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**Rights and Responsibilities of States
on the High Seas and in the EEZ**

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Part 1

Rights and Responsibilities on the High Seas

Principles Governing High Seas

- The high seas are open to all States, whether coastal or land-locked.
- No State may validly purport to subject any part of the high seas to its sovereignty.
- The high seas shall be reserved for peaceful purposes.
- Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

Art 87. Freedom of the High Seas

Freedom of the high seas comprises, *inter alia*, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.

Military activities on the high seas

- It is generally agreed that the phrase “inter alia” in Article 87 is intended to ensure that freedom of the high seas includes the conduct military activities, including the conduct of military exercises, the testing of weapons and military reconnaissance
- “Peaceful purposes” in generally agreed to mean that the high seas cannot be used for acts which would be an illegal use of force against another State

Limits on Freedom of the High Seas

- Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law.
- Freedoms shall be exercised by all States with **due regard** for the interests of other States in their exercise of the freedom of the high seas

Jurisdiction on the High Sea

- Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas.
- Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

Piracy

Article 105. Seizure of a Pirate Ship or Aircraft

- On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board.
- The courts of the State which carried out the seizure may decide upon the penalties to be imposed

94. Art Duties of the Flag State

- 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.

Duties of the Flag State

4. Such measures shall include those necessary to ensure:

- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
- (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;

Duties of the Flag State

- (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

Duties of the Flag State

- 5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

Part 2

Rights and Responsibilities in the EEZ

History of EEZ Regime

- Was a result of a compromise at the Third UNCLOS
- “Territorialist States” wanted a 200 nm territorial sea, subject to exceptions for rights & freedoms of other States
- “Maritime powers” wanted the zone to remain high seas, subject to exceptions for coastal States over resources
- Result was agreement on the EEZ - a new *sui generis* zone called a “specific legal regime”

Nature of EEZ Regime

- EEZ is a maritime zone beyond and adjacent to the territorial sea, extending out to 200 nautical miles from the baselines from which the territorial sea is measured
- EEZ is not part of the high seas
- EEZ is not subject to the sovereignty of coastal State
- EEZ is a specific legal regime in which the rights and jurisdiction of coastal States and the rights and freedoms of other States are set out in the Convention

Overview of EEZ Regime

Article 55 – Specific Legal Regime

Article 56 - Rights, Jurisdiction & Duties of Coastal States

Article 58 - Rights and Duties of Other States

Article 59 – Basis for resolution of conflicts regarding the Attribution of Rights and Jurisdiction in the EEZ

Article 56 – Rights of Coastal State

In the EEZ, the coastal State has:

- (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;
- (c) **other rights** and duties provided for in this Convention.

Article 56 – Jurisdiction of Coastal State

In the EEZ, the coastal State has:

(b) **jurisdiction** as provided for in the relevant provisions of this Convention with regard to:

- (i) the establishment and use of artificial islands, installations and structures; [Part VI]
- (ii) marine scientific research; [Part XII]
- (iii) the protection and preservation of the marine environment; [Part XII]

Article 56 – Due Regard Obligation

2. In exercising its rights and performing its duties under this Convention in the EEZ, the coastal State shall have **due regard** to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

Article 61. Conservation of the Living Resources

- 1. The coastal State shall determine the **allowable catch** of the living resources in its exclusive economic zone.
- 2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation.

Article 62. Utilization of the Living Resources

1. The coastal State shall promote the objective of **optimum utilization** of the living resources in the exclusive economic zone without prejudice to article 61.
2. The coastal State shall determine its **capacity to harvest** the living resources of the exclusive economic zone.
 - Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the **surplus** of the **allowable catch**,

Article 62. Utilization of the Living Resources – Access to Surplus

3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, *inter alia*,

- the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests,
- the provisions of articles 69 and 70,
- the requirements of developing States in the subregion or region in harvesting part of the surplus and
- the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

Article 73. Enforcement of Laws and Regulations of the Coastal State

- 1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, 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.
- 2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

Article 73. Enforcement of Laws and Regulations of the Coastal State

- **3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.**
- **4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.**

Article 58 – Rights and Duties Other States in the EEZ

1. In the EEZ, all States, . . . enjoy, subject to the relevant provisions of this Convention, the **freedoms** referred to in article 87 of **navigation and overflight** and of the laying of submarine cables and pipelines, and **other internationally lawful uses of the sea related to these freedoms**, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

Article 58 – Position of USA

- Position of the United States – the phrase “**other internationally lawful uses** .. . was intended to preserve in the EEZ the freedom to use the high seas for military purposes

Article. 87. Freedom of the high seas

1. . . Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States: (a) freedom of navigation; (b) freedom of overflight; etc

Article 58 – Jurisdiction in the EEZ

- Articles 88 to 115 and other pertinent rules of international law apply to the EEZ in so far as they are not incompatible with this Part.
- Note: Articles 88-115 include the rules on jurisdiction over ships on the high seas, including
 - Exclusive jurisdiction of the flag state
 - Immunity of warships
 - Piracy regime

Article 58 Limitations – Due Regard and Laws of Coastal State

3. In exercising their rights and performing their duties under this Convention in the EEZ, States shall have **due regard** to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Article 58 – Jurisdiction in the EEZ

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Article 58 –US State Dept

- **Military activities**, such as anchoring, launching and landing of aircraft, operating military devices, intelligence collection, exercises, operations and conducting military surveys **are** recognized historic high seas uses that are preserved by article 58

Article 58 – US State Dept

- Under article 58(1), all States have the right to conduct military activities within the EEZ, but may only do so consistently with the obligation to have due regard to coastal State resource and other rights, as well as the rights of other States as set forth in the Convention.
- It is the duty of the flag State, not the right of the coastal State, to enforce this "due regard" obligation.

Artificial Islands, Installations and Structures

1. In the EEZ, the coastal State shall have the **exclusive right** to construct and to authorize and regulate the construction, operation and use of:
 - (a) artificial islands;
 - (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
 - (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.
2. The coastal State shall have **exclusive jurisdiction** over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

Artificial Islands, Installations and Structures

- 4. The coastal State may, where necessary, establish reasonable **safety zones** around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.
- Breadth of safety zone shall not exceed **500 metres**

Artificial Islands, Installations and Structures

- Artificial islands, installations and structures do not possess the status of islands.
- They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

Delimitation of EEZ Boundaries

- 1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
- 2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
(Compulsory Procedures entailing binding decisions.)
 - Example: Bangladesh invoked dispute settlement on its maritime boundary against both Myanmar and India

Article 74(3) Provisional Arrangements / Restraint

- 3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into **provisional arrangements of a practical nature** and, during this transitional period, **not to jeopardize or hamper** the reaching of the final agreement.
- Such arrangements shall be without prejudice to the final delimitation.

“Jeopardize or Hamper”

- **2007 Guyana v Suriname Arbitration** under Annex VII ruled on the meaning of Article 74(3) and the duty not to take unilateral action that would jeopardize or hamper a final maritime boundary agreement
- Tribunal held that unilateral exploitation of oil and gas reserves or unilateral drilling in an area of overlapping claims would be a violation of article 74(3) not permissible because it would lead to a permanent physical change

Thanks for Your Attention

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