it does not itself supply the enforcement power. (iii) Safeguards protecting persons on board. Once a measure entails restraint of movement, deprivation of liberty, or transfer to a different jurisdiction, the operation engages human-rights standards and, in migration contexts, non-refoulement considerations. The study highlights that legality here is outcome-sensitive: unlawful detention conditions, lack of procedural guarantees, or transfers resulting in exposure to serious harm can render the operation internationally wrongful even if the initial boarding was lawful. This reinforced framework has an important operational implication: the legality of high seas enforcement is not determined solely by the status of the vessel, but by the legal characterization of the act (search, seizure, detention), the authority invoked, and the proportionality of the response to the risk or offence at issue [10].

4. Use of force: the strictest constraints. The use of force is subject to the most stringent limitations because it poses the greatest risk to life, bodily integrity, and the overall legitimacy of maritime enforcement. Even where boarding is lawful, force must be treated as a last resort, deployed only when strictly necessary to achieve a legitimate objective (such as ensuring the safety of the boarding team or preventing imminent harm), and calibrated to be proportionate to the threat posed.

The study underscores that proportionality in this context is not an abstract concept: it requires real-time assessment of the severity and immediacy of the threat, the availability of less intrusive alternatives, and the foreseeable risks to persons on board, including vulnerable individuals. Excessive or reckless force can trigger State responsibility and can also contaminate subsequent measures—undermining the legality of detention or seizure by casting the entire operation as arbitrary or disproportionate. Accordingly, rules of engagement should be aligned with strict necessity, continuous risk assessment, and robust reporting requirements to ensure accountability [11].

The persistence of doctrinal disagreement on stateless vessels is best explained by the structural role nationality plays in the law of the sea. The high seas regime is designed to avoid competing enforcement claims by anchoring authority primarily in the flag State. Stateless vessels disrupt this ordering function: they undermine traceability, frustrate accountability, and complicate cooperative suppression of transnational maritime crime [12]. As a result, operational actors tend to treat statelessness as a practical “gateway” to intervention. Yet the legal framework does not explicitly translate this operational intuition into an unrestricted enforcement mandate. The law of the sea recognizes a limited set of exceptions to exclusive flag-State jurisdiction and, while it permits verification of nationality, it does not clearly specify the full range of downstream enforcement actions that third States may take once statelessness is established. This gap fuels competing interpretations and invites States to use statelessness as a flexible legal label, sometimes as a surrogate for otherwise contested jurisdictional bases [13].

Two broad approaches remain visible in scholarship and practice.

(a) The permissive approach (statelessness-as-open-access). This view treats a stateless vessel as outside the protective architecture of exclusive flag-State jurisdiction and therefore “available” to enforcement by any State. Its strongest practical appeal is deterrence: it prevents high seas spaces from becoming sanctuaries for criminal conduct. It also reflects an accountability intuition—if no State claims responsibility, other States should be able to fill the enforcement vacuum [14]. However, the permissive approach carries clear legal and policy risks. First, it tends to conflate loss of protection with grant of authority, moving from “no flag-State exclusivity” to “unlimited third-State power” without an explicit legal bridge. Second, it creates incentives for overreach and selective enforcement, enabling actions that may be difficult to justify under treaty law or customary constraints. Third, it raises predictable human-rights concerns: broad enforcement discretion increases the likelihood of arbitrary deprivation of liberty, excessive use of force, and informal transfers without adequate procedural safeguards [15].

(b) The restrictive approach (statelessness-as-insufficient trigger). This view holds that statelessness may justify verification boarding but does not, by itself, authorize coercive enforcement measures such as prolonged detention, seizure, diversion, or arrest. Under this approach, further steps require a distinct legal basis—either a treaty suppression regime, universal jurisdiction (where recognized), or a jurisdictional nexus (territorial effects, nationality links, protective principle, etc.)—and must comply with necessity and proportionality. The restrictive approach better reflects the exceptional character of enforcement jurisdiction on the high seas and offers a stronger framework against arbitrary interference [16]. Its principal weakness is operational: it may be perceived as under-inclusive in fast-moving contexts (e.g., mass-rescue scenarios, imminent threats, or evidentiary limitations at sea). In practice, strict insistence on an additional nexus may slow interdiction, complicate evidence gathering, and encourage informal workarounds—precisely the kinds of ad hoc practices that reduce transparency and accountability.

A recurrent grey zone emerges when a legally permissible nationality verification boarding gradually turns into de facto enforcement. This “functional escalation” often occurs through a sequence: hailing and document checks; boarding to verify nationality; discovery of inconsistent statements, lack of documents, or suspected criminal indicators; followed by extended control of the vessel, restrictions on movement, and transfer of persons. The legal vulnerability arises not from the initial boarding but from the unstructured transition from verification to coercive measures. In many real-world operations, the factors that trigger escalation (e.g., suspicion of smuggling, migrant transportation, or IUU fishing) are difficult to prove at sea. When evidence is thin, statelessness can become a substitute rationale, allowing enforcement actions to proceed without a clear link to a recognized jurisdictional basis. This

produces two systemic consequences: (i) it erodes the predictability of the high seas jurisdictional order; and (ii) it heightens the risk of rights violations, particularly when individuals are detained or transferred without clear legal characterization, documentation, or access to safeguards [17].

A further reason the debate is difficult to resolve is that stateless-vessel enforcement is frequently intertwined with migrant interdiction and rescue-at-sea contexts. Interdiction measures can become indistinguishable from migration control, and decisions about diversion or transfer can determine whether individuals are effectively denied access to protection. In such cases, human rights law and the principle of non-refoulement are not peripheral; they are structurally determinative of what enforcement can lawfully look like. Even where the law of the sea is interpreted permissively, the treatment of persons on board triggers obligations regarding liberty, humane treatment, and procedural guarantees. The absence of a flag does not reduce these obligations. Indeed, the operational reality is that stateless vessels often carry particularly vulnerable individuals, and any legal framework that prioritizes enforcement efficiency without safeguards risks producing illegality through outcomes (unlawful detention, collective expulsion, indirect refoulement) rather than through formal jurisdictional arguments [18].

To bridge the gap between operational needs and legal constraints, the discussion supports a structured legality test that disciplines escalation and clarifies justification. A coherent approach can be expressed as a sequential inquiry:

1. Are there reasonable grounds to suspect lack of nationality, and were good-faith steps taken to verify nationality (flag, documents, identifiers, and-where feasible-flag-State confirmation)?
2. Is the conclusion of statelessness supported by objective indicia and documented reasoning?
3. Beyond verification, what is the specific legal basis for coercive measures (treaty suppression regime, recognized universal jurisdiction category, or a jurisdictional nexus)?
4. Is the contemplated measure the least intrusive effective option to achieve a legitimate aim, and is the scope/time/force strictly limited?
5. Are minimum protections in place (humane treatment, documentation, reviewability), and, where applicable, are non-refoulement risks assessed before diversion or transfer?

Sequential structure does not eliminate all controversy, but it provides a defensible and transparent framework: it treats statelessness as relevant, yet not self-sufficient; it preserves the legitimacy of verification boarding; and it disciplines escalation through identifiable legal authority and rights-compatible safeguards.

Conclusion

Stateless vessels on the high seas challenge the flag-based architecture of the law of the sea and intensify demands for swift action against maritime crime and irregular migration. This article has argued that, while the absence of nationality weakens exclusive flag-State jurisdiction, it does not itself generate an unlimited enforcement mandate for third States. Statelessness should therefore be treated as a legal conclusion reached through good-faith verification and supported by objective indicia and proper documentation, rather than as a purely operational label. The analysis indicates that nationality verification boarding is the most defensible measure available on the high seas when reasonable grounds exist. Any escalation to coercive measures—such as detention, seizure, diversion, or arrest—should rest on an additional legal basis beyond statelessness (for example, a treaty suppression regime, a recognized category of universal jurisdiction, or a clear jurisdictional nexus), and must comply with the requirements of legality, necessity, and proportionality. Where operations affect persons on board, international human rights obligations and, in migration-related contexts, the principle of non-refoulement function as binding constraints that shape both the permissibility and design of interdiction measures. Accordingly, a coherent approach requires: standardized verification procedures; explicit separation between verification and enforcement decisions; disciplined escalation based on necessity and proportionality; and minimum safeguards ensuring humane treatment, basic procedural guarantees, and protection screening where transfer or diversion is contemplated. Implementing these elements would reduce the current legal grey zone, improve predictability for operational actors, and strengthen accountability while maintaining the effectiveness of maritime enforcement on the high seas.

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АШЫҚ ТЕҢІЗДЕГІ АЗАМАТТЫҒЫ ЖОҚ КЕМЕЛЕРГЕ ҚАТЫСТЫ МЕМЛЕКЕТТІК ЮРИСДИКЦИЯНЫ ЖҮЗЕГЕ АСЫРУ

Андатпа

Бұл мақала ашық теңіздегі азаматтығы жоқ кемелерге (stateless vessels) қатысты мемлекеттің юрисдикциясын жүзеге асырудың халықаралық-құқықтық негіздері мен шектерін қарастырады. Мұндай кемелердің ретсіз көші-қон, контрабанда, адам саудасы, заңсыз, есепке алынбайтын және реттелмейтін балық аулау (IUU fishing) және трансұлттық теңіз қылмысының өзге де түрлері аясында жиірек қолданылуына байланысты мәселенің практикалық маңызы артып отыр. Сонымен қатар азаматтығы жоқ кемелерге қарсы теңіздегі құқық қолдану шараларының рұқсат етілетін ауқымы жөнінде құқықтық айқын еместік сақталуда. Мақаланың мақсаты – мемлекеттердің азаматтығы жоқ кемелерге қатысты бару, тексеру, ұстау және тәркілеу шараларын қандай жағдайларда заңды түрде жүргізе алатынын нақтылау, сондай-ақ халықаралық адам құқықтары жөніндегі міндеттемелерге және көші-қонға байланысты операцияларда non-refoulement қағидатына сәйкестікті қамтамасыз ету үшін қажетті ең төменгі кепілдіктерді айқындау. Зерттеуде доктриналық-құқықтық талдау және теңіз құқығы нормаларын шарттық түсіндіру, азаматтығы жоқ кемелердің мәртебесіне қатысты бәсекелес ғылыми ұстанымдарды салыстырмалы бағалау, сондай-ақ тиісті сот және операциялық тәжірибені талдау әдістері қолданылды. Нәтижелер азаматтығы жоқ мәртебесін айқындаудың практикалық өлшемдерін ұсынады, өкімдік және мәжбүрлеу юрисдикциясын ажыратады және ашық теңіздегі заңды араласудың базалық талаптары ретінде қажеттілік, пропорционалдылық және рәсімдік адалдық қағидаларын тұжырымдайды.

Тірек сөздер: азаматтығы жоқ кеме, ашық теңіз, мемлекеттік юрисдикция, бару құқығы, теңіздегі құқық қолдану.

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ОСУЩЕСТВЛЕНИЕ ГОСУДАРСТВЕННОЙ ЮРИСДИКЦИИ В ОТНОШЕНИИ СУДОВ БЕЗ ГРАЖДАНСТВА В ОТКРЫТОМ МОРЕ

Аннотация

В статье рассматриваются международно-правовые основания и пределы осуществления государственной юрисдикции в отношении судов без гражданства (stateless vessels) в открытом море. Практическая значимость темы возросла в связи с увеличением использования судов, не имеющих или не способных подтвердить национальность в контексте нерегулярной миграции, контрабанды, торговли людьми, незаконного, несообщаемого и нерегулируемого промысла (IUU fishing), а также иных форм транснациональной морской преступности. Вместе с тем сохраняется правовая неопределенность относительно допустимого объема мер морского правоприменения против таких судов. Цель статьи – уточнить, в каких случаях государства вправе законно осуществлять меры посещения, досмотра, задержания и изъятия в отношении судов без национальности, а также определить минимальные гарантии, необходимые для обеспечения соответствия международным обязательствам в сфере прав человека и при миграционных операциях принципу non-refoulement. В исследовании применяются доктринальный правовой анализ и договорное толкование норм права моря, сравнительная оценка конкурирующих научных подходов к статусу судов без гражданства, а также анализ релевантной судебной и операционной практики. Полученные результаты предлагают практические критерии установления статуса судна без гражданства, разграничивают предписывающую и принудительную юрисдикцию и формулируют необходимость, пропорциональность и процедурную добросовестность в качестве базовых требований законного вмешательства в открытом море.

Ключевые слова: судно без гражданства, открытое море, государственная юрисдикция, право посещения, морское правоприменение.

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