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AN EXPLORATORY OVERVIEW OF JURISDICTION ON SEAIN INTERAATIONAL LAW

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Abstract

This is an exploratory overview of the sea I terms of the Jurisdictional right and responsibilities thereon in international law the sea

Introduction

Jurisdiction concerns the power of the state under international law to regulate or otherwise impact upon people, property and circumstances and reflects the basic principles of a state sovereignty, equality of states and non-interference in domestic affairs. Jurisdiction is a vital and indeed central feature of state sovereignty, for it is an exercise of authority which may alter or create or terminate legal relationships and obligations. It may be achieved by means of legislative, executive or judicial action[1].

Jurisdiction of states though may be complex in their territories, it becomes more complex when it comes to the sea, for reason that some divisions of the sea could be beyond the state's territories. Amidst these various international treaties and international customary law have stipulated the national jurisdiction of states in such divisions of the sea, this paper will hence be focused on the national jurisdiction of states in such areas such as internal waters, territorial waters (sea), contiguous zone, exclusive economic zone, high seas and the continental shelf. Let's take them one after the other;

1. Internal waters

Internal waters are deemed to be such parts of the sea as are not either the high seas or relevant zones or the territorial sea, and are accordingly classed as appertaining to the land territory of the coastal state. Internal waters, whether harbours, lakes or rivers, are such waters as are to be found on the landward side of the baselines from which the width of the territorial and other zones is measured [2] and are assimilated with the territory of the state. They differ from the territorial sea primarily in that there does not

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[1] Malcom Shaw N., International Law, Cambridge Press, 6th edition page 645

[2] Article 5(1) of the 1958 Convention on the Territorial Sea and Article 8(1) of the 1982 Convention

exist any right of innocent passage from which the shipping of other baselines encloseas internal water what had been territorial waters[3]

In general, a coastal state may exercise its jurisdiction over foreign ships within its internal waters to enforce its laws, although the judicial authorities of the flag state (i.e. the state whose flag the particular ship flies) may also act where crimes have occurredon board ship. An example of this jurisdiction can be seen in the case of **Wildenhus**[4] where the American Courts had jurisdiction to try a crew member of a Belgian vessel for the murder of another Belgian national when the ship was docked in the port of Jersey City in New York.

A merchant ship in a foreign port or in foreign internal waters is automatically subjectto the local jurisdiction (unless there is an express agreement to the contrary), although where purely disciplinarian issues related to the ship's crew are involved, which do not concern the maintenance of peace within the territory of the coastal state, then such matters would be courtesy be left to the authorities of the flag state to regulate[5].

However, a completely different situation operates where the foreign vessel involved is a warship. In such cases, the authorization of the captain or of the flag state is necessary before the coastal state may exercise its jurisdiction over the ship and its crew. This is due to the status of the warship as a direct aim of the sovereign of the flagstate[6].

The territorial sea

Width

There has historically been considerable disagreement as to how far the territorial sea may extend from the baselines. Originally, the "cannon shot" rule defined the width required in terms of the range of shore-based artillery, but at the turn of the 19th century, this as transmitted into the 3 mile rule. This was especially supported by UK and USA.

However, the issue was much confused by the claims of many coastal states to exercise certain jurisdictional rights for particular purposes e.g. fisheries, customs and immigration controls. It was not until after the First World War that a clear distinction was made between claims to enlarge the width of the territorial sea and claims over particular zones.

[3] Article 5(2) of the 1958 Convention on the Territorial Sea and Article 8(2) of the 1982 Convention
[4] 120 USI (1887). See also armament Dieppes v US 399 F.2d 794 (1986) and R v Anderson I Cox's criminal Cases 198
[5] See; e.g. NNB v Ocean Trade Company 87 ILR, P.96, where the court of appeal of the Hague held that a coastal state had jurisdiction over a foreign vessel where the vessel was within the territory of the coastal state and a dispute arose affecting not only the internal order of the ship but also the legal order of the coastal state concerned. The dispute concerned a strike on boardship taken on the advice of the International Transport Worker's Federation
[6] See; The Schooner Exchange v McFadden 7 Cranch 116 (1812)

Recently, the 3 mile rule has been discarded as a rue of general application to be superseded by contending assertions. The 1958 Geneva Convention on the territorial sea did not include an article on the subject because of disagreements among the states,while the 1960 Geneva Conference failed to accept a Unites States- Canadian proposalfor a 6 mile territorial sea coupled with an exclusive fisheries zone for a further 6 milesby only one vote.

Article 3 of the 1982 Convention, however notes that all states have the right to establish the breadth of the territorial sea up to a limit not exceeding 12 nautical miles from the baselines. This clearly accords with the evolving practice of states[7]

State jurisdiction over the territorial sea

The territorial sea appertains to the territorial sovereignty of the coastal state and thus belongs to it automatically. For example, all newly independent states (with a coast) come to independence with an entitlement to a territorial sea[8]. There have been a number of theories as to the precise legal character of the territorial sea of the coastal state, ranging from treating the territorial sea as part of the res communis, but subject to certain rights exercisable by the coastal state, to regarding the territorial sea as part of the coastal state's territorial domain subject to a right of innocent passage by foreign vessels[9]. Nevertheless, it cannot be disputed that the coastal state enjoys sovereign rights over its maritime belt and extensive jurisdictional control, having regard to the relevant rules of international law. The fundamental restrictions upon the sovereignty of the coastal state is the right of other nations to innocent passage through the territorialsea, and this distinguishes the territorial sea from internal waters of the state, which are fully within the unrestricted jurisdiction of the coastal nation.

Articles 1 and 2 of the Convention on the Territorial Sea, 1958[10] provide that the coastal state's sovereignty extends over its territorial sea and to the airspace and seabed and subsoil thereof, subject to the provisions of the convention and international law. The territorial sea forms an undeniable part of the land territory to which it is bound, so that accession of land will automatically include any band of territorial waters[11].

The coastal state may, if it so desires, exclude foreign nationals and vessels from fishing within its territorial sea and (subject to agreements to the contrary) from coastal trading (known as cabotage), and reserve these activities for its own citizens.

[7] The notice issued by the Hydrographic Department of the Royal Navy on 1st January 2008 shows that 156 states or territories claim a 12 mile territorial sea, with 16 states or territories claiming less than this and only 7 states claiming more than 12 miles. See; www.ukho.gov.uk/content/am/attachments/2008/annual-nms/12.pdf/. A table of national maritime claims issued by the UN shows that as of 24th October 2007, 141 states claimed a territorial sea of 12 miles or under, with 8 states claiming a larger territorial sea

[8] Nicaragua v Honduras, ICJ Reports, 2007, para 234

[9] O'Connel, International Law of the Sea, Vol.1, pp.60-7

[10] Sea also Article 2 of the 1982 Convention

[11] See the Gribardana case, 11 RIAA, P.147 (1909) and the Beagle channel case, HMSO, 1977, 52 ILR, p.93. see also Judge McNair, Anglo-Norwegian Fisheries Case, ICJ Reports, 1951 pp.116, 160 18 ILR, pp.86, 113

Similarly, the coastal state has extensive powers of control relating to, inter alia, security and customs matters. It should be noted, however, that how far a state choosesto exercise the jurisdiction and sovereignty to which it may lay claim under the principles of international law will depend upon the terms of its own municipal legislation, and some states will not wish to take advantage of the full extent of the powers permitted them within the international legal system.

The right of innocent passage

The right of foreign merchant ships (as distinct from warships) to pass unhindered through the territorial sea of a coastal has long been an accepted principle in customary international law, the sovereignty of the coast state notwithstanding. However, the price extent of the doctrine is blurred and open to contrary interpretation, particularly with respect to the requirement that the passage must be "innocent"[12] **Article 17 of the 1982 convention** lays down the following principle; "ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea"

The doctrine was elaborated in **Article 14 of the Convention on Territorial Sea, 1958**, which emphasized that the coastal state must not hamper innocent passage and must publicize any dangers to navigation in the territorial sea of which it is aware. Passage is defined as navigation through the territorial sea for the purpose of crossing that sea without entering internal waters or of proceeding to or from internal waters. It may include temporary stoppages, but only if they are incidental to ordinary navigation or necessitated by distress or force majeur[13].

The coastal state may not impose charges for such passage unless they are in payment for specific services[14], and ships engaged in passage are required to comply with the coastal state's regulations covering for example, navigation in so far as they are consistent with international law[15].

Passage ceases to be innocent under Article 14(4) of the 1958 Convention where it is "prejudicial to the peace, good order or security of the coastal state" and in the case of foreign fishing vessel when they do not observe such laws and regulations as the coastal state may make and publish to prevent these ships from fishing in the territorial sea. In addition submarines must navigate on the surface and show their flag.

Where passage is not innocent, the coastal state may take steps to prevent it in its territorial sea and where ships are proceeding to internal waters, it may act to forestall any breach of the conditions to which admission of such ships to internal waters is

[12] See Brown, international law of the sea, Vol.1 pp.53 ff, Churchill and Lowe, Law of the Sea, pp.82ff, Oc'nell, International Law of the Sea, Vol.1, chapter 7. See also Oppenheim international law, p.615

[13] See, Article 18 of the 1982 Convention. Passage includes crossing the territorial sea in order to call at roadsteads or port facilities outside internal waters, article 18(1) and see the Nicaragua case, ICJ Reports, 1986, pp.12, 111; 76 ILR, P.1

[14] Article 26 of the 1982 Convention

[15] Article 21(4) of the 1982 Convention

subject. Coastal states have the power to temporarily suspend innocent passage of foreign vessels where it is essential for security reasons, provided such suspension has been published and provided it does not cover international straits.

Article 19(2) of the 1982 Convention has developed the notion of innocent passage contained in **Article 14(4) of the 1958 Convention by** the provision of examples of prejudicial passage such as the threat or use of force, weapons practice, spying, propaganda, breach of customs, fiscal, immigration or sanitary regulations, willful and serious pollution, fishing, research or survey activities and interference with coastal communications or other facilities. In addition, a wide ranging clause includes "any activity not having a direct bearing on passage". This would appear to have altered the burden of proof from the coastal state to the other party with regard to innocent passage. By virtue of **article 24** of the 1982 Convention, coastal states must not hamper the innocent passage of foreign ships either by imposing requirements upon them which would have the practical effect of denying or impairing the right or by discrimination. Article 17 of the Geneva Convention on the Territorial Sea, 1958 provided that foreign ships exercising the right of innocent passage were to comply with the laws and regulations enacted by the coastal state, in particular those relating to transport and navigation.

This was developed in **Article 21(1) of the 1982 Convention,** which expresslyprovided that the coastal state could adopt laws and regulations concerning innocent passage to;

i. The safety of navigation and the regulation of maritime traffic
ii. The protection of navigational aids and facilities and other facilities or installations
iii. The protection of cables and pipelines
iv. The conservation of living resources of the sea
v. The prevention of infringement of the fisheries laws and regulations of the coastal state
vi. The preservation of the environment of the coastal state and the prevention, reduction and control of pollution thereof
vii. Marine scientific research and hydrograhic surveys
viii. The prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal state

Breach of such laws and regulations will render the offender liable to prosecution, but will not make the passage non-innocent as such, unless **Article 19** has been infringed[16].

One major controversy of considerable importance revolves around the issue of whether the passage of warships in peace time is or is not innocent. The question was further complicated by the omission of an article on the problem in the 1958 Convention

[16] Under article 22 of the 1982 convention, the coastal state may establish designated sealanes and traffic separation schemes in its territorial sea

on the territorial sea, and the discussion of innocent passage in a series of articles headed "Rules applicable to all ships". This has led some writers to assert that this includes warships by inference, but other authors maintain that such an important issue could not be resolved purely by omission and inference, especially in view of the reservations by many states to the convention rejecting the principle of innocent passage for warships and in the light of comments in the various preparatory materials to the **1958 Geneva Convention**

It was primarily the western states, with their preponderant naval power, that historically maintained the existence of a right of innocent passage for warships, to the opposition of the then communist and third world nations. However having regard to the rapid growth in their naval capacity and the ending of the cold war, soviet attitudes underwent a change.

In September 1989, the US and USSR issued a joint uniform interpretation of the rulesof international law governing innocent passage. This reaffirmed that the relevant rules of international law were stated in the 1982 Convention. It then provided that;
"All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required"

The statement noted that where a ship in passage through the territorial see was not engaged in any of the activities laid down in article 19(2), it was "in innocent passage" since that provision was exhaustive. Ships in passage were under an obligation to comply with the laws and regulations of the coastal state adopted in conformity with **Articles 21, 22, 23 % 25 of the 1982 Convention**, provided such laws and regulations did not have the effect of denying or impairing the exercise of the right of innocent passage.

This important statement underlines the view that the list of activities laid down in **Article 19(2)** is exhaustive so that a ship passing through the territorial sea not engagingin any of these activities is in innocent passage. It also lends considerable weight to theview that warships have indeed a right of innocent passage through the territorial sea and one that does not necessitate prior notification or authorization.

Jurisdiction over foreign ships

Where foreign ships are in passage through the territorial sea, the coastal state may only exercise its criminal jurisdiction as regards the arrest of any person or the investigationof any matter connected with a crime committed on board ship in defined situations. These are enumerated in **Article 27(1) of the 1982 Convention**, reaffirming **Article 19(1) of the 1958 Convention on the Territorial Sea;** as follows;

a) If the consequences of the crime extend to the coastal state, or

b) If the crime is of a kind likely to disturb the peace of the country or the good order of the territorial sea, or;
c) If the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the country of the flag state; or;
d) If such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances

However, if the ship is passing through the territorial sea having left the internal watersof the coastal state, then the coastal state may act in any manner prescribed by its laws as regards arrest or investigation on board ship and is not restricted by the terms of article 27(1). But the authorities of the coastal state cannot act where the crime was committed before the ship entered the territorial sea, providing the ship is not entering or has not entered internal waters.

Under Article 28 of the 1982 Convention, the coastal state should not stop or divert a foreign ship passing through its territorial sea for the purpose of exercising its civil jurisdiction in relation to a person on board ship, nor levy execution against or arrest the ship, unless obligations are involved which were assumed by the ship itself in the course of, or for the purpose of, its voyage through waters of the coastal state, or unlessthe ship is passing through the territorial sea on its way from internal waters. The above rules do not, however, prejudice the right of a state to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea or passing through the territorial sea after leaving internal waters.

Warships and other government ships operated for noncommercial purposes are immune from the jurisdiction of the coastal state, although they may be required to leave the territorial sea immediately for breach of rules governing passage and the flag state will bear international responsibility in cases of loss or damage suffered as a result[17].

The Contiguous Zone

Historically, some states have claimed to exercise certain rights over particular zones of the high seas. This has involved some diminution of the principle of the freedom of the high seas as the jurisdiction of the coastal state has been extended into areas of the high seas contiguous to the territorial sea, albeit for defined purposes only. Such restricted jurisdiction zones have been established or asserted for a number of reasons, for instance to prevent infringement of customs, immigration or sanitary laws of the coastal state, or to conserve fishing stocks in a particular area, or to establish the coastal state to have exclusive or principal rights to the resources of the proclaimed zones.

[17] Articles 29-32 of the 1982 Convention; see also Articles 21-3 of the 1958 Convention on the Territorial sea and the contiguous zone.

In each case they enable the coastal state to protect what it regards as its vital or important interests without having to extend the boundaries of its territorial sea further into the high seas. It is thus a compromise between the interests of the coastal state and the interests of other maritime nations seeking to maintain the status of the high seas, and it makes a balance of competing claims. The extension of rights beyond the territorial sea has, however been seen not only in the context of preventing the infringement of particular domestic laws, but also increasingly as a method of maintaining and developing the economic interest of the coastal state regarding maritime resources. The idea of a contiguous zone was virtually formulated as an authoritative and consistent doctrine in the 1930s by the French Writer Gidel[18] and it appeared in the Convention on the Territorial Sea. **Article 24** declared that;

"In a zone of the high seas contiguous to its territorial sea, the coastal state may exercisecontrol necessary to;

- Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea
- Punish infringement of the above regulations committed within its territory or territorial sea

Thus, such contiguous zones were clearly differentiated from claims to fulfill sovereignty as part of the territorial sea, by being referred to as part of the high seas over which the coastal state may exercise particular rights. Unlike the territorial sea, which is automatically attached to the land territory of the state, contiguous zones haveto be specifically claimed.

While sanitary and immigration laws are relatively recent additions to the rights enforceable over zones of the high seas and may be regarded as stemming by analog from customs, regulations, in practice they are really only justifiable since the **1958**

Convention.

On the other hand, customs zones have a long history and are recognized in customary international law as well. Many states, including the UK and USA, have enacted legislation to enforce customs regulations over many years, outside their territorial waters and within certain areas, in order to suppress smuggling which appeared to thrive when faced only with territorial limits of 3 or 4 miles.

Contiguous zones, however, were limited to a maximum of 12 miles from the baselines from which the territorial sea is measured. So if the coastal state already claimed a territorial sea of 12 miles, the question of contiguous zones would not arise.

[18] A gidel, La Mer Territoriale et al Zone contigue, 48 HR, 1934, pp.137, 241

This limitation, plus the restriction of jurisdiction to customs, sanitary and immigration matters, is the reason for the decline in the relevance of contiguous zones in international affairs in recent years. Under **Article 33 of the 1982 Convention,**however a coastal state may claim a contiguous zone (for the same purpose as the 1958provision) up to 24 nautical miles from the baseline. In view of the accepted 12 miles territorial sea limit, such an extension was required in order to preserve the concept. Once crucial difference is that while under the 1958 system the contiguous zone was part of the high seas, under the 1982 convention it would form part of the Exclusive Economic Zone (EEZ) complex[19]. This will clearly have an impact upon the nature of the zone.

The Exclusive Economic Zone

This zone has developed out of the earlier, more tentative claims, particularly relating to fishing zones and as a result of developments in the negotiating processes leading tothe 1982 Convention. It makes a compromise between those states seeking a 200 mile territorial sea and those wishing a more restricted system of coastal state power.

One of the major reasons for the call for a 200 mile Exclusive Economic Zone has been the controversy over fishing zones. The 1958 Geneva Convention on the Territorial Sea did not reach agreement on the creation of fishing zones and Article 24 of the Convention does not give exclusive fishing rights in the contiguous zone. However, increasing numbers of states have claimed fishing zones of widely varying widths. The European Fisheries convention, 1964, which was implemented in the UK by the Fishing Limits Act 1964, provided that the coastal state has the exclusive right to fish and exclusive jurisdiction in matters of fisheries in a 6 mile belt from the baseline of the territorial sea, while within the belt between 6 and 12 miles from the baseline, other parties to the Convention have the right to fish, provided they had habitually fished in that belt between Jan 1953 and December 1962. This was an attempt the interests of the coastal state with those of other states who could prove customary fishing operations in the relevant area. In view of the practice of many states in accepting at one time or another a 12 mile Exclusive Economic Zone, either for themselves or for some other states, it seems clear that there has already emerged an international rule to that effect. Indeed, **the international court in the Fisheries Jurisdiction Cases[20]** stated that the concept of the fishing zone, the area in which a state may claim exclusive jurisdiction independently of its territorial sea for this purpose, had crystalled as customary law in recent years and especially since the 1960 Geneva conference, and that the extension of that fishing zone up to a 12 mile limit from the baselines appears now to be generally accepted.

[19] See; Article 55, which states that the EEZ is "an area beyond and adjacent to the territorial seas"
[20] ICJ Reports, 1974, pp.8, 175; 55 ILR, p.238

Coastal state's jurisdiction in the Exclusive Economic Zone

Article 55 of the 1982 Convention provides that the Exclusive Economic Zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established under the convention.

Under Article 56, the coastal state in the Exclusive Economic Zone has inter alia;

a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.
b) Jurisdiction with regard to (i) the architecture and use of artificial islands, installations and structures (ii) marine scientific research; (iii) the protection and preservation of the marine environment.

Article 55 provides that the zone starts from the outer limit of the territorial sea, but by **Article 57** shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Accordingly, in reality, the zone itself would be no more than 188 nautical miles where the territorial sea was 12 nautical miles, but rather more where the territorial sea of the coastal state was less than 12 miles.

Rights and duties of other states in the Exclusive Economic Zone

Article 58 lays down the rights and duties of other states in the Exclusive Economic Zone. These are basically the high seas freedom of navigation over flight and laying of submarine cables and pipelines. It also provided that in exercising their rights and performing their duties, states should have due regard to the rights, duties and laws of the coastal state.

In cases of conflict over the attribution of rights and jurisdiction in the zone, the resolution is to be on the bass of equity and in the light of all the relevant circumstances[21]. **Article 60 (2)** provides that the EEZ, the coastal state has jurisdictionto apply customs, laws and regulations in respect of artificial islands, installations and structures. A wide variety of states have in the last two decades claimed EEZs of 200 miles. A number of states that have not made such a claim have proclaimed fishing zones[22]. It would appear that such is the number and distribution of states claiming economic zones, that the existence of the EEZ as a rule of customary law is firmly established[23].

[21] Article 59

[22] Malcom Shaw N, International Law, Cambridge Press 6th edition at 583

[23] The Hydrographic Department of the Royal Navy noted that as of 1st January 2008 126 states and territories had proclaimed 200 mile Economic Zone while 45 states and territories had proclaimed fishery zones of varying breadths up to 200 miles

This is underlined by the comment of the **international court of justice in the Libya/ Malta Continental Shelf Case**[24] that the institution of the EEZ… is shown by the practice of states to have become part of customary law.

5. The Continental Shelf

The continental shelf is a geological expression referring to the ledges that project from the continental landmass into the seas and which are covered with only relatively shallow layer of water (some 150-200 meters) and which eventually fall away into the ocean depth. These ledges or shelves take up some 7 to 8 percent of the total area of the ocean and their extent varies considerably from place to place[25].

The vital fact about the continental shelves is that they are rich in oil and gas resources and quite often are host to extensive fishing grounds. This stimulated a round of appropriations by coastal states in the years following the 2nd World War, which gradually altered the legal status of the continental shelf from being part of the high seas and available for exploitation by all states until its current recognition as exclusiveto the coastal state.

The first move in this direction, and the one that led to a series of similar and more extensive claims, was the Truman Proclamation of 1945. This pointed to the technological capacity to exploit the riches of the shelf and the need to establish a recognized jurisdiction over such resources, and declared that the coastal state was entitled to such jurisdiction for a number of reasons first, because the utilization or conservation of the resources of the subsoil and seabed of the continental shelfdepended upon co-operation from the shore, secondly because the shelf itself could beregarded as an extension of the land mass of the coastal state, and its resources were often merely an extension into the case of deposits lying within the territory and finally because the coastal state, for reasons of security was profoundly interested in activitiesoff its shores which would be necessary to utilize the resources of the shelf.

Accordingly, the US government proclaimed that it regarded the "national resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coast of the United states as appertaining to the US, subject to its jurisdictions and control. However, this would in no way affect the status of the waters above the continental shelf as high seas.

This proclamation precipitated a whole series of claims by states to their continental shelves, some in similar terms to the US assertions, and others in substantially wider terms. Argentina and Elsalvador, for example claimed not only the shelf but also the waters above and the airspace. This led to a lot of problems which were discussed over many years, leading to the 1958 Convention on the Continental Shelf.

[24] ICJ Reports, 1985, p.13, 81 ILR, p.238
[25] Malcom Shaw N, international law, Cambridge Press, 6th edition at 584

In the **North Sea Continental Shelf Cases**[26]**,** the court noted that "the rights of the coastal state in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist ipso facto and ab initio, by virtue of its sovereignty over the land, and as an extension of it in exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short there is here an inherent right."

The development of the concept of the EEZ has to some extent confused the issue, under **Article 56 of the 1982 Convention** the coastal state has sovereign rights over all natural resource of its EEZ including the seabed resources. Accordingly states possess two sources of rights with regard to the seabed, although claims with regard to the economic zone, in contrast to the continental shelf, need be specifically mad, though its also possible that the geographical extent of the shelf may be different from that of the 200 mile economic zone.

The rights and duties of the coastal state in the continental shelf

The coastal state may exercise 'sovereign rights' over the continental shelf for the purposes of exploiting it and exploiting its natural resources under **Article 77 of the 1982 Convention**. Such rights are exclusive in that no other state may undertake such activities without the express consent of the coastal state. The sovereign rights do not depend upon occupation or express proclamation. The Truman concept of resources which referred only to mineral resources has been extended to include organisms belonging to the sedentary species. The sovereign rights recognized as part of the continental shelf relate to natural resources so that wrecks for example lying on the shelf are not included. The convention expressly states that the rights of the coastal state do not affect the status of the superjacent waters as high seas, or that of the airspaceabove the waters. This is stressed in succeeding articles which not that, subject to its right to take reasonable measures for exploration and exploitation of the continental shelf the coastal state may not impede the laying or maintenance of cables or pipelines on the shelf. In addition such exploration and exploitation must not result in any unjustifiable interference with navigation, fishing or the conservation of the living of the sea[27].

The coastal state may, under **Article 80 of the 1982 Convention**, construct and maintain installations and other devices necessary for exploration on the continental shelf and is entitled to establish safety zones around such installations to a limit of 500 metres, which must be respected by ships of all nationalities. Within such zones, the state may take such measures as are necessary for their protection. But although under the jurisdiction of the coastal state, these installations are not to be considered as

[26] ICJ Reports, 1969, pp.3, 22, 41 ILR, pp.29, 51

[27] Articles 78 and 79 of the 1982 Convention and Article 3 of the 1958 continental Shelf Convention

Islands. This means they have no territorial sea of their own and their presence in no way affects the delimitation of the territorial waters of the coastal state.

Where the continental shelf of a state extends beyond 200 metres, **Article 82 of the 1982 Convention** provides that the coastal state must make payments or contributionsin kind in respect of the exploitation of the non-living resources of the continental shelf beyond the 200 mile limit. The payments are to be made annually after the first 5 yearsof production at the site in question on a sliding scale up to 12th year, after which they are to remain at 7 percent. These payments and contributions are to be made to the **International Sea Bed Authority,** which shall distribute them amongst states parties on the basis of equitable sharing criteria, taking into account the interest and needs of developing states particularly the least developed and the landlocked among them.

6) The High Seas

The closed seas concept proclaimed by Spain and Portugal in the 15th and 16th centuries, and supported by the Papa Bulls of 1493 and 1506 diving the sea of the world between the two powers was replaced by the notion of the open seas and the conconut at freedomof the High seas during the 18th century.

The essence of the freedom of the high seas is that no state may acquire sovereignty over parts of them.[28] This is the general rule, but it is subject to the operation of the doctrines of recognition, acquiescence and prescription where by long us age accepted by other nations, certain areas of the high seas bounding on the territorial waters of coastal states may be rendered subject to the states sovereignty. This was emphasizedin the **Anglo-Norwegian Fisheries case**[29]

The high seas were defined in **Article 1 of the Geneva Convention on the High Seas, 1958** as all parts of the sea that were not included in the territorial sea or in the internal waters of a state. This reflected customary international law, although as a result of developments the definition in **Article 86 of the 1982 Convention** includes, all parts of the sea that are not included in the EEZ in the territorial sea or in the internal watersof a state, or in the archipelagic waters of an archipelagic state.

Article 87 of the 1982 Convention (developing Article 2 of the 1958 Geneva Convention on the High Seas) provides that the high seas are open to all states and that the freedom of the high sea is exercised under the conditions laid down in the convention and by other rules of internationals law. It includes inter alia the freedomsof navigation, over flight, the laying of submarine cables and pipelines, and construction of artificial islands and other installations permitted under international law, fishing and the conduct of scientific research. Such freedoms are to be exercised with due regard for the interest of other states in their exercise of the freedom of the

[28] See; Article 2 of the 1958 High seas Convention and article 89 of the 1982 convention

[29] ICJ Reports, 1951, p.116; 18 ILR, p.86

high seas, and also with due regard for the right under the convention regarding activities in the international sea bed area. **Article 88 of the 1982 Convention** provides that the high seas shall be reserved for peaceful purposes.

Principles that are general acknowledged to come within **Article 2** include the freedomto conduct naval exercises on the high seas and the freedom to carry out research studies.

The freedom of navigation[30] is a traditional and well-recognized facet of the doctrine of the high seas, as is the freedom of fishing. This was reinforced by the declaration bythe court in the **Fisheries Jurisdiction Cases**[31] that Ice lands unilateral extension of its fishing zones from 12 to 50 miles constituted a violation of **Article 2 of the High Seas Convention**, which is as the preamble states "generally declaratory of established principles of internationals law. The freedom of the high seas applies not only to coastal states but also to states that are landlocked.

Jurisdiction on the High seas

The foundation of the maintenance of order on the high seas has rested upon the conceptof the nationality of the ship, and the consequent jurisdiction of the flag state over the ship. It is basically, the flag state that will enforce the rules and regulations not only ofits own municipal law but of international law as well. A ship without a flag will be deprived of many of the benefits and rights available under the legal regime of the highseas.

Each state is required to elaborate the condition necessary for the grant of its nationalityto ships, for the registration of ships in its territory and for the right to fly its flag.[32] The nationality of the ship will depend upon the flag it flies but **Article 91 of the 1982 Convention** also stipulates that there must be a genuine link between the state and the ship. This provision which reflects a well- established rule of general international law, was intended to check the use of flags of convenience operated by states such as Liberia and Panama which would grant their nationality to ships requesting such because of low taxation and the lack of application of most wage and social security agreements. This enabled the ships to operate very low costs indeed. However, what precisely the genuine link consists of and how one may regulate any abuse of the provisions of **Article 5** are unresolved questions.

The UN conference on conditions of Registration of Ships, help under the auspices of the UN conference on Trade and Development convened in July 1984 and an agreement was signed in 1986. It attempts to deal with the flags of convenience issue, bearing in mind that nearly 1/3 of the world's merchant fleet by early 1985 flew such flags. It

[30] See; the Corfu channel case, ICJ Reports, 1949, p.4, 22; 16 AD, p.155, and Nicaragua v USA, ICJ Reports, 1986, pp.14, 111-12, 76 ILR, pp.349, 445

[31] ICJ Reports, 1974, p.3

[32] Article 5 of the 1958 High seas Convention and article 91 of the 1982 convention

specifies that flag states should provide in their laws ad regulations for the ownership of ships flying their flags and that those should include appropriate provision for participation by nationals as owners of such ships and that such provision should be sufficient to permit the flag states to exercise effectively its jurisdiction and control over ships flying its flag.

The international Tribunal for the law of the sea (ITLOS) in **M/V Saiga (No.2)** has underlined the determination of the criteria and establishment of the procedures for granting and with drawing nationality to ships as matters within the exclusive jurisdiction of the flag state, although dispute concerning such maters may be subject to the dispute settlement procedures of the 1982 convention.

Ships are required to sail under the flag of one state only and are subject to its exclusive jurisdiction (save in exceptional cases). Where a ship des sail under the flags of more than one state, according to convenience, it may be treated as a ship without nationality and will not be able to claim any of the nationalities concerned.[33] A ship that is stateless and does not fly a flag, may be boarded and seized on the high seas. This point was accepted by the Privy Council in the case **of Naim Molvan V Attorney General for Palestine** which concerned the seizure by the British navy of a stateless ship attemptingto convey immigrants into Palestine.

The basic principle relating to jurisdiction on the high seas is that the flag state alone may exercise such lights over the ship[34]. This was elaborated in the **Lotus Case,** whereit was held that "vessels on the high seas are subject to no authority except that of the state whose flag they fly. This exclusivity is without exception regarding warships andships owned or operated by a state where they are used only on governmental non-commercial service. Such ships have, according to **Articles 95 and 96 of the 1982 Convention,** "complete immunity from the jurisdiction of any state other than the flag state."

Exception to the exclusivity of flag state jurisdiction

However, this basic principle is subject to exceptions regarding other vessels and the concept of the freedom of the high seas of similarly limited by the existence of a seriesof exceptions below

1) Right of visit

Since the law of the sea depends to such an extent upon the nationality of the ship, it is well recognized in customary international law that warships have a right of approach to ascertain the nationality of ships. However, this right of approach to identify vesselsdoes not incorporate the right to board or visit ships. This majorly be undertaken, in the absence of hostilities between the flag states of the warships and a merchant vessel

[33] Article 6 of the 1958 Convention and article 92 of the 1982 Convention
[34] See; article 6 of the 1958 Convention and article 92 of the 1982 Convention

and in the absence of special treaty provisions to the contrary, where the ship is engagedin piracy or the slave trade, or through flying a foreign flag or no flag at all, is in realityof the same nationality as the flag at all, in reality of the same nationality as the warshipor of no nationality. But the warship has to operate carefully in such circumstances, since it may be liable to pay compensation for any loss or damage sustained if its suspicions are unfounded and the ship boarded has not committed any act justifying them. Thus, international law has settled for a narrow exposition of the right of approach, in spite of earlier tendencies to expand this right and the above provisions were incorporated into **Article 22 of the High seas Convention. Article 110 of the 1982 Convention** added to this list a right of visit where the ship is engaged in unauthorized broadcasting and the flag states of the warship has under **Article 109 of the Convention** jurisdiction to prosecute the offender.

2) Piracy

The most formidable of the exceptions to the exclusive jurisdiction of the flag state andto the principle of the freedom of the high seas is the concept of privacy. Piracy is strictly defined in international law and was declared in **Article 101 of the 1982 Convention** to consist of any of the following acts.

a) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passenger of a private ship or private aircraft and directed.
   i) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state.
b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft,
c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) and (b)

The essence of piracy under international law is that it must be committed for private ends. In other words, any hijacking or takeover for political reasons is automatically excluded from the definition of piracy. Similarly, any acts committed on the ship by the crew and aimed at the ship itself or property or persons on the ship do not fall withinthis category.

Any and every state may seize a pirate ship or aircraft whether on the high seas or on terra nullius and arrest the persons and seize the property on a board. In addition, the courts of the state carrying out the seizure have jurisdiction to impose penalties and may decide what action to take regarding the ship or aircraft and property subject to therights of third parties that have acted in good faith.

3) The Slave trade

Article 99 of the 1982 Convention provides that every state shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful. Use of its flag for that purpose any slave talking refuge on board any ship, whatever its flag shall ipso facto be free. Under **Article 110,** warships may board foreign merchant ships where they are reasonably suspected of engaging in the slave trade, offenders must be handed over to the flag state for trial.

4) Unauthorized Broadcasting

Under **Article 109 of the 1982 Convention**, all states are to cooperate in the suppression of unauthorized broadcasting from the High seas. This is defined to mean transmission of sound or TV from a ship or installation on the high seas intended for reception a ship or installation on the high seas intended for reception by the general public, contrary to international regulations but excluding the transmission of distress calls. Any person engaged in such broadcasting may be prosecuted by the flag state of the ship, the state of registry of the installation, the state of which the person is a national, any state where the transmission can be received or any state where authorized radio communication is suffering interference.

Any of the above states having jurisdiction may arrest any person or ship engaging in unauthorized broadcasting on the high seas and seize the broadcasting apparatus.

Collisions

Where ships are involved in collision on the high seas, **Article 11 of the High Seas convention** declares, overruling the decision in the **Lotus case** that penal or disciplinary proceedings may only be taken against the master or other persons in the services of the ship by the authorities of either the flag state or the state which the particular person is a national. It also provides that no arrest or detention of the ship, even for investigation purposes, can be ordered by other than the authorities of the flag state. This was re-affirmed in **Article 97 of the 1982 Convention.**

Hot pursuit

The right of hot pursuit of a foreign ship is a principle designed to ensure that a vessel which has infringed the rules of a coastal state cannot escape punishment by fleeing to the high seas. In reality it means that in certain defined circumstances a coastal state may extend its jurisdiction on to the high seas in order to pursue and seize a ship whichis suspected of infringing its laws. The right which has been developing in one form or another since the 19^{th} century was comprehensively elaborated in **Article 111 of the 1982 Convention** building upon **Article 23 of the High Seas Convention 1958.**

It notes that such pursuit may commence when the authorities of the coastal state have good reason to believe that the foreign ship has violated its laws. The pursuit must start while the ship, or one of its boats is within the internal waters, territorial sea or contiguous zone of the coastal state and may only continue outside the territorial sea or contiguous zone if it is uninterrupted. However, if the pursuit commences while the

foreign ship is in the contiguous zone, then it may only be undertaken if there has beena violation of the rights for the protection of which the zone was established. The rightwill apply mutatis mutandis to violations in the EEZ or on the continental shelf of the relevant rules and regulations applicable to such areas.

Hot pursuit only begins when the pursuing ship has satisfied itself that the ship pursuedor one of its boats is within the limits of the territorial sea or as the case may be, in thecontiguous zone or EEZ or one the continental shelf. It is essential that prior to the chase a visual or auditory signal to stop has been given at a distance enabling it to be seen or heard by the foreign ship and pursuit may only be exercised by warships or military aircraft or by specially authorized government ships or planes. The right of hot pursuit ceases as soon as the ship pursued has entered the territorial waters of its own or a third state. The ITLOS has emphasized that the conditions laid down. In **Article 111** are cumulative, each of them having to be satisfied in order for the pursuitto be lawful[35]. In stopping and arresting a ship in such circumstances, the use of forcemust be avoided if at all possible and where it is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances.

In conclusion therefore, the national jurisdiction in the sea is dependent on the maritimedivisions of the sea. Each division as discussed above is accompanied with rights andobligations, its therefore through a proper construction of the international treaties relating to the sea and the international customary law that jurisdiction of the coastal, landlocked and other states in the sea can be ascertained and known.

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[35] M/V Saiga, 120 ILR, pp.143, 194