Outline of Presentation

1. High Seas Principles and Freedoms of the High Seas
2. Jurisdiction over Ships on the High Seas
3. Limitations on High Seas Freedoms
4. Protection and Preservation of the Marine Environment of the High Seas

Part 1
High Seas Principles
Freedom of the High Seas
Principles Governing High Seas

- Global Commons – No claim to sovereignty
- Freedoms of the Seas
- Exclusive Jurisdiction of Flag State

1958 Convention on High Seas

- Preamble states that it is intended to codify the rules of customary international law
- Provisions in UNCLOS remain essentially the same, with only minor changes

1958 Convention Art 27 – Freedom of the High Seas

- Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law.
- It comprises, inter alia, both for coastal and non-coastal States:
  - (1) Freedom of navigation;
  - (2) Freedom of fishing;
  - (3) Freedom to lay submarine cables and pipelines;
  - (4) Freedom to fly over the high seas.
Freedoms of high seas not specifically mentioned in Article 27

- It is generally accepted that the freedoms of the high seas also includes:
  - Construction of artificial islands and installations
  - Marine scientific research
  - Hydrographic surveys
  - Military activities, including weapons testing

UNCLOS Art 87. Freedom of high seas

- Freedom of the high seas comprises, inter alia, both for coastal and land-locked States:
  - (a) freedom of navigation;
  - (b) freedom of over flight;
  - (c) freedom to lay submarine cables and pipelines, subject to Part VI (Continental Shelf);
  - (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.

Limits on High Seas Freedoms

- 1958 Convention
  - These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

- UNCLOS Article 87(2)
  - These 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, and also with due regard for the rights under this Convention with respect to activities in the Area.
High Seas Principles of Jurisdiction that apply in the EEZ

- Article 58(2) of UNCLOS provides that "Articles 88 to 115 and other pertinent rules of international law apply in the EEZ insofar as they are not incompatible with Part V on EEZ.
- This means that except for matters under Part V are subject to the jurisdiction of the coastal State (e.g., right to arrest foreign fishing vessels), all the rules on jurisdiction over ships on the high seas apply in the EEZ.

Part 2
Jurisdiction over Ships on the High Seas

Art 91. Nationality of Ships

- Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag.
- Ships have the nationality of the State whose flag they are entitled to fly.
- There must exist a genuine link between the State and the ship.
Art 92. Exclusive Jurisdiction of Flag State

- 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.
- A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

Article 101. Definition of Piracy

- 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;

Article 103. Definition of a Pirate Ship

- A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101.
- The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.
Art 105. Seizure of a Pirate Ship

- On the high seas, every State may seize a pirate ship 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.

Arts 95-96. Immunity of Warships & Govt Ships

- Article 95. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.
- Article 96. Ships owned or operated by a State and used only on government non-commercial service have complete immunity from the jurisdiction of any State other than the flag State.

Art 94. Duties of Flag State – exercise of jurisdiction

- 1. Shall effectively exercise jurisdiction & control in administrative, technical and social matters, must maintain Registry and must assume jurisdiction under its internal law.
- 7. Must conduct inquiry if marine casualty or incident of navigation.
Art 94. Duties of Flag States - Safety at Sea

- Flag State must take measures to ensure that ships flying its flag conform to "generally accepted procedures and practices for safety at sea"
- This means that Flag State must ensure that its ships comply with major IMO conventions on Safety at Sea
  - 1972 Collision Regulations
  - 1974 SOLAS Convention
  - 1975 STCW Convention
  - etc.

Art 211(2). Duties of Flag State on Ship-Source Pollution

- Flag States must adopt laws and regulations to prevent pollution of the sea that are at least as effective as the "generally accepted international rules and standards"
- This means must be at least as effective as the IMO Convention on the prevention of pollution from ships called MARPOL 73/78

Art 97. Penal Jurisdiction in case of Collision

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.
2. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.
Article 98. Duty to Render Assistance

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
   - (a) to render assistance to any person found at sea in danger of being lost;
   - (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
   - (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

Article 99. Prohibition of the Transport of Slaves

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 taking refuge on board any ship, whatever its flag, shall ipso facto be free.

Article 108. Illicit Traffic in Narcotic Drugs or Psychotropic Substances

1. All States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.

2. Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic.
Article 109. Unauthorized Broadcasting from the High Seas

1. All States shall cooperate in the suppression of unauthorized broadcasting from the high seas.

2. “Unauthorized broadcasting” means the transmission of sound radio or television broadcasts from 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.

3. On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

4. Any person engaged in unauthorized broadcasting may be prosecuted before the court of:
   - (a) the flag State of the ship;
   - (b) the State of registry of the installation;
   - (c) the State of which the person is a national;
   - (d) any State where the transmissions can be received; or
   - (e) any State where authorized radio communication is suffering interference.

Article 111. Right of Hot Pursuit

- Right of a coastal State to pursue a ship that has violated its laws and regulations
- Pursuit must commence in waters subject to jurisdiction of coastal State
- May also commence to violations of coastal State’s laws governing EEZ and continental shelf
- Right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or any third State
Article 110. Right of Visit

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity . . ., is not justified in boarding it unless there is reasonable ground for suspecting that:
   ◦ (a) the ship is engaged in piracy;
   ◦ (b) the ship is engaged in the slave trade;
   ◦ (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
   ◦ (d) the ship is without nationality; or
   ◦ (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in para 1, the warship may proceed to verify the ship’s right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Part 3
Limitations on High Seas Freedoms
Part III. Right to Fish on the High Seas

Article 87. All States have freedom on fishing on the high seas, subject to the conditions laid down in Section 2 (Articles 116-119)

Article 116. Limits on Freedom of Fishing on the High Seas

• All States have the right for their nationals to engage in fishing on the high seas subject to:
  1. their treaty obligations;
  2. the rights and duties as well as the interests of coastal States provided for, inter alia, in article 63, paragraph 2, and articles 64 to 67; and
  3. the provisions of this section.

Article 117. Duty of States to Adopt with Respect to Their Nationals Measures for the Conservation of the Living Resources of the High Seas

• All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.
Article 118. Duty to Cooperate to conserve and manage living resources

- States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas.
- States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned.
- They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Marine Scientific Research on the High Seas

Article 257. Marine Scientific Research in the Water Column Beyond the Exclusive Economic Zone

- All States, irrespective of their geographical location, and competent international organizations have the right, in conformity with this Convention, to conduct marine scientific research in the water column beyond the limits of the exclusive economic zone.

Freedom to Lay Submarine Cables and Pipelines

- Article 112. Right to Lay Submarine Cables and Pipelines
  1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.
  2. Article 79, paragraph 5, applies to such cables and pipelines.
Limit on Freedom to Lay Submarine Cables & Pipelines

Article 79. Submarine Cables and Pipelines on the Continental Shelf

- When laying submarine cables or pipelines, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Part 4
Protection & Preservation of the Marine Environment in the High Seas

Article 194. Measures to Prevent, Reduce and Control Pollution of ME

Article 194(1)

- States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.
Article 194. Measures to Prevent, Reduce and Control Pollution of ME

Article 194(2)

2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment.

Article 194(5):

5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

Article 206. Assessment of Potential Effects of Activities

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.
Article 211. Pollution from Vessels

States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry.

Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

Article 217. Enforcement by Flag States

Contains detailed obligations of States to take measures to ensure the vessels flying their flag comply with the international rules and standards set out in the IMO Conventions

- Must adopt laws and regulations
- Must prevent ships from sailing if do not comply
- Must require vessels to carry certificates
- Must investigate complaints of alleged violations

Pollution by Dumping

Article 216. Enforcement with Respect to Dumping

1. Laws and regulations adopted in accordance with this Convention and applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment by dumping shall be enforced:

- (b) by the flag State with regard to vessels flying its flag or vessels or aircraft of its registry;
Marine Biological Diversity in High Seas

- No provisions in UNCLOS governing the protection of the marine environment or marine biological diversity in Areas Beyond National Jurisdiction (ABNJ), especially "marine genetic resources"
- Discussions currently at UN to draft third "implementation agreement" to govern biodiversity beyond national jurisdiction (BBJN)

Thanks for your attention!

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