LEGAL NATURE OF THE HIGH SEAS: IS FREEDOM OF THE SEAS ABSOLUTE?

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ABSTRACT

The principle of the freedom of the seas has long been regarded as a foundational doctrine of international maritime law. Originating from Hugo Grotius' concept of *Mare Liberum*, the doctrine established that the high seas are beyond national sovereignty and remain open for use by all states. This principle later evolved into a recognized rule of customary international law and was formally codified in the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS preserves the traditional freedoms of navigation, overflight, fishing, marine scientific research, and the laying of submarine cables on the high seas. However, modern international law increasingly imposes legal obligations that regulate the exercise of these freedoms. States are required to protect the marine environment, conserve living marine resources, and cooperate in suppressing piracy and other unlawful acts at sea. Additionally, developments such as regional fisheries management regimes and emerging frameworks for biodiversity beyond national jurisdiction reflect a growing trend toward cooperative governance of the oceans. This paper examines the historical evolution, legal framework, and contemporary limitations surrounding the doctrine of freedom of the seas. Through doctrinal analysis of international treaties, judicial decisions, and scholarly literature, the study evaluates whether the classical concept of absolute freedom continues to exist in modern international law. The paper argues that although the high seas remain beyond territorial sovereignty, the traditional doctrine of absolute freedom has gradually evolved into a system of regulated freedom characterized by collective responsibility, environmental protection, and international cooperation.

Keywords: High Seas; Freedom of the Seas; UNCLOS; Flag State Jurisdiction; Marine Environmental Protection

INTRODUCTION

The high seas refer to those parts of the oceans that lie beyond the jurisdiction of any particular state. Consequently, no state may claim sovereignty over any portion of the high seas. Historically, these areas have been regarded as open to all states. The intellectual foundation of this principle can be traced to Hugo Grotius' work *Mare Liberum* (1609), in which he argued that the sea is incapable of appropriation because of its vastness and the common use of the oceans by all nations. On this basis, Grotius advanced the doctrine of the freedom of the seas, which recognised that all states possess an equal right to navigate and engage in trade across the oceans.

Over time, this doctrine developed into a recognised principle of customary international law. States generally accepted that the high seas were open to all for purposes such as navigation, fishing, and communication. Under this framework, no state could exercise territorial sovereignty over the high seas, and vessels operating in these areas were primarily governed by the jurisdiction of the state whose flag they flew.

The adoption of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982 established the modern legal framework governing maritime zones, including the high seas. Part VII of the Convention preserves the traditional doctrine of freedom of the seas while providing a comprehensive legal structure for its application. Article 87 recognises various freedoms of the high seas, including navigation, overflight, fishing, marine scientific research, and the laying of submarine cables and pipelines. At the same time, Article 89 clearly affirms that no state may validly claim sovereignty over any part of the high seas.

Despite preserving these traditional freedoms, UNCLOS also introduced several obligations that regulate the way such freedoms may be exercised. States are required to protect and preserve the marine environment, cooperate in the conservation of living marine resources, and take measures to suppress piracy and other unlawful activities at sea. These obligations indicate that the exercise of high seas freedoms is subject to certain legal limitations designed to balance freedom with responsibility.

In recent decades, growing concerns relating to marine pollution, overfishing, climate change, and maritime security have further shaped the governance of the high seas. International agreements, regional fisheries management organisations, and environmental frameworks have

introduced additional regulatory mechanisms. These developments suggest that the high seas, while remaining beyond national sovereignty, are increasingly subject to collective legal regulation.

Against this background, an important legal question arises: can the doctrine of the freedom of the seas still be considered absolute, or has it evolved into a system of regulated freedom based on cooperation and shared responsibility? This paper examines the legal nature of the high seas under customary international law and the United Nations Convention on the Law of the Sea. It evaluates whether contemporary legal developments have transformed the traditional understanding of high seas freedom and whether the current regime reflects a shift toward more cooperative forms of ocean governance.

LITERATURE REVIEW

Scholarly literature on the law of the sea has extensively examined the evolution and contemporary regulation of the high seas. The theoretical foundations of the doctrine of the freedom of the seas can be traced to Hugo Grotius' *Mare Liberum* (1609), where Grotius argued that the oceans are incapable of national appropriation and must remain open to all states for navigation and trade.[1] This work established the intellectual basis of the classical doctrine that the high seas constitute *res communis* and are therefore beyond the sovereignty of any single state.

Modern scholarship has examined how this traditional doctrine has evolved within the framework of contemporary international law. Robin Churchill and Vaughan Lowe, in *The Law of the Sea*, provide a comprehensive analysis of maritime zones under the United Nations Convention on the Law of the Sea (UNCLOS).[2] Their work highlights the coexistence of traditional high seas freedoms with increasing regulatory obligations relating to environmental protection, conservation of living resources, and international cooperation.

Similarly, Donald R. Rothwell and Tim Stephens argue that the legal regime governing the high seas has gradually shifted from a system of unrestricted freedom toward one characterised by cooperative governance and sustainability obligations.[3] Their analysis emphasises the role

[1] Hugo Grotius, Mare Liberum (1609).
[2] Robin Churchill and Vaughan Lowe, The Law of the Sea (3rd edn, Manchester University Press 1999).
[3] Donald R Rothwell and Tim Stephens, The International Law of the Sea (2nd edn, Hart Publishing 2016).

of international institutions and regulatory frameworks in addressing contemporary challenges such as overfishing and marine environmental degradation.

Yoshifumi Tanaka further explores the jurisdictional complexities of the high seas regime. Tanaka observes that although UNCLOS preserves the principle of freedom of the seas, the doctrine has been significantly qualified by due-regard obligations, conservation measures, and environmental responsibilities imposed on states exercising high seas freedoms.[4]

In addition to doctrinal texts, several scholarly articles have examined the regulatory transformation of high seas governance. Rosemary Rayfuse analyses the limitations of exclusive flag-state jurisdiction in addressing illegal, unreported, and unregulated (IUU) fishing, highlighting the increasing role of port state control and regional fisheries management organisations.[5] Tullio Treves similarly notes that environmental protection obligations under UNCLOS and related treaties have significantly qualified the classical doctrine of absolute freedom of the seas.[6] Margaret A. Young further examines the interaction between the law of the sea and international environmental law, arguing that overlapping regulatory regimes create jurisdictional tensions and challenge the traditional understanding of unrestricted maritime freedom.[7] David Anderson also evaluates the status of high seas freedoms under Article 87 of UNCLOS and concludes that contemporary legal developments have transformed the doctrine of absolute freedom into a more conditional and regulated system.[8]

Collectively, this body of scholarship demonstrates that while the traditional doctrine of the freedom of the seas remains an important principle of international law, modern regulatory developments increasingly emphasise environmental protection, resource conservation, and international cooperation in the governance of the high seas.

RESEARCH METHODOLOGY

This study adopts a doctrinal method of legal research. It primarily relies on the analysis of

[4] Yoshifumi Tanaka, The International Law of the Sea (3rd edn, Cambridge University Press 2019).
[5] Rosemary Rayfuse, 'Non-Flag State Enforcement in High Seas Fisheries' (2004) 6 Journal of International Wildlife Law & Policy 243.
[6] Tullio Treves, 'The Law of the Sea and the Protection of the Marine Environment' (2008) 12 Max Planck Yearbook of United Nations Law 1.
[7] Margaret A Young, 'Fragmentation or Interaction: The Law of the Sea and International Environmental Law' (2012) 49 German Yearbook of International Law 1.
[8] David Anderson, 'Freedom of the High Seas in the Modern Law of the Sea' (2005) 6 Melbourne Journal of International Law 1.

international treaties, particularly the United Nations Convention on the Law of the Sea (UNCLOS), judicial decisions of international courts and tribunals, and scholarly writings on the law of the sea. Secondary sources such as academic books, journal articles, and reports have also been examined to evaluate the evolving legal framework governing the high seas and the extent to which contemporary developments have qualified the traditional doctrine of freedom of the seas.

Historical Development of The Freedom of The Seas

The doctrine of the freedom of the seas has evolved over several centuries and today represents a fundamental principle of international maritime law. Historically, the concept emerged as a response to the practice of maritime powers claiming sovereignty and exclusive control over portions of the oceans. During the early modern period, particularly in the seventeenth century, the oceans were increasingly viewed as vast and open spaces that could not be placed under the jurisdiction of any single state. This understanding was essential for facilitating global trade, navigation, and communication among nations, particularly as European powers expanded their maritime activities.

Doctrine of *Mare Liberum*

The doctrine of *Mare Liberum* was developed by Hugo Grotius in 1609.[9] It emerged in a historical context where Portugal and Spain claimed exclusive control over major sea routes and overseas trade, particularly in relation to access to Asian markets. These claims were used to prevent other European states, especially the Dutch Republic, from participating in international maritime commerce.

Grotius rejected such claims. In *Mare Liberum*, he argued that the sea cannot become the property of any state because, Unlike land, the sea cannot be occupied, enclosed, and controlled. The concept of ownership, according to Grotius, depends upon the ability to possess and exercise control over a resource. Since the sea cannot be possessed in the same manner as land, it cannot be appropriated by any state. Consequently, Grotius maintained that all nations possess equal rights to use the oceans for navigation, communication, and trade.

The doctrine therefore established the principle that no state may prevent other states from

[9] Hugo Grotius, Mare Liberum (1609).

freely navigating the seas. The freedom of navigation became the central element of Grotius' theory, and the seas were regarded as open to all states on equal terms. This doctrine directly opposed the theory of *Mare Clausum*, which defended the possibility of states exercising control over certain maritime areas. Although the debate between these two theories continued for some time, the principle of freedom of the seas eventually gained broader acceptance in international practice and gradually became part of customary international law.[10]

In modern international law, this principle is reflected in the United Nations Convention on the Law of the Sea (UNCLOS). Article 87 recognises that the high seas are open to all states, while Article 89 provides that no state may validly claim sovereignty over any part of them.[11]Although the historical context has evolved, the central idea remains the same: the high seas cannot be appropriated and must remain accessible to all states.

Res Communis

The concept of *res communis* originates in Roman law. In classical Roman legal thought, certain things were regarded as common to all and incapable of private ownership. These included air, flowing water, and the sea. Such resources were described as *res communis omnium*, meaning that they belonged to everyone and could not be appropriated by any individual.[12]

This concept was later incorporated into international law to explain the legal status of areas beyond national jurisdiction. Within the law of the sea, the principle of *res communis* provides the theoretical basis for treating the high seas as incapable of national ownership. If a resource cannot be possessed or enclosed, it cannot become the sovereign territory of a state.

It is important to distinguish *res communis* from *res nullius*. While *res nullius* refers to things that belong to only may be acquired through occupation, *res communis* refers to things that are inherently incapable of ownership.[13] The high seas are therefore not "ownerless" spaces that may be claimed by states; rather, they are areas that international law protects from national appropriation.

[10] Malcolm N Shaw, *International Law* (8th edn, Cambridge University Press 2017).
[11] United Nations Convention on the Law of the Sea (1982) 1833 UNTS 3, arts 87–89.
[12] Charlotte Ku, 'The Concept of Res Communis in International Law' (1990) 12 *History of European Ideas* 459.
[13] Sai Manoj Reddy, 'Res Communis and Res Nullius' (Lex-Warrier, 2015).

The principle of *res communis* supports the idea that the high seas remain open to all states on equal terms. At the same time, this principle does not imply the absence of legal regulation. Although the high seas lie beyond national sovereignty, their use remains subject to international legal rules agreed upon by states. This framework allows states to enjoy freedom of use while preventing unilateral control over shared maritime spaces.

The modern codification of this principle can be found in the United Nations Convention on the Law of the Sea (UNCLOS). Article 87 affirms that the high seas are open to all states, and Article 89 clearly provides that no state may claim sovereignty over any part of them.[14] These provisions demonstrate the continuing relevance of the *res communis* principle in contemporary maritime law.

In modern international law, the concept of *res communis* also influences discussions relating to other global commons such as outer space and Antarctica. The principle continues to provide a legal foundation for maintaining shared spaces beyond national jurisdiction while allowing cooperative international regulation.

Development under Customary International Law

Building upon the concepts of *Mare Liberum* and *res communis*, the doctrine of freedom of the seas gradually developed into a principle of customary international law. Customary international law emerges from consistent state practice accompanied by *opinio juris*, or the belief that such practice is legally obligatory. From the seventeenth century onwards, states increasingly accepted that the high seas were freely available to all and were not subject to territorial claims. Territorial jurisdiction was generally limited to coastal waters, while the remainder of the oceans remained open for navigation and fishing.[15]

An important component of this developing legal framework was the principle of exclusive flag state jurisdiction. Under this principle, ships navigating the high seas are subject to the jurisdiction of the state whose flag they fly, except in limited circumstances such as piracy.[16] This rule reinforced the idea that the high seas were not subject to territorial sovereignty while ensuring that vessels remained under the authority of a particular state. By the nineteenth

[14] UNCLOS (n 11) arts 87–89.
[15] Malcolm N Shaw, *International Law* (8th edn, Cambridge University Press 2017).
[16] UNCLOS (n 11) art 92.

century, the freedom of the seas had become widely recognised as a principle of general international law. The doctrine therefore evolved from the philosophical arguments advanced by Grotius into an established legal norm reflected in state practice.

Early Codification Efforts

Although the freedom of the seas initially developed through customary law, the growth of maritime activity created a need for formal codification. The Hague Codification Conference of 1930 attempted to clarify rules relating to territorial waters and maritime jurisdiction. However, the conference failed to produce a binding convention due to disagreements among states.

A more successful effort occurred at the First United Nations Conference on the Law of the Sea in 1958. The Convention on the High Seas formally recognised that the high seas are open to all states and reaffirmed fundamental principles such as freedom of navigation and exclusive flag state jurisdiction.[17]

Growing concerns regarding marine resources and environmental protection later led to further negotiations aimed at developing a more comprehensive legal regime governing ocean spaces. These efforts culminated in the adoption of the United Nations Convention on the Law of the Sea in 1982. UNCLOS consolidated earlier customary principles and introduced a detailed legal framework regulating maritime zones and activities at sea.[18]

Codification therefore marked an important transition from reliance on customary principles toward a structured treaty-based legal regime governing the use of the oceans. The adoption of UNCLOS laid the foundation for the modern law of the sea and significantly shaped the contemporary governance of the high seas.

Legal Framework of the High Seas under UNCLOS

The United Nations Convention on the Law of the Sea (UNCLOS) was adopted in 1982 and entered into force in 1994, is widely regarded as the comprehensive legal framework governing

[17] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.
[18] UNCLOS (n 11).

maritime zones and ocean use.19 The Convention establishes a detailed regime regulating various maritime areas, including the territorial sea, contiguous zone, exclusive economic zone (EEZ), continental shelf, and the high seas.

Part VII of UNCLOS specifically governs the legal status and regulation of the high seas. It preserves the traditional doctrine that the high seas are open to all states while simultaneously introducing structured legal obligations governing their use. Unlike earlier customary rules, UNCLOS provides a detailed and codified framework regulating navigation, jurisdiction, resource utilisation, and environmental protection. In this respect, UNCLOS represents an important transition from broad customary principles toward a treaty-based legal system that balances freedom of use with international responsibility.

Article 87 – Freedoms of the High Seas

Article 87 of the United Nations Convention on the Law of the Sea (UNCLOS) lays down the legal foundation of high seas freedom.[20] It provides that the high seas are open to all States, and that all States, whether coastal or landlocked, and recognises several freedoms associated with their use. These freedoms include navigation, overflight, the laying of submarine cables and pipelines, the construction of artificial islands and installations permitted under international law, fishing, and marine scientific research.

These rights reflect the classical doctrine of the freedom of the seas, historically influenced by the concept of *Mare Liberum*. Among these freedoms, the freedom of navigation remains particularly significant, as it guarantees that vessels of all states may navigate the high seas without interference from other states. Similarly, the freedom of overflight ensures that aircraft may traverse the airspace above the high seas without restriction.

However, UNCLOS makes clear that these freedoms are not unlimited. Article 87 requires that high seas freedoms must be exercised with due regard for the interests of other states and in conformity with the Convention and other rules of international law. This means that although all states enjoy equal access to the high seas, they must exercise their freedoms in a manner that does not prejudice the rights or lawful uses of other states.

[19] United Nations Convention on the Law of the Sea (1982) 1833 UNTS 3.
[20] Un UNCLOS (n 11) art 87.

For instance, fishing activities must comply with the conservation obligations contained in Articles 116–119 of UNCLOS, while environmental protection duties are elaborated in Part XII of the Convention.[21] These provisions illustrate that the freedoms recognised under Article 87 operate within a broader regulatory framework designed to balance the principle of freedom with collective responsibilities under international law.

Article 89 – Prohibition of Sovereignty

Article 89 UNCLOS provides that no State may validly claim sovereignty over any part of the high seas.[22] This rule reflect one of the most fundamental principles of the law of the sea: areas beyond national jurisdiction cannot be appropriated by individual states.

The prohibition of sovereignty directly reflects the classical doctrine of the freedom of the seas and the concept of *res communis*. Historically, the high seas were understood as areas beyond territorial control, and Article 89 codifies this understanding within modern treaty law. The provision ensures that maritime spaces beyond national jurisdiction remain open and cannot be transformed into extensions of state territory.

This rule is essential for maintaining equality among states. If sovereignty claims over the high seas were permitted, powerful maritime states could potentially control major sea routes and restrict access to ocean resources. By prohibiting such claims, Article 89 preserves the open and shared character of the oceans while ensuring equal access for all states.

Importantly, Article 89 distinguishes between sovereignty and jurisdiction. Although territorial sovereignty over the high seas is prohibited, functional jurisdiction over vessels is permitted under the principle of flag state control. States may regulate ships flying their flag, but they cannot treat the high seas themselves as part of their national territory.

Thus, Article 89 safeguards the non-sovereign status of the high seas while permitting regulatory authority through internationally recognised mechanisms such as flag state jurisdiction.

Flag State Jurisdiction

Although the high seas lie beyond the sovereignty of any state, vessels operating there are not

[21] UNCLOS (n 11) arts 116–119; Part XII.
[22] UNCLOS (n 11) art 89.

outside legal control. The principal mechanism regulating ships on the high seas is the doctrine of flag state jurisdiction. Under Article 92 of UNCLOS, ships sailing on the high seas are subject to the exclusive jurisdiction of the state whose flag they fly.[23]

The flag state system is based on the principle that every vessel must possess a nationality and be registered under the laws of a particular state. That state is responsible for exercising administrative, technical, and social control over ships flying its flag. Article 94 of UNCLOS further obliges states to ensure that vessels registered under their jurisdiction comply with international safety, labour, and operational standards.[24]

This system also aims to prevent jurisdictional conflicts between states. If multiple states could exercise authority over vessels navigating the high seas, maritime navigation could become uncertain and potentially chaotic. Exclusive flag state jurisdiction therefore provides legal clarity by assigning regulatory authority to a single state.

At the same time, the system has been criticised for weaknesses in enforcement. Some states operate so-called "flags of convenience," allowing foreign shipowners to register vessels under their flag with minimal regulatory oversight. This practice has raised concerns regarding maritime safety, labour conditions, and environmental protection.[25] In response, international law has gradually introduced additional mechanisms to strengthen enforcement, including port state control and cooperative monitoring regimes.

Despite these challenges, flag state jurisdiction remains a central feature of the legal framework governing the high seas. It reconciles the absence of territorial sovereignty with a system of national regulatory responsibility.

Duties and Responsibilities of States

While UNCLOS recognises several freedoms on the high seas, these freedoms are accompanied by corresponding duties and responsibilities. States exercising their rights under Article 87 must ensure that their activities comply with international obligations designed to protect shared ocean resources.

[23] UNCLOS (n 11) art 92.
[24] UNCLOS (n 11) art 94.
[25] Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (Hart Publishing 2016).

One significant responsibility concerns the conservation of living marine resources. Articles 116–119 of UNCLOS require states to cooperate in the conservation and management of fish stocks and other living marine resources found on the high seas. These provisions oblige states to adopt measures preventing overfishing and ensuring the sustainability of marine ecosystems.

Another key obligation concerns environmental protection. Article 192 establishes a general duty for states to protect and preserve the marine environment, while Article 194 requires states to take measures to prevent, reduce, and control marine pollution.[26] These provisions highlight the increasing importance of environmental governance within the law of the sea.

States also have duties relating to maritime security and international cooperation. Article 100 of UNCLOS requires all states to cooperate in the suppression of piracy on the high seas.[27] This obligation reflects the shared interest of the international community in maintaining safety and order in maritime navigation.

Finally, UNCLOS emphasises the principle of due regard. Article 87(2) requires states to exercise their high seas freedoms with due regard for the interests and lawful activities of other states. This principle helps prevent conflicts between users of the oceans and ensures that maritime activities remain consistent with international law.

Collectively, these obligations demonstrate that the modern law of the sea does not treat high seas freedom as unlimited. While the high seas remain beyond national sovereignty, states must exercise their freedoms responsibly and cooperate in managing shared ocean resources.

Limitations on High Seas Freedoms

International law recognises that the high seas are open to all states and that all states enjoy certain freedoms in their use. However, these freedoms are not unlimited. Over time, international legal rules have developed to regulate activities conducted on the high seas in order to protect marine resources, safeguard the marine environment, and maintain maritime security. The United Nations Convention on the Law of the Sea (UNCLOS) provides that high seas freedoms must be exercised in accordance with international law and with due regard for

[26] UNCLOS (n 11) arts 192–194.
[27] UNCLOS (n 11) art 100.

the interests of other states.[28]

Modern legal scholarship increasingly recognises that the high seas can no longer be regarded as a completely unrestricted space. Instead, they are governed by a framework of legal obligations that require cooperation among states and impose limitations on the traditional doctrine of freedom of the seas.[29]

Conservation of Living Resources

The conservation of marine living resources constitutes one of the most significant limitations on high seas freedom. Although UNCLOS recognises that states have the right to fish on the high seas, this freedom is subject to important regulatory obligations. Articles 116–119 of UNCLOS require states to cooperate in the conservation and management of fish stocks and other living marine resources found in areas beyond national jurisdiction.[30]

States are therefore required to adopt measures designed to prevent overfishing and ensure the long-term sustainability of marine ecosystems. These measures must be based on the best available scientific evidence and should aim to maintain fish populations at sustainable levels. In practice, international cooperation is often implemented through regional fisheries management organisations (RFMOs), which establish catch limits, monitoring mechanisms, and conservation standards for shared fish stocks.

Scholars have observed that such conservation measures became necessary as unrestricted fishing activities led to significant depletion of marine species in several parts of the world.[31]Consequently, modern international law recognises that the freedom to fish on the high seas must be balanced with the collective responsibility to conserve marine resources.

Protection of the Marine Environment

Environmental protection represents another important limitation on high seas freedoms. UNCLOS imposes a general obligation on states to protect and preserve the marine environment. Article 192 establishes this fundamental duty, while Article 194 requires states

[28] UNCLOS (1982) art 87.
[29] Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (Hart Publishing 2016).
[30] UNCLOS arts 116–119.
[31] Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge University Press 2019).

to adopt measures aimed at preventing, reducing, and controlling marine pollution.[32] These obligations apply to activities conducted both within national jurisdiction and on the high seas.

Environmental concerns such as oil spills, plastic pollution, and industrial maritime activities have increasingly highlighted the vulnerability of marine ecosystems. As a result, international law requires states to regulate their maritime activities in a manner that minimises environmental harm. Contemporary scholarship emphasises that environmental protection has significantly reshaped the legal framework governing the oceans, which are now viewed as shared ecological systems requiring collective stewardship.[33]

Suppression of Piracy and Maritime Crimes

Maritime security considerations also impose limitations on the freedom of the high seas. UNCLOS recognises piracy as an international crime and imposes obligations on states to cooperate in suppressing such activities. Article 100 requires all states to cooperate in the repression of piracy on the high seas, while Article 105 authorises warships of any state to seize pirate vessels and prosecute the offenders.[34]

This rule reflects the principle of universal jurisdiction, which allows any state to exercise jurisdiction over pirates regardless of nationality or location. Piracy threatens international shipping, disrupts maritime trade routes, and endangers the safety of vessels and crews. For this reason, international law treats piracy as a matter of collective concern requiring coordinated enforcement by states.

In addition to piracy, international legal frameworks also address other maritime crimes such as human trafficking, illicit broadcasting, and smuggling. These rules further demonstrate that the high seas are not lawless spaces but are governed by a structured system of security regulation.

Due Regard Principle

Another important limitation on high seas freedoms is the due regard principle. Article 87 of

[32] UNCLOS arts 192–194.
[33] Tullio Treves, 'The Law of the Sea and the Protection of the Marine Environment' (2008) 12 *Max Planck Yearbook of United Nations Law* 1.
[34] UNCLOS arts 100–105.

UNCLOS provides that states must exercise their freedoms on the high seas with due regard for the interests of other states.[35] This principle requires states to consider how their activities may affect the lawful uses of the high seas by other states.

For example, fishing operations should not obstruct major shipping routes, and marine scientific research should avoid damaging submarine cables or offshore installations. The due regard principle therefore serves as an important mechanism for preventing conflicts between different users of the oceans.

By promoting mutual respect and cooperation among states, the due regard principle ensures that the high seas remain accessible to all while reducing the potential for disputes arising from competing maritime activities.

Port State Control and Enforcement Measures

Port state control represents another mechanism through which international law limits high seas freedoms and ensures compliance with maritime regulations. When foreign vessels enter a state's port, authorities may inspect them to verify compliance with international safety, labour, and environmental standards.

Such inspections may examine vessel safety conditions, crew welfare, and environmental compliance. Where violations are identified, port authorities may detain vessels until the deficiencies are corrected. Port state control therefore serves as an important enforcement mechanism, particularly in cases where flag states fail to adequately regulate ships flying their flag.

Legal scholars note that port state control significantly strengthens the enforcement of international maritime standards and contributes to improved safety and environmental protection within the global shipping industry.[36]

Taken together, these regulatory mechanisms demonstrate that the modern law of the sea does not treat high seas freedom as absolute. Instead, international law increasingly emphasises responsible use, environmental protection, and collective governance in the management of

[35] UNCLOS art 87(2).
[36] Erik J Molenaar, 'Port State Jurisdiction and Enforcement in International Maritime Law'.

ocean spaces beyond national jurisdiction,

Jurisdictional Tensions and Emerging Issues

The United Nations Convention on the Law of the Sea (UNCLOS) establishes a comprehensive legal framework governing the use of the high seas. However, despite the existence of this framework, several jurisdictional tensions continue to arise in practice. These tensions emerge because different states exercise different forms of authority in maritime spaces, particularly where the interests of flag states, coastal states, and the international community intersect. At the same time, new global concerns such as environmental protection, fisheries management, and maritime security have generated additional legal debates regarding the governance of areas beyond national jurisdiction. As a result, the regulation of the high seas remains an evolving area of international law.

Conflict between Flag State and Coastal State Powers

One of the most significant jurisdictional tensions arises between the powers of flag states and those of coastal states. Under UNCLOS, ships operating on the high seas are generally subject to the jurisdiction of the state whose flag they fly.[37] This principle of exclusive flag state jurisdiction assigns regulatory responsibility to the state of registration and aims to prevent competing claims of authority over vessels navigating the oceans.

At the same time, coastal states exercise certain rights in maritime zones adjacent to their territory. For example, within the Exclusive Economic Zone (EEZ), a coastal state enjoys sovereign rights for the purpose of exploring, exploiting, conserving, and managing natural resources.[38] These rights may occasionally conflict with the activities of foreign vessels operating near coastal waters.

Disputes may arise when coastal states attempt to enforce environmental regulations, fisheries laws, or security measures against foreign vessels operating in areas close to their maritime zones. Flag states may challenge such actions, arguing that only they possess jurisdiction over their vessels on the high seas. Scholars have observed that balancing the authority of flag states with the regulatory interests of coastal states remains one of the most complex issues in the

[37] UNCLOS (1982) art 92.
[38] UNCLOS arts 55–57.

contemporary law of the sea.[39]

Environmental Governance and the Global Commons Debate

The high seas are frequently described as part of the "global commons," referring to areas beyond national jurisdiction that are shared by all states. Traditionally, these areas were governed primarily by the doctrine of the freedom of the seas. However, growing environmental concerns have significantly reshaped this perspective.

Issues such as marine pollution, overfishing, and the loss of marine biodiversity have raised important questions regarding how the high seas should be governed and protected. As scientific understanding of ocean ecosystems has improved, many scholars and policymakers have argued that stronger international regulatory frameworks are necessary to ensure the sustainable use of marine resources.[40]

Recent international developments illustrate this evolving approach. In particular, negotiations on the Agreement on Biodiversity Beyond National Jurisdiction (BBNJ) aim to strengthen the protection and sustainable use of marine biodiversity in areas beyond national jurisdiction. The agreement introduces mechanisms relating to marine protected areas, environmental impact assessments, and the equitable sharing of benefits derived from marine genetic resources. These developments reflect a growing recognition that effective governance of the high seas requires greater international cooperation and environmental stewardship.

Role of Regional Fisheries Management Organizations

Regional Fisheries Management Organizations (RFMOs) play an important role in regulating fishing activities on the high seas. These organisations are established through agreements between states to manage fish stocks within specific ocean regions. RFMOs adopt conservation measures such as catch quotas, seasonal restrictions, and monitoring systems designed to ensure the sustainable use of marine resources.[41]

The importance of these organisations arises from the migratory nature of many fish species,

[39] Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (Hart Publishing 2016).
[40] Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge University Press 2019).
[41] Rosemary Rayfuse, 'Regional Fisheries Management Organizations' *International Journal of Marine and Coastal Law*.

which often move across national boundaries and high seas areas. Because no single state can effectively manage such resources alone, international cooperation becomes essential. RFMOs therefore provide a framework through which states can coordinate their policies, exchange scientific information, and implement collective conservation measures.

Despite their importance, RFMOs also face several challenges. Some states fail to comply with conservation measures, while enforcement remains difficult due to the vast geographical scale of ocean areas. Nevertheless, these organisations remain central to contemporary efforts aimed at regulating high seas fisheries and preventing the depletion of marine resources.

Security Operations and Enforcement Challenges

Maritime security concerns also represent an increasingly important dimension of high seas governance. Activities such as piracy, illegal fishing, trafficking, and smuggling pose serious threats to international shipping and global trade. UNCLOS permits states to take action against piracy and similar crimes occurring on the high seas.[42] However, effective enforcement remains challenging.

The oceans cover vast areas, and monitoring activities at sea requires significant financial, technological, and logistical resources. Many states lack the capacity to effectively regulate vessels flying their flag or to patrol large maritime regions. As a result, enforcement gaps sometimes arise, allowing unlawful activities to persist.

To address these challenges, states have increasingly engaged in cooperative maritime security initiatives, including joint naval patrols, information-sharing mechanisms, and coordinated enforcement operations. Scholars note that effective regulation of maritime security threats requires cooperation not only between states but also among regional organisations and international institutions.[43]

These developments demonstrate that maritime security considerations have become an important factor shaping the contemporary governance of the high seas. As global maritime activities continue to expand, strengthening cooperative enforcement mechanisms will remain essential for maintaining order and stability in ocean spaces beyond national jurisdiction.

[42] UNCLOS arts 100–107.
[43] Natalie Klein, *Maritime Security and the Law of the Sea* (Oxford University Press 2011).

Shift From Absolute Freedom To Regulated Freedom

Historically, the doctrine of the freedom of the seas suggested that the high seas were open to all states without restriction. This principle developed from the writings of Hugo Grotius and subsequently became part of customary international law. The classical doctrine assumed that, because the oceans could not be appropriated by any state, they should remain freely accessible for navigation, trade, and communication.

However, modern international law has gradually introduced significant limitations on how states may use the high seas. The United Nations Convention on the Law of the Sea (UNCLOS) continues to recognise the traditional freedoms associated with the high seas. At the same time, the Convention imposes important obligations concerning environmental protection, conservation of marine resources, and maritime security.[44] These developments suggest that the traditional concept of absolute freedom has evolved into a system of regulated freedom.

Analysis of Modern Restrictions

Modern international law imposes several restrictions on the use of the high seas, largely arising from concerns relating to environmental protection, sustainable resource management, and maritime security.

One important limitation relates to the conservation of marine living resources. UNCLOS requires states to cooperate in protecting fish stocks and other marine resources. Articles 116–119 establish regulatory measures aimed at preventing overfishing and maintaining sustainable fish populations.[45] These provisions represent a significant departure from the earlier assumption that fishing on the high seas was entirely unrestricted.

Environmental protection constitutes another major limitation on high seas freedoms. Article 192 of UNCLOS establishes a general obligation for states to protect and preserve the marine environment. States are therefore required to adopt measures preventing pollution and minimising environmental damage resulting from maritime activities.[46]

Security concerns also impose important restrictions. UNCLOS requires states to cooperate in

[44] UNCLOS (1982) arts 87, 192–194.
[45] UNCLOS arts 116–119.
[46] UNCLOS art 192.

suppressing piracy and other unlawful acts at sea. Article 100 obliges states to work collectively to combat piracy, while Article 105 allows warships from any state to seize pirate vessels operating on the high seas.[47]

Taken together, these obligations demonstrate that the modern high seas regime emphasises responsible use and international cooperation rather than unrestricted access. Scholars increasingly observe that the traditional doctrine of absolute freedom has been replaced by a more structured regulatory framework governing ocean activities.[48]

Collective Governance and State Sovereignty

The governance of the high seas raises an important question regarding the relationship between state sovereignty and collective international regulation. Under Article 89 of UNCLOS, the high seas remain beyond national sovereignty, and no state may claim territorial control over these areas.[49] However, the absence of sovereignty does not imply the absence of regulation.

Instead, contemporary international law has developed mechanisms of collective governance. States retain their legal independence but must comply with shared legal obligations when using the high seas. International agreements, regional organisations, and cooperative regulatory frameworks all contribute to this system.

Regional fisheries management organisations, environmental treaties, and maritime security initiatives represent important examples of this cooperative approach. Many scholars argue that this system reflects the growing recognition that the oceans constitute shared global resources requiring coordinated international management.[50] As maritime activities expand and environmental pressures increase, collective governance mechanisms are likely to become even more significant in the regulation of ocean spaces beyond national jurisdiction.

Movement Toward a Common Heritage Approach?

A further debate concerns whether the legal regime governing the high seas is gradually

[47] UNCLOS arts 100–105.
[48] Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (Hart Publishing 2016).
[49] UNCLOS art 89.
[50] Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge University Press 2019).

moving toward a "common heritage of mankind" approach. This concept was originally applied to the deep seabed under UNCLOS and suggests that certain global resources should be managed for the benefit of humanity as a whole rather than individual states.

Some scholars argue that increasing environmental pressures and resource exploitation may push the high seas toward a similar governance model. Recent international negotiations on the Agreement on Biodiversity Beyond National Jurisdiction (BBNJ) illustrate this emerging trend. The agreement seeks to strengthen conservation measures, establish marine protected areas, and promote the sustainable use of marine biodiversity in areas beyond national jurisdiction.[51]

Nevertheless, the high seas have not yet fully adopted the common heritage principle. States continue to exercise substantial authority through mechanisms such as flag state jurisdiction and international regulatory frameworks. As a result, the current regime governing the high seas reflects a hybrid system combining traditional freedoms with modern regulatory obligations.

Judicial Decisions on High Seas Jurisdiction

International courts and tribunals have played an important role in interpreting the legal regime governing the high seas and clarifying the scope of state jurisdiction.

In *M/V Saiga (No 2) (Saint Vincent and the Grenadines v Guinea)*, the International Tribunal for the Law of the Sea (ITLOS) reaffirmed the principle of exclusive flag state jurisdiction over vessels operating on the high seas.[52] The case concerned the arrest of the oil tanker *M/V Saiga* by Guinea for alleged customs violations. ITLOS held that ships navigating the high seas fall under the jurisdiction of the state whose flag they fly, except in limited circumstances recognised under international law.

Similarly, in the *Arctic Sunrise* arbitration between the Netherlands and Russia, the tribunal emphasised the importance of freedom of navigation on the high seas.[53] The dispute arose from Russia's detention of the Greenpeace vessel *Arctic Sunrise* during protests against offshore oil drilling. ITLOS ordered the release of the vessel and its crew, reinforcing the principle that

[51] Agreement on Biodiversity Beyond National Jurisdiction (BBNJ).
[52] *M/V Saiga (No 2) (Saint Vincent v Guinea)* ITLOS Case No 2 (1999).
[53] *Arctic Sunrise (Netherlands v Russia)* ITLOS Case No 22 (2013).

high seas freedoms must be respected by states.

The *South China Sea Arbitration (Philippines v China)* also contributed significantly to the interpretation of maritime rights under UNCLOS.[54] The Permanent Court of Arbitration clarified that maritime claims must be consistent with the legal framework established by UNCLOS and rejected claims that exceeded the Convention's limits.

An earlier but influential decision is the *Fisheries Jurisdiction Case (United Kingdom v Iceland)* before the International Court of Justice.[55] In this case, the Court recognised the growing importance of conservation measures and emphasised the need for international cooperation in managing fish stocks. The decision illustrated how international law gradually began to impose limits on previously unrestricted fishing activities.

Together, these judicial decisions demonstrate how international courts have reinforced both the traditional freedoms and the regulatory limitations that characterise the modern law of the sea.

Findings and Analysis

This study examined the legal nature of the high seas and the evolution of the doctrine of freedom of the seas under international law. The analysis considered historical legal doctrines, the development of customary international law, and the regulatory framework established under the United Nations Convention on the Law of the Sea (UNCLOS).

The research demonstrates that the traditional doctrine of freedom of the seas originated from the writings of Hugo Grotius and was based on the premise that the high seas could not be subject to national appropriation. This principle gradually developed into a recognised rule of customary international law and ensured that ocean spaces beyond national jurisdiction remained open to all states for navigation, trade, and communication.

UNCLOS continues to preserve this foundational principle. Article 87 recognises key freedoms associated with the high seas, including navigation, overflight, fishing, and marine scientific research. At the same time, the Convention imposes important obligations relating to environmental protection, conservation of marine resources, and the suppression of piracy.

[54] *South China Sea Arbitration (Philippines v China)* PCA Case No 2013-19 (2016).
[55] *Fisheries Jurisdiction (United Kingdom v Iceland)* [1974] ICJ Rep 3.

These provisions demonstrate that the freedom of the high seas now operates within a structured legal framework that balances access with responsibility.

The principle of flag state jurisdiction also plays a central role in regulating activities on the high seas. Ships remain subject to the jurisdiction of the state whose flag they fly, thereby ensuring that vessels operating beyond territorial waters are not outside the reach of legal authority. However, weaknesses in enforcement, particularly in relation to illegal fishing and environmental violations, continue to present challenges within the existing regulatory framework.

Furthermore, contemporary developments illustrate increasing international cooperation in managing ocean resources. Regional Fisheries Management Organizations (RFMOs), environmental agreements, and maritime security initiatives have become important mechanisms for regulating activities beyond national jurisdiction.

Judicial decisions have also contributed significantly to clarifying the legal regime governing the high seas. Cases such as *Fisheries Jurisdiction (United Kingdom v Iceland)* and decisions of the International Tribunal for the Law of the Sea have reinforced the importance of cooperation in resource conservation and respect for flag state jurisdiction.

Overall, the findings indicate that although the principle of freedom of the seas remains a central feature of the law of the sea, it no longer operates as an unrestricted doctrine. Instead, modern international law increasingly emphasises responsible use, environmental protection, and cooperative governance in the regulation of the high seas.

Conclusion

This research examined the legal nature of the high seas and the continuing relevance of the doctrine of freedom of the seas within contemporary international law. Historically, the principle of *Mare Liberum* established that the oceans could not be appropriated by any state and must remain open for use by all nations. Over time, this doctrine became embedded within customary international law and later received formal recognition under the United Nations Convention on the Law of the Sea (UNCLOS).

While UNCLOS preserves the traditional principle that the high seas remain beyond national sovereignty, the Convention simultaneously introduces important regulatory obligations

governing their use. States are required to protect the marine environment, conserve living marine resources, and cooperate in addressing maritime crimes such as piracy. International institutions, regional fisheries organisations, and judicial bodies further contribute to the governance of ocean spaces beyond national jurisdiction.

These developments indicate that the classical doctrine of absolute freedom of the seas has evolved into a regime characterised by regulated freedom. The modern law of the sea seeks to balance the traditional principle of open access with the need to ensure environmental sustainability, maritime security, and equitable resource management.

As pressures on ocean resources continue to increase, strengthening international cooperation and regulatory mechanisms will become increasingly important. The evolving legal framework governing the high seas therefore reflects an ongoing effort to reconcile state interests with the collective responsibility to protect and manage the oceans for present and future generations.

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