

## THE HIGH SEAS – GENERAL

Beyond the limits of national jurisdiction, the water column and the air space above the oceans are governed by the regime of the high seas.<sup>1</sup> When coastal states have established exclusive economic zones - and that is already (or will in future be) the rule - the high seas are the ocean space beyond the 200 nautical mile limit of this zone.<sup>2</sup>

The high seas are to be open and freely available for use by all states, regardless of their location. Their use is to be governed by the principle of equal rights for all<sup>3</sup>. No state may validly purport to subject any part of the high seas to its sovereignty;<sup>4</sup> in agreeing to the Convention, all states acknowledge that these oceans are reserved for peaceful purposes.<sup>5</sup> These are, after all, merely the logical consequences of the Convention's aim to maintain peace, justice, and progress for all people of the world.<sup>6</sup>

Within this context, the regime of the high seas is based on the freedom to use the oceans. In exercising its right of use of the high seas, no state may interfere with the justified and equal interests of other states<sup>7</sup> or act in a manner which would constitute an abuse of the rights recognized by the Convention.<sup>8</sup> States are also to respect the activities on the sea-bed in the Area, which are managed by the Sea-Bed Authority in the interests of mankind as a whole<sup>9</sup>. A similar attitude shall be required from coastal states undertaking activities on the "outer shelf," and the coastal state is to avoid any unjustified interference with the rights of other states.<sup>10</sup>

The Convention establishes freedom of activity in six general fields: (1) navigation, (2) overflight, (3) laying of cables and pipelines, (4) artificial islands and installations, (5) fishing, and (6) marine scientific research.<sup>11</sup> This is not intended as a conclusive list, nor does this listing in any way prejudice possible rights of coastal states.<sup>12</sup>

Freedom of navigation is of utmost importance for all, for the shipping community and naval forces as well as for the fishing industries and marine scientific research. Every state has the right to sail ships and participate in navigation<sup>13</sup> by granting its nationality to vessels which are registered with the state and which fly its flag.<sup>14</sup> Such flag states have the right and duty to exercise their exclusive jurisdiction on ships on the high seas.<sup>15</sup> This includes administrative, technical, social,<sup>16</sup> and pollution<sup>17</sup> matters. Other states are generally excluded from exercising any jurisdiction, e.g., penal, disciplinary, arrest, or detention matters in collision cases,<sup>18</sup> although there are exceptions;<sup>19</sup> furthermore, there are activities generally considered reprehensible<sup>20</sup> (see following pages). Government-owned non-commercial vessels and warships are under no circumstances subject to the jurisdiction of other states.<sup>21</sup> For the use of artificial installations in and airplanes over the high seas, the Convention provides only regulatory provisions in respect to scientific research and pollution. For these freedoms and those of fishing, cables, and pipelines, see *Further Readings*.

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<sup>1</sup> Art. 86

<sup>2</sup> Art. 57

<sup>3</sup> Preamble; 87-90

<sup>4</sup> Art. 89

<sup>5</sup> Art. 88

<sup>6</sup> Preamble

<sup>7</sup> Art. 87, Para. 2; 301

<sup>8</sup> Art. 300

<sup>9</sup> Art. 87, Para. 2; Part XI (Art. 137, Para. 2)

<sup>10</sup> Art. 78, Para. 2

<sup>11</sup> Art. 87, Para. 1

<sup>12</sup> Art. 63; 64; 116(b); 77, Para. 1

<sup>13</sup> Art. 90

<sup>14</sup> Art. 91

<sup>15</sup> Art. 92, Para. 1

<sup>16</sup> Art. 94

<sup>17</sup> Art. 194, 211, 217

<sup>18</sup> Art. 97

<sup>19</sup> e.g. Art. 97, 221

<sup>20</sup> Art. 99-110

<sup>21</sup> Art. 95, 96

## THE HIGH SEAS

### I. GENERAL PRINCIPLES

- (1) Justice and equal rights for all (Preamble) to be exercised in good faith and with no abuse of rights of others (Article 300)
- (2) Freedom of all types of activities (Article 87, Paragraph 1) with due regard for the interests of other states
- (3) Reserved for peaceful purposes (Article 88)
- (4) State sovereignty over any part of the high seas is excluded (Article 89)

### II. PARTICULAR FREEDOMS

List of Freedoms (Article 87)	Regulations governing the high seas
Navigation	<p><i>Basics</i></p> <ol style="list-style-type: none"> <li>1) Nationality of Vessels; Article 91</li> <li>2) Vessels in service of international organizations. Article 93, Annex IX</li> <li>3) Warships, etc : Articles 95, 96</li> </ol> <p><i>Jurisdiction</i></p> <ol style="list-style-type: none"> <li>1) Exclusive jurisdiction; flag state. Article 92</li> <li>2) Administrative, technical, social; flag state. Article 94, Paragraphs 1-5</li> <li>3) Collisions on the high seas                             <ul style="list-style-type: none"> <li>- Inquiry each state. Article 94, Paragraph 7; cooperation with flag state "</li> <li>- Penal jurisdiction; to this effect, disciplinary, arrest, detention; flag state. Article 97</li> </ul> </li> <li>4) Pollution; flag state. Articles 192, 194, 211, 217</li> <li>5) Pollution, port state. Articles 218, 232 (flag state; Article 228)</li> <li>6) International offences; other states, Articles 99-110</li> </ol> <p><i>Other items:</i> Search and rescue service by coastal states; Article 98, Paragraph 2; Render assistance; Article 98; Hot pursuit. Article 111; Civil pollution claims; Article 229</p>
Overflight	Pollution; state of registry. Articles 212, 222
Submarines cables and pipelines	<ol style="list-style-type: none"> <li>1) Subject to Part VI (Continental Shelf); Article 87</li> <li>2) General right; Article 112</li> <li>3) Liability for damage; Articles 113-114; Indemnity for loss incurred avoiding damage; Article 115</li> </ol>
Construction of artificial islands	<ol style="list-style-type: none"> <li>1) In accordance with international law; Article 87</li> <li>2) Subject to Part VI (Continental Shelf); Article 87</li> <li>3) For scientific research in general; Articles 258-262; In the Area; Articles 143, 256</li> </ol>
Fishing	Articles 116-120
Scientific research	<ol style="list-style-type: none"> <li>1) Subject to Part VI (Continental Shelf); Article 87</li> <li>2) Subject to Part XIII (Marine Scientific Research); Article 87</li> <li>3) Scientific research in the Area; Article 143</li> <li>4) Development and transfer of marine technology; Part XIV</li> </ol>