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COASTAL STATE RIGHTS AND JURISDICTIONS ON THE HIGH SEAS: LEGAL MEASURES AND PROCEDURES IN INTERNATIONAL CONVENTIONS

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Abstract:
This study examines the rights and jurisdiction of the coastal State on the high seas under the legal measures and procedures established by international conventions, particularly the 1982 United Nations Convention on the Law of the Sea (UNCLOS). While the freedom of the high seas grants all States equal rights to navigation, fishing, scientific research, and the laying of submarine cables, international law allows the coastal State to exercise limited jurisdiction over foreign vessels in specific circumstances.

The study analyzes the principal powers of the coastal State, including the right of visit, the suppression of piracy, illicit drug trafficking, unauthorized broadcasting, marine pollution, and the right of hot pursuit. It also addresses the powers exercised within the Exclusive Economic Zone and on the continental shelf, together with the legal guarantees intended to preserve the balance between the interests of the coastal State and the principle of freedom of navigation.

Using descriptive, analytical, and comparative methods, the study concludes that the effectiveness of these legal measures remains limited in practice because their implementation depends largely on the political will and maritime capabilities of States. Therefore, stronger international cooperation and more effective enforcement mechanisms are required.

Keywords: coastal State, high seas, jurisdiction, maritime piracy, UNCLOS.

Introduction

As is established in general international law, any coastal State may exploit the maritime zones relatively adjacent to its coast, beginning with internal waters, territorial sea, and the Exclusive Economic Zone (EEZ), extending to the high seas. Furthermore, a coastal State may, through its warships, exercise policing powers in cases of suspicion regarding a vessel engaged in activities inconsistent with the rules of public international law or in violation of the State's maritime legislation. Concurrently, it exercises judicial jurisdiction, whereby the courts of the seizing State are competent to adjudicate the case, applying their national laws to suppress all maritime criminal acts. These acts constitute forms of jurisdiction conferred upon the coastal State on the high seas; conversely, they represent conditions that restrict the principle of freedom for other States and the conduct of their vessels within this maritime domain.

However, the rights of the coastal State on the high seas remain ill-defined or, more accurately, a subject of continuous dispute. Even where defined, the legal procedures and measures governing them often remain inadequately implemented in practice and lack an effective deterrent character. Consequently, our study of this subject arises from its inherent importance, as it pertains to a maritime zone that is both free and vital: the high seas, which host numerous maritime activities requiring specific regulations, procedures, and measures. Accordingly, this study aims to elucidate the various legal measures and procedures adopted by international conventions on this subject, framed by the following central problem: What are the various legal measures and procedures established by numerous international conventions regarding the rights of the coastal State on the high seas, and to what extent are they effective?

To address this problem and encompass the various dimensions of the subject, the historical scientific method was employed to acquire knowledge regarding the historical background and stages of evolution of the procedures and measures prescribed for the coastal State on the high seas under international conventions. The descriptive scientific method was also utilized to clarify international legal provisions of a customary or conventional nature related to the subject. Furthermore, the analytical scientific method was adopted to enable the researcher to identify the strengths and weaknesses of the

international system established to regulate the rights of the coastal State on the high seas. Finally, the comparative scientific method was integrated due to the diversity of sources and references belonging to different major legal systems worldwide.

Based on the texts of international law, particularly the international Law of the Sea, the coastal State possesses jurisdiction on the high seas regarding the following matters: the right of approach and visit, combating slave trading, combating illicit traffic in narcotic drugs and psychotropic substances, combating unauthorized broadcasting, the right of hot pursuit, protection of the marine environment, and acts of maritime piracy.

Given their proximity to the high seas, a coastal State may, within its Exclusive Economic Zone (EEZ) and on the Continental Shelf, undertake a series of measures applicable to all, including foreign vessels transiting those areas. For this purpose, Article 73 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) authorizes the coastal State to "...take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention" for the purpose of exercising "...its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone." To provide the necessary guarantees for the freedom of international navigation, the same article stipulates safeguards requiring coastal States to promptly release arrested vessels and their crews upon the posting of a reasonable bond or other security. It further provides that such penalties may not include imprisonment or any other form of corporal punishment, unless the States concerned agree otherwise. The coastal State is also obligated, in cases of arrest or detention of foreign vessels, to notify the flag State of the action taken and of any penalties subsequently imposed.

It is noted that this provision is limited to living resources only. Regarding non-living resources, the coastal State possesses certain powers over foreign vessels when they engage in activities related to these resources, pursuant to Article 111, paragraph 2, of the 1982 Convention. This paragraph permits the right of hot pursuit for "...violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal state applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones." It can be concluded that the coastal State has the right to take punitive measures against violations committed by foreign vessels of that State's laws and regulations pertaining to those activities, while taking into account the minimum guarantees stipulated in Article 73 of the United Nations Convention on the Law of the Sea (UNCLOS).[1]

On this basis, we shall endeavor to review the various rights prescribed for the coastal State on the high seas, along with the corresponding legal measures and procedures, through the following two requirements. In the first requirement, we will address the legal measures and procedures concerning maritime vessels, while in the second requirement, we will examine the legal measures and procedures pertaining to the marine environment and the regulation of navigation.

I First Section: Legal Measures and Procedures Concerning Maritime Vessels

In this section, we will address the right of visit and search, the suppression of slave trade, the suppression of illicit traffic in narcotic drugs and psychotropic substances, the suppression of unauthorized broadcasting, and the right of hot pursuit.

1. Subsection 01: The Right of Visit and Search

The coastal state may exercise the right of approach, justified by considerations related to order and security on the high seas. As for the right of visit, it commences when a warship finds reasonable grounds for suspecting a private vessel—exceeding the mere identification of the flag—whereupon it may dispatch a party of its crew to that vessel to verify its identity. The long-standing rule currently observed mandates that private vessels, upon encountering warships, must immediately hoist their flags. The hoisting of the flag by a warship serves as a warning to private vessels to do the same, as every warship, regardless of its nationality, possesses the right to verify the identity of any private vessel it encounters during its passage by requesting it to fly its flag or disclose its identity through any other means. This process is justified by considerations of order and security in international waters, and this right continues to be exercised to the present day, despite losing much of its significance due to the development of modern means of vessel identification. Regarding the right of visit, it begins when a

warship finds reasonable grounds for suspecting a private vessel that exceed the scope of flag identification; it may then send members of its crew to that vessel to verify its identity.[2]

The 1958 Geneva Convention on the High Seas codified this custom in Articles 22 and 23, which grant this right in cases where there is strong justification. It authorized the commander of a warship, when there are serious grounds for suspecting that a private vessel is engaged in piracy, the slave trade, or is of the same nationality as the warship despite flying a foreign flag or refusing to show its true flag, to send a boat under the command of an officer to the suspected vessel. This was also affirmed in Article 46(1) of the 1956 International Law Commission Report.[3]

If suspicion persists after the documents have been checked, the warship may proceed to conduct an examination and visit on board the vessel, while observing all possible considerations. Compensation must be provided for all damages sustained by the suspected vessel if the suspicions prove to be unfounded. However, if evidence confirming those suspicions is found on board, the warship may seize the vessel, escort it to a port of the warship's state, and present its case before its courts.

Article 110 of the United Nations Convention on the Law of the Sea (UNCLOS) adopted these provisions and expanded the circumstances in which a visit is permissible by adding the cases of unauthorized broadcasting and stateless vessels. Although Article 22 of the 1958 Convention limits the right to conduct visits to warships only, it can be argued that other public vessels possess the same right, by analogy with Article 21, which grants these vessels the right to seize pirate ships. Furthermore, the final paragraph of Article 110 of the United Nations Convention on the Law of the Sea (UNCLOS) addressed this deficiency by explicitly stating that this right extends to all vessels and aircraft duly authorized to that effect and bearing clear markings identifying them as being on government service.[4]

2. Subsection 02: Combating the Slave Trade

Slavery is defined as: "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." Meanwhile, the slave trade is defined as: "every act directed at a human being with the intent of enslaving them, whether represented by their capture, possession, or disposal to others, with or without consideration."[5]

Britain was the first country to consider slavery a prohibited matter within its territory since 1772. Slavery was subsequently abolished in all British colonies in 1807, French colonies in 1848, Dutch colonies in 1863, and the United States of America in 1865—which witnessed the largest human massacre in the modern era, ending with the amendment of the U.S. Constitution and the abolition of slavery across all states.[6] Consequently, international custom authorized the fight against the slave trade and classified it as an international crime. The movement to combat it intensified at the beginning of the nineteenth century through numerous international instruments. The Declaration of the Vienna Congress of 1815 stated that the slave trade is "...repugnant to the principles of humanity and universal morality." In treaties concluded between France and Britain, such as the Convention of December 20, 1841, and the Convention of May 29, 1845, both states agreed to allow their warships to inspect vessels suspected of engaging in the slave trade. The commitment to combat this trade was reaffirmed in subsequent instruments, most notably the Berlin Act of 1885, the Brussels Act of 1890, the Treaty of Saint-Germain of 1919, the Slavery Convention prepared by the League of Nations in 1926, and the Supplementary Convention on the Abolition of Slavery signed in Geneva in September 1956.[7]

Since the early stages of the emergence of the concept of combating the slave trade, warships were granted the right to inspect merchant vessels to ensure they were not engaged in this trade. This provision was categorically confirmed in Article 22, Paragraph (b) of the 1958 Convention. Furthermore, Article 13 of the same Convention obligated all states to adopt effective measures to prevent and punish the slave trade on ships authorized to fly their flags, and decreed that any slave who takes refuge on board any ship, regardless of its flag, shall ipso facto become free. The United Nations Convention on the Law of the Sea (UNCLOS) adopted these provisions in Articles 99 and 110.[8]

3. Subsection 03: Combating Illicit Trafficking in Narcotic Drugs and Psychotropic Substances

The Hague Convention of 1912 is considered the first document in this regard. From an early stage, officials realized that the effective suppression of illicit drug trafficking required a global approach. Consequently, since the beginning of the 20th century, this task was entrusted to the League of Nations and subsequently to the United Nations. Within the framework of the latter, the United Nations Office

on Drugs and Crime (UNODC) was established in 1997. Headquartered in Vienna, the office works to raise public awareness about the dangers of drug abuse, performs monitoring functions, and strengthens international activities to combat drug production. This is in addition to the significant role played by the Economic and Social Council (ECOSOC) in this field, and the United Nations Fund for Drug Abuse Control, established by the UN General Assembly under Resolution 2719 (XXV).[9]

United Nations efforts culminated in the conclusion of the 1961 New York Convention, known as the "Single Convention on Narcotic Drugs." This convention prohibited illicit drug trafficking and obligated States Parties to take necessary measures to penalize the transport, transit, import, and export of drugs for purposes other than the legitimate ones specified therein. The 1971 Vienna Convention on Psychotropic Substances established provisions concerning the trade in synthetic drugs, which are somewhat similar to the provisions of the Single Convention. Although these two conventions define their scope of application within the territories of the States Parties, the principle of the law of the flag allows their provisions to be applied to vessels flying the flags of those states. The United Nations Convention on the Law of the Sea (UNCLOS) confirmed this view; Article 108 prohibits the transport of these substances by ships on the high seas for trafficking purposes if such action contravenes international conventions, while calling upon all states to cooperate for this purpose. Furthermore, Article 17 of the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, dated December 20, 1988, urged the conclusion of bilateral or regional agreements aimed at suppressing such acts. These two conventions constitute the legal framework for organizing international cooperation to suppress the trafficking of these substances at sea.[10]

The United Nations continues its efforts to develop the fight against the illicit trafficking of these substances. The Commission on Narcotic Drugs and the Working Group on Maritime Cooperation have previously emphasized the strengthening of international, regional, and bilateral cooperation in suppressing the illicit trafficking of narcotic drugs and psychotropic substances. Additionally, the UN General Assembly, in its Resolution S-20/4, stressed the need for necessary measures to enhance international cooperation to counter the global drug problem. The General Assembly also held a special session from June 8–10, 1998, dedicated to addressing the global drug problem, resulting in several resolutions and recommendations. The United Nations International Drug Control Programme (UNDCP) facilitated the implementation of Article 17 of the 1988 Convention, and the International Maritime Organization (IMO) has undertaken various activities to bolster the effective combat against the illicit trade in narcotic drugs and psychotropic substances.[11]

Professor Paul Reuter classifies state obligations under international conventions into two types: the first type includes rules obligating states to enact laws and regulations that criminalize this trade and to establish bodies responsible for implementing these laws, ensuring their compliance, and punishing violators. The second type involves rules governing a state's relations with other states in this field, as well as with international bodies tasked with overseeing the application of those conventions. Furthermore, during its twentieth session, the International Maritime Organization issued guidelines for the prevention and suppression of the smuggling of drugs and psychotropic substances, as set forth in Assembly Resolution A.892(21).c[12]

4. Subsection 04: Combating Unauthorized Broadcasting

The prohibition of unauthorized broadcasting entered international regulation relatively late. The Radio Regulations annexed to the Geneva Radio Regulations (1959) prohibited the establishment and use of radio and television broadcasting stations on board ships, aircraft, or any floating objects or structures situated outside national territories. Based on this prohibition, the International Frequency Registration Board (IFRB) issued a circular to the member states of the International Telecommunication Union (ITU), requesting that administrations responsible for ship registration verify that no broadcasting equipment exists on board these vessels, with the exception of equipment dedicated to navigation.[13]

The 1958 Geneva Conventions on the Law of the Sea did not address this issue; however, it was incorporated into the 1982 United Nations Convention on the Law of the Sea (UNCLOS) following a proposal by the European Community. This raises the question of whether the delay in codifying this prohibition was due to the belief that it had already constituted a settled customary rule in state practice for a sufficient period. This was the position held by the International Court of Justice in its judgment rendered on November 27, 1981, in the case of the vessel Magda Maria. In its opinion, the Court relied

on a 1958 Danish precedent in the case of the vessel Lucky Star, where the court clarified that this customary rule permits the seizure of materials rather than the vessel itself. It appears that the Court's opinion is "untenable," as the Lucky Star case involved a stateless vessel, whereas the Hague Court considered the Magda Maria to be a Panamanian vessel. Pursuant to Article 109 of the 1982 Convention on the Law of the Sea, several states have jurisdiction to prosecute persons engaged in unauthorized broadcasting. These states include the flag state, the state of registration, the state of which the person is a national, and any state where the broadcasts can be received or where they cause interference with authorized radiocommunications. Furthermore, these states may seize the vessel utilized for such purposes.[14]

5. Subsection 05: Right of Hot Pursuit

Hot pursuit is a right conferred upon the public vessels or aircraft of a state to pursue foreign vessels that commit acts in violation of the laws and regulations of the coastal state pertaining to its national jurisdictional zones. This pursuit must commence within those zones and continue into the high seas for the purpose of escorting the vessel to the coastal state's ports for adjudication. Hot pursuit is considered an exception to the exclusive jurisdiction of the flag state, as it is deemed a continuation of the coastal state's jurisdiction or an extension of the "exercise of jurisdiction" that could have commenced had the vessel not departed the zone. Thus, hot pursuit ensures the effectiveness of the coastal state's jurisdiction. International legal doctrine and jurisprudence were initially reserved, or even dismissive, toward this concept until it was gradually incorporated into the rules of international law since the nineteenth century through the writings of numerous jurists and the decisions of scientific forums and international courts. It was eventually solidified in the 1958 Geneva Convention and subsequently in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which supplemented and developed those provisions.[15] Pursuit may only be conducted by warships or military aircraft of the coastal state, or by vessels and aircraft clearly marked and identifiable as being on government service and authorized to that effect.[16]

Hot pursuit must commence when the foreign vessel or one of its boats is within the internal waters, the territorial sea, or the contiguous zone of the pursuing state. The 1982 United Nations Convention on the Law of the Sea expanded these areas to include archipelagic waters, the exclusive economic zone (EEZ), the continental shelf, and safety zones surrounding installations on the continental shelf, as stipulated in paragraphs 1 and 2 of Article 111 of the same Convention.[17] Such pursuit is not deemed to have begun until a visual or auditory signal to stop has been given at a distance that enables it to be seen or heard by the vessel.[18]

However, the problem lies in the multiplicity of these maritime zones: are the provisions of hot pursuit applied uniformly across all zones, or do they vary from one maritime zone to another?

In this regard, some scholars look to the cause or causes that triggered the hot pursuit, which inherently vary by zone, or the "good reason to believe" by the competent authorities of the coastal state that the vessel has violated its laws and regulations. Regarding internal waters, the territorial sea, and archipelagic waters, the cause for pursuit is the vessel's violation of any laws and regulations of the coastal state, whether specifically related to those zones or to the state's territory in general. As for the remaining zones, the cause for pursuit is restricted to violations of the laws and regulations specific to those particular zones. Extensive debate also arose concerning the commencement of hot pursuit from the contiguous zone. The International Law Commission (ILC) discussed this matter at length while drafting the relevant article; the debate centered on whether this zone is considered an extension of the coastal state's legal regime or merely a location where the state takes enforcement measures for violations committed within its territory or territorial sea. The Commission ultimately concluded that:

"...a state which has established a contiguous zone for purposes of customs control cannot commence the pursuit of a fishing boat accused of illegal fishing in the territorial sea if the boat is in the contiguous zone at the commencement of the pursuit..."

Furthermore, pursuit may commence from the contiguous zone if it pertains to the violation of rights for which the zone was established, even if those violations were committed within the territory, internal waters, or territorial sea. This is explicitly understood from Article 23, Paragraph 1 of the 1958 Geneva Convention on the High Seas and Article 111 of the 1982 United Nations Convention on the Law of the Sea.[19]

This is what may be inferred from the text of Article 24 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, although Article 23 of the 1958 Convention does not lead to the same understanding. This led a segment of legal doctrine to state: "The Convention does not authorize pursuit, even starting from the contiguous zone, against a ship that had violated, within this zone, the interests established for its protection."[20]

It is noted, according to some legal doctrine, that this interpretation is considered narrow and diminishes the utility of establishing a contiguous zone. Furthermore, it is inconsistent with the practice of many states, particularly in ensuring it does not extend beyond 24 nautical miles. Reference should also be made to the provision of paragraph 2 of Article 303 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which allows a coastal state to presume that the removal of objects of an archaeological and historical nature from the seabed in the contiguous zone without its approval results in an infringement of the laws and regulations relating to that zone. That is to say, the removal of these objects from the seabed in the contiguous zone authorizes the commencement of hot pursuit from this zone, on the grounds that it is analogous to a violation of the laws and regulations of the zone itself. Article 33 of the 1982 UNCLOS provides: "In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal state may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; ...."[21]

For the pursuit to be valid, the foreign ship being pursued, or one of its boats or other craft working as a team and using said ship as a mother ship, must be present within one of the zones referred to above. As for other vessels coming from the coast to participate in the violations with the target ship, it is more likely—according to the legal doctrine that adopts the literal and narrow sense of the text of Article 23 of the 1958 Convention and Article 111 of the 1982 UNCLOS—that they do not give rise to pursuit. However, a broad interpretation of these two articles may allow for a contrary view. This was the position taken by the Court of Naples in a 1976 decision, which stated that hot pursuit of a foreign mother ship may commence even if the vessels and boats coming from the coast to participate in the violation possess a nationality different from that of the ship. Pursuit is not considered to have actually commenced unless the pursuing ship is satisfied by such practicable scientific means as may be available that the pursued ship or one of its boats is within the zone where the violation of its laws and regulations occurred. Pursuit may only commence after visual or auditory signals to stop have been given at a distance which enables them to be seen or heard by the pursued ship.[22]

For the pursuit to be valid, it must be continuous and uninterrupted; its cessation for any reason whatsoever does not permit its resumption. It must cease immediately if the foreign ship enters the territorial sea of its own state or of a third state. In this case, the ship falls under the jurisdiction of its own state or the third state, which may be requested to hold the ship accountable for the violation committed. The same provisions apply to pursuit carried out by aircraft. The aircraft giving the order to stop must itself actively pursue the foreign ship until a ship of the coastal state, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is capable of stopping the foreign ship itself.[23] If the foreign ship is stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage sustained as a result of such pursuit or stopping. Neither the 1958 Convention on the High Seas nor the 1982 UNCLOS specified the consequences of inspecting, stopping, or seizing the pursued ship; however, it is established in customary international law that the primary consequence is that the courts of the flag state of the pursuing ship or aircraft shall have jurisdiction to try that ship, although the flag state of the foreign ship may exercise diplomatic protection for that ship.[24]

II Section 02: Legal Measures and Procedures Pertaining to the Marine Environment and the Regulation of Navigation

In this section, we shall address the protection and preservation of the marine environment from pollution, the protection of submarine cables and pipelines, restrictions on the freedom of overflight, the regulation of maritime navigation, the protection of maritime fishing operations, the combating of maritime piracy, and the necessity of implementing binding international resolutions and conventions issued by a competent international body.

1. Subsection 01: Protection and Preservation of the Marine Environment from Pollution

The general obligation of States to protect and preserve the marine environment necessitates the imposition of several significant restrictions on the right of every State to navigate ships flying its flag and on the State's jurisdiction over such vessels. Article 217 of the United Nations Convention on the Law of the Sea (UNCLOS) 1982 details the duties of the flag State, not only to ensure that its vessels respect established rules of conduct to avoid, reduce, and control pollution of the marine environment, but also to ensure that the "design, construction, equipment," and "manning" of these vessels conform at all times to the relevant rules. It is well established that these rules are international standards which all States are committed to implementing.

The imperatives of balancing the interests of international navigation with the preservation of the marine environment on one hand, and the protection of coastal State interests on the other, have led to a "concurrent jurisdiction" between the coastal State and the flag State, governed by a complex set of legal rules. In this regard, three types of enforcement measures can be distinguished:

- **Punitive Measures**: Actions taken in the event of a violation of rules of conduct that prohibit direct marine pollution, such as dumping and waste disposal.
- **Precautionary Measures**: These primarily include any measure refusing a vessel permission to use waters for navigation due to fears of pollution.
- **Self-Protection Measures**: Exercised in situations that may not necessarily arise from unlawful conduct.

There is no precise boundary between these types of measures. Furthermore, the 1982 Convention on the Law of the Sea does not explicitly distinguish between them, despite its focus on punitive measures in cases of violation of "applicable international rules and standards established to prevent, reduce, and control pollution from vessels." These international rules and standards are assimilated with "national laws and regulations established in accordance with such rules and standards for their implementation," and sometimes even "national laws and regulations adopted in accordance with this Convention."

The authority of the coastal State over foreign vessels regarding the protection of the marine environment varies according to the location of the act. Article 220 of the 1982 Convention distinguishes between the territorial sea and the exclusive economic zone (EEZ). When a violation is committed in the territorial sea, the coastal State may take all punitive measures, including the detention of the vessel, even if this right pertains only to national laws and regulations "adopted in accordance with this Convention."[25]

In the exclusive economic zone, the violation of international rules, or national rules intended to implement those international rules, may trigger the application of such punitive measures. Even in this case, the coastal State is not empowered to "take action" unless there is "clear objective evidence" of a violation, and that such violation has caused or threatens to cause significant damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone.[26]

In other cases of violation, the coastal State must limit itself to requesting appropriate information. If the vessel refuses to provide such information, or if other circumstances of this nature exist, the coastal State may undertake a physical inspection of the vessel, but only in cases of "substantial discharge" causing "significant pollution of the marine environment." Furthermore, Article 218 of the 1982 Convention introduced another instance of "concurrent jurisdiction" over vessels on the high seas. This article allows the port State—when a foreign vessel is voluntarily within one of its ports or at one of its off-shore terminals—to conduct a full investigation. Upon the availability of conclusive evidence, proceedings may be instituted against the vessel for any discharge committed outside the internal waters, territorial sea, or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or a general diplomatic conference.[27]

It is observed that these provisions go further than the London Convention on the Prevention of Pollution from Ships of November 2, 1973, which limits the authority of port state authorities to inspection. Nevertheless, there are three categories of safeguards against the arbitrary exercise of "concurrent jurisdiction" by the coastal state over foreign vessels on the high seas, namely:

A. The First Category: Pertains to the rights of the accused, including respect for "recognized rights," the imposition of monetary penalties only, the statute of limitations prohibiting criminal proceedings

after three years, and the possibility of recourse to national courts for acts based on loss and damage resulting from unlawful measures.

B. **The Second Category**: Relates to the vessel itself, aiming to prevent discrimination in law or in fact between vessels and defining investigation procedures, particularly the release of vessels upon posting reasonable security.

C. **The Third Category**: Comprises safeguards stipulating flag state preemption; in all cases, the flag state maintains concurrent jurisdiction with other states to institute similar proceedings against vessels flying its flag. Furthermore, it may suspend proceedings initiated against its vessels if it institutes such proceedings within specified periods and conditions.[28]

The 1969 Brussels Convention, as amended by the 1973 London Protocol, granted coastal states the right to take appropriate measures—in consultation with concerned states or without consultation in urgent cases—against merchant vessels on the high seas, regardless of their flag, aimed at protecting their maritime territories from pollution. In doing so, the state may sink the polluting vessel if necessary. It is worth noting that while the 1982 United Nations Convention on the Law of the Sea dedicated Part XII to the protection and preservation of the marine environment, it did not include any exception to flag state jurisdiction regarding acts of pollution on the high seas. Moreover, a view in international jurisprudence holds that "the obligation not to pollute the environment in general, and consequently the marine environment by dumping radioactive waste, imposes two duties upon states that are present in almost every international convention, draft convention, resolution, or recommendation: the duty to take measures and establish rules to prevent pollution, and the duty of international cooperation to achieve this purpose."[29]

2. Subsection 02: Protection of Submarine Cables and Pipelines

The first treaty concluded for the protection of cables and pipelines was signed on June 16, 1864, between France, Brazil, Portugal, and Haiti. Furthermore, a specific regime was established to prevent the accidental or intentional cutting of wires under the Paris Convention of March 14, 1884, concerning the Protection of Submarine Telegraph Cables outside territorial waters.[30] These cables and pipelines are laid underwater, allowing for the tracking of vessels that damage them; they also permit warships of various states to exercise policing powers and verify the nationality of vessels that violate their provisions. The coastal state may not object to the laying and maintenance of these cables and pipelines; rather, pursuant to Article 61/02 of the Paris Convention, it may only take reasonable measures to explore the continental shelf and exploit its natural resources. Subsequently, the 1958 Convention, in Articles 27, 28, 29, and 36, obligated states to enact penal legislation specifically for the protection of pipelines and high-voltage cables. This was previously confirmed in the 1956 report of the International Law Commission, which stated: "It is the duty of every state to take the necessary legislative measures to prevent the intentional or negligent breaking or injury of submarine cables or pipelines on the high seas, which constitutes a punishable offense."[31]

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) reiterated such provisions and legislation in Articles 79 and 113, which stipulated that such acts are considered crimes for which the flag state is responsible for punishing the perpetrators. Any conduct involving the breaking or injury of a submarine cable beneath the high seas by a ship flying its flag or a person subject to its jurisdiction—done intentionally or through culpable negligence in a manner liable to interrupt or obstruct telegraphic or telephonic communications, as well as the breaking or injury of a submarine pipeline or high-voltage power cable—is prohibited. However, this does not apply to any breaking or injury caused by persons acting merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such damage.[32]

- In light of this, the question that immediately comes to mind is: in the event that a vessel is proven to have committed an act of sabotage on the high seas, who possesses the right to arrest and prosecute it?

Opinions have varied in this field. Some argue, according to Article 1 of the Resolution issued by the Institute of International Law during the Brussels session on September 5, 1879, regarding the international protection of submarine cables of international importance in times of peace and war, that every state has the right to carry out such an arrest. However, as stated in the 1884 Paris Convention, jurisdiction in this case belongs to the courts of the state to which the offending vessel belongs, applying

its own law against it. Thus, any warship, regardless of the flag it flies, has the jurisdiction to document the occurrence of damage to submarine wires and pipelines on the high seas, provided that the courts of the accused's state shall have exclusive jurisdiction over the trial.[33]

3. Subsection 03: Restrictions on the Freedom of Overflight

Pursuant to Article 02 of the 1958 Geneva Convention on the High Seas, the freedom of overflight above the high seas is not subject to the sovereignty of any State. However, this freedom is not absolute; it is subject to certain restrictions, namely the obligation not to obstruct or prejudice the freedom of maritime navigation. In the event of a violation of this rule, the coastal State shall intervene to prevent such obstruction or damage over the high seas.[34]

4. Subsection 04: Regulation of Maritime Navigation, Protection of Fisheries, and acts of maritime piracy

Although maritime navigation is free for all, the safety of ships must be maintained during sailing and passage operations, as well as during various other activities related to navigational matters, which can only be exercised under appropriate security conditions to avoid maritime accidents that may disrupt navigation or affect vessels. Consequently, to achieve minimum standards for maritime safety, States have adopted a set of requirements, such as ensuring the ship's crew is qualified for sailing operations and related tasks. Furthermore, each State, in respect of ships flying its flag, shall take the necessary measures to ensure safety at sea regarding shipbuilding, equipment, and seaworthiness, in addition to exercising control over administrative, technical, and social matters related to these ships. Several conventions and treaties have been concluded regarding maritime safety and security, such as: the 1948 London Convention for the Safety of Life at Sea; the 1948 London Regulations for Preventing Collisions at Sea; the 1960 London Conference on the Safety of Life at Sea; the 1969 London Conventions on Tonnage Measurement of Ships; the 1971 Convention concerning special trade passenger ships; the 1973 Convention concerning energy and assistance; the 1979 Hamburg Convention; the 1986 Geneva Convention on Conditions for Registration of Ships; and the 1988 Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its 2005 Protocol.[35]

Regarding maritime fisheries, as previously mentioned, every State, whether coastal or landlocked, has the right to engage in fishing on the high seas without prejudice to the interests of the coastal State,[36] without violating rules for the conservation of living resources, and while respecting international agreements and international cooperation in this framework.[37] A State may prohibit fishing during certain seasons, ban the fishing of specific species, or prohibit the use of certain fishing methods. Furthermore, the vessel remains subject only to the jurisdiction of the flag State, as confirmed by the 1893 arbitral award rendered by the Anglo-American Joint Tribunal in the Bering Sea Fur Seal Case. However, by the end of the 19th century, it became apparent that certain fishing operations could pose a significant threat to fishery resources in some areas of the high seas. Thus, the freedom of fishing was no longer absolute as it threatened the future of fishery resources, leading States to attempt to regulate fishing operations through bilateral treaties, such as the 1839 and 1938 bilateral treaties between Britain and France regulating fishing in the English Channel, and the 1927 treaty between Iran and the Soviet Union for fishing in the Caspian Sea, which was terminated in 1953... and other multilateral treaties such as the 1882 North Sea Fisheries Convention between the coastal States (excluding Sweden and Norway), which was replaced by the 1964 Fisheries Convention concerning Western European waters, among others.[38]

Regarding maritime piracy, navigation has historically endured severe afflictions from these acts. Consequently, the international community has long recognized the right of states to intervene to combat this type of activity, as navigation on the high seas cannot flourish under any circumstances without the elements of security and stability.[39] Despite the development of wireless communications and the increased speed of ships and military aircraft capable of assisting civilian vessels within a short period, the international community still requires further cooperation to eliminate this international phenomenon. According to the International Maritime Organization (IMO), the number of incidents of armed piracy committed against ships starting from 1997, for example, reached approximately 252 incidents, in which 51 crew members were killed, 30 were injured, and 412 were taken hostage. The International Maritime Bureau (IMB) and the International Transport Workers' Federation (ITF)

maintain that official reports represent no more than 50% of the actual figures, due to fears of ships being detained and the subsequent significant losses incurred by them and insurance companies. All hijacked ships were being held in areas such as Eyl and Garacad in Puntland, Somalia, or the Harardhere and Hobyo regions under the control of the Hawiye clan.[40]

After 2005, and despite the signing of the Protocol to the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the world witnessed more than 135 ships being attacked off the Somali coast in 2008 alone. The pace of these operations accelerated when Somali pirates, in that same year, seized approximately 100 other ships and held 500 people hostage. All of this occurred in full view of multinational naval forces patrolling the Gulf of Aden; however, they were unable to limit the number of attacks, which continued to increase in the region during 2009, intensifying global concern and tension.[41]

According to the IMB, the number of maritime piracy incidents rose to 445 in 2010, and there were 142 attacks between January and March 2011. Of these, 97 were recorded off the coast of Somalia alone, up from 35 attacks in the same period of the previous year, thereby reaching the highest level ever recorded across all years.[42] According to the latest reports from the IMB, the frequency of maritime piracy operations increased in the Gulf of Guinea in 2020, compared to piracy operations in Somalia and the Gulf of Aden, where operations decreased relatively in the same year.[43]

5. Subsection 05: The Necessity of Executing Binding International Decisions and Agreements Issued by a Competent International Body

Certain international bodies may issue binding international decisions directed at a specific state, which must be executed when confronting certain emergency circumstances. For instance, the decision issued by the United Nations Security Council on April 9, 1966, authorized British vessels to intercept and inspect all commercial ships, regardless of their registry, whenever there were strong suspicions that they were carrying oil shipments to Southern Rhodesia in violation of the oil embargo imposed upon it. Similarly, the Council's decisions regarding the economic blockade on Iraq following the end of the Second Gulf War in 1991 serve as another example.[44]

If international agreements exist that permit a vessel to be subject to the jurisdiction of a state other than the flag state, these agreements must be respected, provided that such exceptions are explicitly stipulated therein. This aligns with the provisions of international law, as evidenced, for example, by the 1882 Hague Convention for the Regulation of the Police of the Fisheries in the North Sea. This convention was signed by Great Britain, France, Belgium, Denmark, Germany, and the Netherlands, while Sweden and Norway did not sign it; subsequently, a new convention was signed in 1955 to replace it. Further examples include the 1911 Convention for the Preservation and Protection of Fur Seals, signed by the United States of America, Great Britain, Japan, and Russia, as well as the 1957 Convention on Fishing and Conservation of the Living Resources of the High Seas in the North Atlantic. Each of the aforementioned agreements granted the warships of any contracting state the jurisdiction to seize acts constituting a violation of their provisions, even if committed by a vessel belonging to another state party to the agreement.[45]

Conclusion

In light of the foregoing, it can be stated that all States, whether coastal or land-locked, regardless of their status—even those newly formed—possess the right to utilize and benefit, on an equal footing, from the high seas for navigation, fishing, laying cables and pipelines, scientific research, and the various freedoms stipulated in recognized international conventions. This is based on the principle of the freedom of the high seas, a principle derived from a customary rule acknowledged by all States. Consequently, no State may exercise exclusive sovereignty over this maritime zone. Furthermore, the waters of the Exclusive Economic Zone (EEZ) extending from the seabed and subsoil to the surface are subject to the freedom of navigation and are considered part of the high seas in this regard.

While sovereignty over the high seas exists, it does not belong to individual States but rather to the international community as a whole. Although the principle of freedom prevails in the high seas, such freedom is not entirely absolute; rather, it is circumscribed by restrictions and conditions aimed at preserving public order and preventing chaos within this maritime domain. In other words, while States enjoy full freedom to exploit the high seas, they must, in return, adhere to the provisions of the

international law of the sea and respect the interests of other States, in accordance with the conditions set forth in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Accordingly, States are prohibited from engaging in the slave trade, the illicit traffic in narcotic drugs and psychotropic substances, and unauthorized broadcasting. They are also mandated to preserve and protect the marine environment and to combat all forms of maritime piracy. The latter remains one of the most critical issues occupying governments from the dawn of history to the present day, given its numerous developments and its persistent recurrence on the global stage as a primary (ancient-modern) subject of international discussion, particularly after 2005. Nevertheless, the implementation of these legal measures and procedures remains disparate, varying according to the power of States and the vessels flying their flags, which consistently undermines the balance of justice and equality.

Footnotes

[1] See: Mohamed Saadi, State Sovereignty over the Sea in Public International Law, Dar Al-Jami'a Al-Jadeeda, Alexandria, Egypt, 2010, p. 225 et seq.
- David Ruzié and Gérard Teboul, Droit International Public, 21st ed., Mémentos Dalloz, éditions Dalloz, Paris, 2012, p. 139.

[2] Ibid., p. 138.
[3] See: Mohamed Saadi, op. cit., pp. 257-258
- David Ruzié and Gérard Teboul, op. cit., pp. 138-139.

[4] See: Mohamed Saadi, op. cit., pp. 258-259. And Abdul Karim Awad Khalifa, International Law of the Sea, Dar Al-Jami'a Al-Jadeeda Publishing House, Alexandria, 2013, pp. 109-110.
[5] Muhammad Saadi, op. cit., p. 233.
[6]Muhammad Al-Majzoub, The Intermediate Guide to Public International Law, 7th ed., Al-Halabi Legal Publications, Beirut, Lebanon, 2018, pp. 463-464
[7] David Ruzié et Gérard Teboul, Op. cit., p. 140.
- Muhammad Saadi, the previous reference, pp. 233-234.

[8] Ibid., pp. 234-235.
[9] See the website: www.unodc.org, accessed on 22/03/2025 at 18:17.
[10] Mohammed Saadi, op. cit., p. 235.
[11] See the official United Nations website: www.un.org. Accessed on 27/10/2025 at 19:07.
[12] See the same official United Nations website: www.un.org. Accessed on 27/10/2025 at 19:15.
[13] Mohammed Saadi, op. cit., p. 249.
[14] Abdul Karim Awad Khalifa, previous reference, pp. 107-108. See also: Muhammad Saadi, previous reference, pp. 249-250.
[15] See: Article 23 of the 1958 Geneva Convention on the High Seas and Article 111 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).
[16] Article 111/06 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). See also: Muhammad Saadi, op. cit., p. 259.
[17] Abdul Karim Awad Khalifa, op. cit., p. 111.
[18] Muhammad al-Majdhub, op. cit., p. 467.
[19] See: Muhammad al-Hajj Hammoud, International Law of the Sea, 1st ed., Dar al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2008, p. 473. See also: Muhammad Saadi, op. cit., p. 260 et seq. See also: Abdul Karim Awad Khalifa, op. cit., p. 112.
[20] Muhammad al-Hajj Hammoud, op. cit., pp. 473-474.
[21] Muhammad al-Hajj Hammoud, ibid., p. 474.
[22] Muhammad Saadi, ibid., pp. 260-261.
[23] Ibid., p. 250.
[24] Ibid., p. 251-252.
[25] Muhammad al-Hajj Hammoud, previous reference, p. 477.
[26] Ibid., pp. 477-478.
[27] Ibid., p. 478.
[28] Ibid., p. 478-479.
[29] Abdul Karim Awad Khalifa, the previous reference, p. 99.

[30] Muhammad Saadi, the previous reference, pp. 235-236.
[31] Ibid., p. 237.
- Report of the Commission on International Law (8th session in 1956): In the Yearbook of the Commission on International Law 1956, vol. II. United Nations, 2005.
[32] Muhammad Saadi, op. cit., pp. 237-238.
[33] Abdul Karim Awad Khalifa, op. cit., p. 99.
[34] Mohammed Saadi, op. cit., p. 268.
[35] Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS) of 1982. See also Mohammed Saadi, op. cit., pp. 262-267.
[36] Article 116 of the United Nations Convention on the Law of the Sea (UNCLOS.
[37] Article 117 of the United Nations Convention on the Law of the Sea (UNCLOS).
[38] Muhammad Saadi, previous reference, pp. 221-248.
[39] Muhammad al-Majdhub, previous reference, pp. 465-466.
[40] See: Husam al-Din al-Ahmad, Maritime Piracy Crimes in Light of International Legislation and Agreements, 1st ed., Halabi Legal Publications, Lebanon, 2010, p. 41.
- And the official website of the ITF Seafarers Bulletin: www.itfseafarers.org, 2010, accessed on 06/05/2025 at 14:19.
[41] The same website: www.itfseafarers.org. Accessed on 06/05/2025 at 14:42.
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[43] Live Piracy & Armed Robbery Report 2020, IMB Piracy Reporting Centre, available at: https://www.icc-ccs.org/index.php/piracy-reporting-centre/live-piracy-report/details/179/2048, published December 19, 2020, accessed December 21, 2025, at 8:45 PM.
[44] Ibid., p. 269.
[45] Abdul Karim Awad Khalifa, the previous reference, p. 98.

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