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## COOPERATION OF STATES AGAINST VIOLATION OF THE LEGAL REGIME BASED ON THE PRINCIPLE OF FREEDOM OF THE HIGH SEAS

### Summary

In general, the water basin - the sea, the ocean is the most important for the world. As it is known, without the seas, the realization of interstate relations of the oceans, especially international trade, is impossible. Maritime rights are invaluable not only for shipping and maritime countries, but also for all states engaged in international trade. Because international shipping is responsible for 90% of world trade and carries more than 7 billion tons of cargo every year for about 4 million miles. The seabed and ocean floor are not included in the concept of open sea due to their special legal status. No state can subjugate any part of the high seas to its sovereignty. Customary international law has long recognized the affirmative obligation of mariners to render assistance to persons in distress at sea to the extent they can do so without serious danger to their ship, crew, or passengers. This long-standing custom is codified in a number of international treaties adopted under the auspices of the IMO, as well as the 1958 Geneva Convention on the High Seas<sup>14</sup> and the 1982 UNCLOS.

**Key words:** *high seas, cooperation of states, violation of the legal regime, military ships, international acts, United Nations Convention on the Law of the Sea,*

### Introduction

As seen in the definition of the high sea, the high seas is the part of the world's oceans that does not fall under the jurisdiction of any state and is open to the use of all states. No state can subjugate any part of the high seas to its sovereignty. The high seas are free for both coastal states and landlocked states. The high seas shall be reserved for peaceful purposes. No State may validly purport to subject any part of the high seas to its sovereignty. The exercise of these freedoms is guaranteed by international law. At the same time, these freedoms may be restricted by international law in order to protect the environment and protect the legitimate interests of states. At the same time every state has the responsibility to take, or to cooperate with other States in taking, such measures for their respective nationals as may be important for the conservation of the living resources of the high seas. On the high seas, a ship is subject to the exclusive jurisdiction of that state. The state exercises its jurisdiction and control over the ship and its crew in administrative, technical and social matters. Criminal or administrative liability against the master of a ship or any other member of the crew may be imposed only by the relevant authorities of the State in which the ship sails. However, there are a number of exceptions to this principle. Thus, a naval or aircraft carrier of any State may detain and inspect a foreign vessel in the following cases (if there are sufficient grounds to suspect that such acts have been committed):

- a) a foreign ship is engaged in piracy;
  - b) is engaged in the slave trade;
  - c) engages in drug trafficking;
  - d) damaged submarine telegraph cables and pipelines;
  - d) transmits unauthorized radio or television programs from the high seas;
  - e) violated the rules in the waters under the jurisdiction of the coastal state (persecution on "hot traces"),
- etc.

The right of visit which Regulating with article 110 of UNCLOS signifies that a warship is allowed to investigate the vessel's right to flying its flag. To accomplish this, a boat can be sent to the vessel in question, to examine the vessel's documents. (5, p.34)

A duly authorized person or persons shall be informed of a maritime accident or navigation incident in which each State encounters a ship sailing under its flag on the high seas and causes loss of life and serious injury to citizens of other States or serious damage to ships, facilities and marine environment of another State organizes the investigation by or with their participation. The State of the flag and the other State shall co-operate in the conduct of any investigation by that other State in connection with this naval accident or navigation incident. According to article 94 of United Nations Convention on the Law of the Sea, Every

State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:

(a) the construction, equipment and seaworthiness of ships;

(b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;

(c) the use of signals, the maintenance of communications and the prevention of collisions. (1, art.94)

Art. 94 (3) obliges States to take measures 'necessary to ensure safety at sea. Art. 94 (3) (a) - 9 (c) set out a non-exhaustive list ('inter alia') of such measures. Art. 94 (3) (a) concerns the construction, equipment and seaworthiness of ships. Seaworthiness is not a purely technical concept: a vessel which is not adequately crewed, in terms of the training and number of personnel, may not be seaworthy This introduces some overlap with Art. 94 (3) (b) dealing with manning of ships, labour conditions and crew training and Art. 94 (4) (b). Finally, Art. 94 (3)(c) requires measures be taken regarding communications, the use of signals, and the prevention of collisions. These are not, however, generic requirements but rather, due to the operation of Art. 94 (5), States must, in taking these measures, conform to generally accepted international regulations. (2, p.711)

Customary international law has long recognized the affirmative obligation of mariners to render assistance to persons in distress at sea to the extent they can do so without serious danger to their ship, crew, or passengers. This long-standing custom is codified in a number of international treaties adopted under the auspices of the IMO, as well as the 1958 Geneva Convention on the High Seas<sup>14</sup> and the 1982 UNCLOS. Moreover, there is nothing in IHL that precludes neutrals from providing such assistance. On the contrary, Article 17(1) of Additional Protocol I specifically provides that the "civilian population and aid societies. Shall be permitted, even on their own initiative, to collect and care for the wounded, sick and shipwrecked, even in invaded or occupied areas." Moreover, "no one shall be harmed, prosecuted, convicted or punished for such humanitarian acts," which would suggest that the customary duty to render assistance remains in force during an armed conflict.

UNCLOS additionally makes clear that nothing in the Convention is intended to "alter the rights and obligations of States Parties which arise from other agreements compatible with and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under Arguably, the duty to search for casualties after an engagement imposed by Article 18 of GCII is consistent with the duty to render assistance under Article 98. (3, p.111)

Duty of the states at the sea regulate not only with UNCLOS at the same time but also other international legal acts- Vienna Convention on the Law of Treaties, May 23, 1969, The International Convention for the Safety of Life at Sea (SOLAS), International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, Marpol Convention of 1973 etc.

The freedom of the high seas, the implementation of which is guaranteed at the international level, is grossly violated by the state. An example of this is piracy. State experience shows that states can try to suppress piracy in other ways than seize and prosecute types of maritime patrols designed to 'stop and disrupt' pirate attacks. Combating piracy; many States have never had such laws, and many continue to do so. At the same time, the duty to cooperate does not require the prosecution of suspected pirates. According to UNCLOS, the power to prosecute pirates is mandatory.

This existence is mainly regulated by Article 101 of the UNCLOS. According to Article 101 Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a 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) or (b). (1, art. 101)

Maritime piracy is designated by the Financial Action Task Force as one of the "serious offences for money laundering" <sup>1</sup> and this explains why it is one of the predicate offences for money laundering in many African countries. Piracy, and in particular in the Gulf Aden, is a threat to international trade and business. (6, p.2) Arrest for piracy may be carried out only by warships or military aircraft, or by other vessels or aircraft with the same powers, which are determined to be in public service with precise foreign markings.

Illegal trafficking in narcotic drugs and psychotropic substances is one of the abuses committed during the implementation of the principle of freedom of the high seas. According to article 108 of UNCLOS:

1. All States shall co-operate in preventing the illicit transport of narcotic drugs and psychotropic substances on the high seas in violation of international conventions.

2. Any State which has reasonable grounds to believe that a ship sailing under its flag is engaged in the illicit trafficking of narcotic drugs or psychotropic substances may require the co-operation of other States to prevent such trafficking.

Art. 108 (1) imposes a general duty upon all States to cooperate in the suppression of illicit traffic in drugs on the high seas, contrary to international conventions. The duty is not limited to taking action regarding a State's own flag vessels, but this does not imply any enforcement powers against foreign vessels. No content is given to the phrase contrary to international conventions.

### Conclusion

The high sea is the part of the world's oceans that does not fall under the jurisdiction of any state and is open to the use of all states. As can be seen from the definition, the seabed and ocean floor are not included in the concept of open sea due to their special legal status. No state can subjugate any part of the high seas to its sovereignty. The high seas are free for both coastal states and landlocked states. The doctrine that the high seas in time of peace are open to all nations and may not be subjected to national sovereignty was proposed by the Dutch jurist Hugo Grotius as early as 1609. It did not become an accepted principle of international law, however, until the 19th century. Freedom of the seas was ideologically connected with other 19th-century freedoms, particularly laissez-faire economic theory, and was vigorously pressed by the great maritime and commercial powers, especially Great Britain. Freedom of the high seas is now recognized to include freedom of navigation, fishing, the laying of submarine cables and pipelines, and overflight of aircraft. The exercise of the right to freedom of expression is guaranteed at the international level, but the right to abuse this right gives rise to liability, and states must cooperate in this regard. At the same time every state has the responsibility to take, or to cooperate with other States in taking, such measures for their respective nationals as may be important for the conservation of the living resources of the high seas. On the high seas, a ship is subject to the exclusive jurisdiction of that state. The state exercises its jurisdiction and control over the ship and its crew in administrative, technical and social matters. Criminal or administrative liability against the master of a ship or any other member of the crew may be imposed only by the relevant authorities of the State in which the ship sails.

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