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A Review of International Space Law and the International Law of the Sea (Comparative Position of the Commitment to "Due Attention")

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ABSTRACT

International law says countries need to respect each other's rights and interests when they act on the global stage—whether that's in the air, at sea, or out in space. This isn't something with a long history in law; it really started showing up in international agreements about airspace, oceans, and outer space less than a century ago. But even now, almost eighty years later, states and courts haven't really hammered out what this obligation means. That's left a lot of confusion and debate.

In this article, I dig into treaties and court decisions to show that "due regard" actually has two sides. First, it means you have to take something into account when making choices. Second—and this one matters more, but gets less attention in the courts—it means you have to find a balance between the similar rights and interests of different countries, especially when their claims or powers overlap.

This balancing act comes from both the duties to avoid harm and the duties to act positively, and you'll find some of these spelled out in international agreements as separate rules.

KEY WORDS: Due diligence, law of the seas, space law, international judicial process.

1. Introduction

You see the phrase "due regard" pop up all over international conventions and treaties. It's basically a rule that tells States—not just individuals or companies, but whole countries—how they should behave when they're exercising their rights. States don't have free rein to do whatever they want anymore; both domestic and international law set boundaries.

Take the high seas, for example. Sure, States have the freedom to use the ocean for things like shipping or fishing. That's clear from UNCLOS, Article 87(1). But there's a catch: they have to respect the interests of other countries while doing so (UNCLOS, Article 87(2)). The same idea shows up in outer space law. UNCLOS lays out the freedom to explore and use space (OST, Article 1), but again, every State has to consider what other States want or need too (OST, Article 9).

Even though this idea of "due regard" keeps showing up in treaties, it's still kind of fuzzy. What does it actually mean in practice? No one has nailed down exactly what's required, so States end up arguing about it—especially when their interests collide. That's why we need to sort out what this obligation really is, especially when

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courts or arbitration panels get involved. Is "due regard" just a general principle that applies whenever States' rights overlap? Or is it only a rule when a specific treaty actually spells it out? You'll spot "due regard" in other areas, like human rights or environmental law, but for now, this article sticks to the law of the sea and space law. The goal is to pin down what "due regard" actually means, figure out how it works in international law, and see if it's become a standard, customary rule.

2. The use of international arenas before the twentieth century AD

Let's talk about something new in international law—a concept with no real precedent in earlier eras. Once modern nation-states came onto the scene after the Treaty of Westphalia, sovereignty became the big thing. That meant, basically, states could do whatever they wanted unless a rule said otherwise.

When there weren't any written rules about the high seas, countries just used them however they liked—shipping, military stuff, you name it. The whole idea was that the high seas belonged to everyone. Every state could use them, no questions asked, and nobody could discriminate.

This approach showed up in the famous Lotus Opinion from the Permanent Court of International Justice. People started calling it the Lotus Principle. The court put it plainly: "restrictions on the sovereignty of States cannot be considered as imposed." So, if you're wondering whether something's allowed or forbidden in international law, the default is that it's allowed. If someone wants to ban it, they need a clear legal rule. Because of this, pretty much any use of the commons—military operations, even nuclear testing—was fair game under international law. The Lotus Principle let states use the high seas, outer space, and other shared areas however they wanted. But as technology advanced, international relations shifted, and competition heated up between established powers and newcomers, the old ways didn't always fit. Suddenly, new responsibilities and needs started popping up on the global stage.

The old rules of international law just don't cut it anymore. They can't keep up with what countries actually need. Justice Shahabuddin, in his dissent on nuclear weapons, pointed out that you can't just apply the Lotus principle in every situation and expect it to work the same way.

International law gives countries a lot of freedom because of their sovereignty, but that freedom has limits. States can't do things that tear down the foundations of the international community (ICJ Rep, 1996: 393). Judge Alvarez made a similar point in his dissent on the Sheilat case. The Lotus principle used to work when states had absolute sovereignty, but those days are over. Now, the UN Charter, General Assembly resolutions, the common good of the international community, and the need to prevent abuse all put real limits on what states can do (ICJ Rep, 1951: 152). Judge Weeramantri, in the nuclear weapons case, said a mature legal system can't rely on having a rule for every possible situation. The idea that anything not forbidden is allowed—that's out of date. International law has moved on. So, the rule of "due regard" came into the picture, and that's what we'll look at next.

3. The concept of the obligation to have due regard in international law

As people started using the seas more and built the tech to do it, state involvement and competition over the oceans started heating up. With modern, long-range fishing fleets, countries like Russia, Japan, the US, and England weren't just sticking to their own coasts anymore. They pushed out, fishing off the shores of other countries and even way out in the open ocean. This led to more and more cases of one country's boats showing up in waters claimed by someone else, plus several countries competing over the same high seas. Not surprisingly, arguments broke out, and countries realized they needed clearer rules to sort things out.

The old Lotus Principle just didn't cut it anymore. There were too many overlapping interests—using the seas, protecting the environment, making sure everyone got a fair shot at resources, and thinking about the rights of future generations. International law had to step up, balancing economic development with environmental protection and the rights of all countries, not to mention the interests of those coming after us.

To handle all these competing demands, international law introduced something called the "rule of due regard." This idea first popped up in the 1944 Chicago Convention about civil aviation. Basically, it said that when states make laws about aviation, they need to keep the safety of other nations' planes in mind. The wording is still pretty vague though, and it doesn't connect well to later treaties or court decisions. Because this "due regard" rule hasn't become a solid, universal principle in international law, its meaning shifts depending on the context. Each area—like the law of the sea or space law—interprets it in its own way, based on specific treaties and documents. So, to really understand how this rule works, you have to look at it field by field. First, you look at what it means for the law of the sea, then at how it plays out in space law.

3.1 The concept of obligation to take due account in the law of the sea

When countries first started making rules for how they use the world's oceans, they realized they needed clear limits. The conventions from the First Conference on the Law of the Sea tried to answer this need by introducing the idea of "due regard" for other countries' interests. You see this phrase pop up a lot in the 1982 Convention on the Law of the Sea .After those agreements, courts started weighing in. Judges and arbitrators have talked about what "due regard" actually means, especially in a couple of judicial opinions and one arbitral decision. It's a big deal in the law of the sea. Basically, both countries and international organizations have to seriously consider things like protecting the environment, making sure economic decisions make sense, and being fair about geography.

When it comes to areas under a country's direct control, both the coastal country and other states have to respect each other's rights. The same goes for areas beyond any single country's borders. When the rules say you need to pay "due attention" to something, it means you can't just ignore it—you have to weigh it as a real factor when making decisions.

For instance, the Convention on the Law of the Sea says you need to think about things like rotating members, fair geographic distribution, economic efficiency, and protecting the marine environment—living creatures, resources, all of it. Article 60, paragraph 3, and Article 234 spell this out. Biodiversity is a huge part of this, and there's even a whole separate treaty about that (look up the Convention on Biological Diversity if you're curious).

In the end, "due regard" means you have to give serious thought to these interests before making any big choices. If you don't, your decision could end up looking completely different—or you'd at least need a really strong reason to brush those interests aside.

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The Convention itself doesn't spell out exactly what "due regard" should look like, which leaves some room for interpretation. Courts have stepped in to help clear things up and make this obligation a bit less vague. So far, courts have mostly focused on the second context. Here, when several countries hold equal authority over a situation—no one country's legal rights trumping the others—you're not just supposed to think about everyone's rights. You also need to actually talk with the countries that will really feel the effects of any decisions. The whole idea is to find some kind of balance, where everyone's rights and interests line up and support each other, instead of clashing.

If you make a commitment, you have to follow through. But just because you consider other countries' rights doesn't mean you'll always reach a decision that leaves everyone completely happy. The real question is: how much harm to each country's rights and interests is reasonable? (Su, 2020: 196)

Take submarine cables and pipelines, for example. If you lay new ones near existing infrastructure, it might stop someone from adding more cables or expanding their network. People generally accept that. But if you put something in a spot that blocks repairs to existing cables or pipelines, that's not okay.

Balancing rights and interests isn't a one-size-fits-all thing. You have to look at the details—what's at stake for each country, how much the activity matters to their national income, what kind of losses one side or the other could face, whether there are other ways to get the same benefits, and if there's a way to make up for any losses. Everything gets weighed together, and the goal is always to strike a fair balance. Here's another example: inspecting a ship and arresting someone on board. You can't ignore the seafarer's rights, so inspectors should try to do their job without hauling the ship into port if they can help it.

This idea of "due regard" in the second context means you pay attention to both the general rights and interests of all countries and the specific concerns of those that will feel the impact the most. Maybe that's fishermen from one country working off another's coast, or whaling ships from one state operating in someone else's exclusive economic zone. When a particular country stands to lose more, you need to put in extra effort to respect its interests.

When countries want to use the natural resources of a certain region, the ones already involved usually care a lot more than those who aren't. Because of that, the coastal State should really pay more attention to their interests—basically, tip the balance a bit in their favor compared to other States. Let's look at two examples from the Convention on the Law of the Sea, where these ideas have become real obligations.

First, the coastal State's criminal laws don't stop at the shoreline—they reach out into the territorial sea. So if a crime happens there, the coastal State's courts handle it, and its officers can carry out arrests or seize property. But there's a big exception: if a ship is just passing through and not causing any trouble, the State usually leaves it alone. Still, it's not always that simple. The Convention tries to balance two things—security and order for the coastal State, and freedom of navigation for everyone else. Neither one wins out completely. So, sometimes, if the situation calls for it, the coastal State can step in, even if the vessel seems harmless (Tanaka, 2012: 94).

Second, in the exclusive economic zone, the coastal State gets to build installations and man-made structures all on its own. But it can't just do whatever it wants. When building or removing these structures, it has to respect the rights of other States, especially when it comes to navigation and overflight. Before putting anything up, the coastal State should let others know—give warning, put out the word, and mark everything clearly for passing ships. And if these structures end up abandoned or unused, they need to be cleared away (Stephens, 2010: 184 & Rothwell).

Next up, we'll talk about international treaties and then move on to international court cases, pointing out the main things everyone needs to keep in mind for both.

3.1.1Treaties

Let's start with the main maritime treaties. The 1958 Geneva Conventions—one on the Territorial Sea and the Contiguous Zone, and another on the High Seas—set the stage. The High Seas Convention even talks about "reasonable consideration." Later, the 1982 Convention on the Law of the Sea switched things up a bit and went with "due consideration," which ended up being used much more widely. I'll go through each of these conventions one by one next.

3.1.2The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone

The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone makes it clear: coastal states don't have unlimited criminal jurisdiction over ships in their territorial sea. If you look at the first paragraph of article 19, it spells out just four specific situations where a coastal state can detain or inspect a ship. That's it. But there's more. If someone commits an offense in internal waters and then the ship moves into the territorial sea, that's covered too. Now, when it comes to actually detaining people, the rules aim to keep things running smoothly. The idea is, don't hold up the ship any longer than you have to. Say someone gets arrested — you don't need to drag the whole vessel into port just for that. You can board, make the arrest, and let the ship go on its way, all in the same day.

If the coastal state has the right tools to inspect or search the vessel, there's no need for a big production. The ship might stop briefly, authorities do what they need to do, and then it's back on course. The point is, the process shouldn't cause unnecessary delays or disruptions to navigation.

3.1.3Geneva Convention on the High Seas, 1958

At the same conference, another convention came up—this one focused on the high seas and introduced the terms "due regard" and "reasonable regard." Article 2 of the 1958 Geneva Convention on the High Seas says pretty clearly that anyone exercising their freedoms on the high seas has to show reasonable regard for the interests of other States that also want to use the seas freely.

Take a look at Article 26, paragraph 3, too. This part covers laying submarine cables and pipelines. It basically says, if you're putting down new cables or pipelines, you have to pay due regard to the ones already there. People need to be able to repair those existing cables and pipelines, and nothing should get in the way of that.

Honestly, it's not obvious why the drafters switched between "reasonable regard" and "due regard." They mean the same thing, and nobody seems to treat them differently. Later on, the Convention on the Law of the Sea just stuck with "due regard," and used it to strike a fair balance between everyone's rights and interests out there on the high seas.

3.1.4The 1982 Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea talks a lot about having "due regard for the law of the sea." You'll see this phrase pop up in ways that remind you of how the old Geneva

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Conventions handled the High Seas and Territorial Sea. But in UNCLOS, due diligence really comes into play when it's about balancing the rights of coastal States with the rights of everyone else, depending on which part of the ocean you're talking about.

What actually stands out compared to earlier treaties is how UNCLOS pushes this idea of due diligence into protecting marine resources and the environment. That's much more front and center now.

The Convention also makes space for other interests—like looking out for developing States, recognizing countries with advanced maritime tech, and even stuff like rotating membership, making sure people are picked fairly from different regions, and keeping things efficient in international maritime organizations. You'll find these ideas scattered through various articles and annexes: 148, 161(4), 162(2)(d), 163(2), 167(2), 267, and a few more.

3.2 Case law

International courts have tackled this idea in several big law of the sea cases—think Fisheries Jurisdiction (1974), the Saiga (1999), and the Chagos Arbitration (2015). Judges didn't always agree; some gave their own take or pushed back against the main opinion. We've already seen some of these disagreements in the original and main opinions. Now, let's dig into how the courts actually reviewed this commitment.

3.2.1The 1974 Fisheries Powers Case (Britain v. Iceland)

The International Court of Justice first dug into this idea during the Fisheries Powers Case. Britain and Iceland were locked in a dispute over who got exclusive rights to fish in waters stretching 50 nautical miles from Iceland's coast.

Back in 1948, Iceland's Parliament passed a law to protect fish stocks in areas where their own fishermen had been working overtime. The law required the Icelandic government to take real steps to safeguard those resources in its territorial sea. Before all this, Britain and Iceland had a deal: each could fish exclusively within 3 miles of their own coast, and everything beyond that was fair game for both. But in 1952, Iceland told Britain it was pulling out of that agreement, then pushed its exclusive zone out to 4 miles. They even drew a new line just for this.

The year before, in 1951, the International Court of Justice had backed Norway's use of the straight-line principle in a similar case with Britain. Iceland borrowed that idea, using straight lines to mark the edges of its own fishing zone.

After the First Conference on the Law of the Sea in 1958, which cleared up the idea of exclusive fishing rights but didn't say exactly how far those rights should go, Iceland expanded its zone again—this time to 12 miles.

Britain didn't take this lightly. They said Iceland's move from 3 to 12 miles was invalid. When talks went nowhere, Britain took the fight to the International Court of Justice.

Britain argued that Iceland couldn't just decide, on its own, to push its exclusive fishing zone out and ignore everyone else's interests. They said international law didn't back up Iceland's claim. Since the two countries used to share access to these waters, Britain saw Iceland's decision to ditch their agreement and stretch its zone to 50 miles—without Britain's okay—as ignoring the other side's rights completely.

Justice Dillard, in his dissent, argued that this obligation binds every State. Basically, if a State's interests are on the line—whether in bilateral or multilateral situations—it can invoke this obligation. States have a duty to try and settle disputes peacefully. (ICJ Rep, 1974: 69)

Justice Singh, in a separate statement, agreed that coastal States might get preferential rights. Still, he made it clear—these States have to respect the rights and interests of others, especially when it comes to fishing in the same area. (ICJ Rep, 1974: 40)

He went on to say that "due regard" isn't just a formality. Even when one State holds a stronger right, both sides need to respect each other's claims. Fairness matters. States should handle their mutual claims with respect and balance. (ICJ Rep, 1974: 40)

The main opinion from the Court pointed out something pretty obvious: as maritime technology advanced, more countries started fishing, and the old rules just didn't cut it anymore. International law had to adapt. Now, instead of just letting States do whatever they want, the focus is on respecting other States' rights and making sure fishery resources get conserved. (ICJ Rep, 1974: Para.72)

Finally, the Court told both States to sit down and negotiate over Iceland's exclusive fishing zone. And during these talks, they have to keep a few things in mind—especially the need to respect each other's interests and make sure fishing is fair and sustainable. (ICJ Rep, 1974: Para.79(4)(c))

3.2.2The V/V Sayga Case, 1919 (Saint Vincent and the Grenadines v. Guinea)

After the Fisheries Powers Case, the International Court of Justice took up a similar issue in the V/V Sayga Case. This time, the problem was around the V/V Sayga, a ship flying the flag of Saint Vincent and the Grenadines, which was fueling fishing vessels inside Guinea's exclusive economic zone. The Sayga wasn't fishing or taking resources itself—it was just supplying fuel to other boats that were. Still, the Guinean Coast Guard tried to stop the ship. The captain ignored the order, so the Coast Guard fired at the vessel.

Saint Vincent and the Grenadines didn't argue their case using the principle of due diligence, but some judges brought up the idea anyway. Judge Singh, in his statement, said that even though coastal States get preferential rights in their own waters, they have to respect the rights and interests of other States in the area, especially when it comes to fishing. He pointed out that when two States have equivalent rights—or when one has a stronger claim—it's still important to show "due regard" for each other's interests. Plus, he said States should settle their disputes in a fair way.

The main opinion from the Court recognized that advances in maritime technology had changed everything. The seas are busier, there's more fishing, and the old rules about how States can fish don't cut it anymore. International law has evolved, too. The old idea of total freedom on the seas has given way to a new principle: States have to respect the rights of others and focus on conserving fish stocks.

In its main decision, the Court told the States involved to negotiate and sort out their dispute over Iceland's exclusive fishing zone. These talks, the Court said, need to consider various issues—including the duty to respect other States' interests in conserving and sharing the sea's fishery resources fairly.

3.2.3The V/V Sayga Case, 1919 (Saint Vincent and the Grenadines v. Guinea)

After the Fisheries Powers Case, the International Court of Justice picked up this idea again in the V/V Sayga Case. Here's what happened. The case was about the V/V Sayga, a ship flying the flag of Saint Vincent and the Grenadines, refueling fishing boats in

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Guinea's exclusive economic zone. The Sayga wasn't out there fishing or taking anything from Guinea's waters itself—it was just supplying fuel to other vessels that were. Things escalated when Guinea's Coast Guard tried to stop the Sayga. The ship ignored the order, so the Coast Guard ended up opening fire.

Saint Vincent and the Grenadines, the main country involved, didn't actually bring up the principle of due diligence in their arguments. Still, a few judges mentioned it in their opinions. Judge Ling, for example, talked about how the Convention's rules can get tricky when different countries have overlapping rights in the same stretch of sea. When no single country can block another from exercising its rights, there's always a risk of clashes or misunderstandings.

That's where the idea of "due regard" comes in. The Convention on the Law of the Sea insists on it—to keep these disputes from flaring up or at least to stop them from getting worse. Due regard is one way to settle disagreements, and the drafters of the Convention knew these kinds of conflicts were bound to come up.

Judge Waryoba, in his dissent, put it simply: if you're operating in another country's exclusive economic zone, you've got to respect the coastal state's economic interests. That means any ship flying your flag needs to follow this rule too. But there's a big question here that no one really answered: Is refueling vessels in someone else's exclusive economic zone actually against the rights of the coastal state? It's hard to say yes, considering the coastal state's main privileges are tied to making money from the resources in the zone—fish, oil, you name it.

Still, when you look at Guinea's situation, a lot of its income comes from refueling fishing boats in the area. So if someone's supplying fuel to these boats without Guinea's okay, you could argue they're not showing enough respect for Guinea's rights and interests.

3.2.4 Chagos Marine Protected Area Arbitration 2015 (Mauritius v. Britain)

The Chagos Marine Protected Area Arbitration stands out as the key case for interpreting this concept in international law. The Chagos Archipelago, under British control, became the center of the dispute. In 2010, the UK government set up a marine protected area there, banning most fishing to safeguard certain species and the area's unique ecosystem.

The problem? They did all this without talking to Mauritius, even though Mauritian fishers had a long history in these waters, and fishing was a big deal for their economy. So, Mauritius took the issue to the Permanent Court of Arbitration, asking for a tribunal under Annex VII to the Convention on the Law of the Sea. The tribunal reached its decision in 2015.

Mauritius argued that Britain ignored its rights by creating this protected zone. The country insisted that the UK should have sat down for serious talks first, especially about fishing rights, before rolling out any new rules or restrictions.

Basically, Britain was supposed to show "due regard" for Mauritius' rights—to make sure the new rules didn't mess with Mauritian access to fisheries (RIAA, 2015: Para.471). The UK pushed back, saying "due regard" just means thinking about the other side's interests, nothing more. They didn't believe it should actually affect their rights (RIAA, 2015: Paras.475-476).

The arbitral tribunal listened to both sides and pointed out that "due diligence" doesn't come with a strict, universal rule in international law. It depends on the specifics of each case. The tribunal didn't say Britain had to avoid every action that might touch Mauritius' rights. But the UK wasn't free to ignore those rights, either. They had to weigh up several things: how important Mauritius' rights were, the possible harm caused by the UK's move, the goals behind setting up the protected area, and whether there were other ways the UK could protect the environment without hurting Mauritius.

Britain didn't really consider these points—they just went ahead and set up the protected area. That didn't line up with what "due diligence" demands. The Court also made it clear: in most cases, you can't properly consider all these factors without actually talking to the other country involved (RIAA, 2015: Para.519).

The Court pointed to the talks between the UK and the US as a good example of how proper consultation should work, especially when due diligence matters. The US ran a naval base in the Chagos Islands, so any rules meant to protect the marine environment could get in the way of their military operations.

To address this, the British government kept reaching out to the US—they organized meetings at different levels, from experts all the way up to senior officials. The UK shared all sorts of details about their plans to protect the area's marine environment. They also reassured the Americans that creating a protected zone wouldn't mess with US military activities, and they promised to make things right if the US ever felt otherwise.

The Court said the British really did take US concerns seriously. The UK tried to balance what the US wanted with its own plans to set up a marine protected area (RIAA, 2015: Para.528). But when it came to Mauritius, things looked different. The UK skipped over the kind of real consultation they'd promised. Despite saying they'd share more information and hold more talks, the UK went ahead and declared the protected area without proper bilateral discussions (RIAA, 2015: Para.530-531). The standard of due diligence meant the UK should have consulted Mauritius too, and found a fair balance between their interests.

Instead, the UK didn't provide accurate information or keep Mauritius in the loop. They even created the expectation that they wouldn't act alone, but then did just that. All of this showed they didn't stick to their commitment to proper consultation (RIAA, 2015: Para.534).

3.3 The concept of due diligence in space law

Courts don't really play a big part in space law. So far, no international court or tribunal has actually decided a space law dispute. What we do have are a few domestic court cases that help guide how people interpret and apply international space law. But when it comes to rules like due diligence, there's no legal precedent to lean on. So, for now, let's stick to the space treaties themselves.

In this corner of international law, due diligence brings both negative and positive duties. Negative duties mean states have to avoid certain actions—like making sure their space activities don't contaminate outer space or mess up Earth's environment. That's a clear commitment spelled out in Article 9 of the Outer Space Treaty.

On the flip side, states have positive obligations, too. They need to:

1. Study and experiment so they don't end up polluting outer space.
2. Investigate and test so they don't damage Earth's environment with stuff brought in from space.
3. Talk things through with other countries before doing anything that could interfere with someone else's space activities. (Mineiro, 2008: 333)

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Now, the duty to pay "due regard" in space law isn't as clearly defined as it is in the law of the sea. Still, courts' interpretations of due diligence at sea can give us some clues for space.

Here's the thing: In space, states' rights and powers overlap. No country gets special treatment. Each one has to strike a balance between its own plans and the interests of others. That means weighing risks, possible losses, and alternatives before going ahead with any space activity.

The most important treaties here are the 1967 Outer Space Treaty and the 1979 Moon Agreement. Both lay out these obligations pretty clearly. Let's take a closer look at what they say.

3.3.1 The 1967 Outer Space Treaty

After the 1958 Geneva Conventions, space law picked up a lot from those rules. Article 9 of the Outer Space Treaty pretty much repeats what paragraph 6 of the earlier Declaration of Legal Principles said: countries need to respect each other's interests when it comes to space activities. That's the heart of it. And, according to some experts, this goes hand in hand with the idea that freedom in outer space—outside the atmosphere—doesn't mean you get to do whatever you want.

Just because a country was first in space doesn't give it special rights. It's not a free pass, and it never was (Aminzadeh, 2012:194). Freedom up there doesn't mean you can pollute or run experiments that cause harm, either (Ziyaei-Begdali, 2016:374). Space, like the open sea, belongs to everyone. No country gets dibs on any part of it.

So, every country has to make sure its activities in space don't mess with what others are doing—or what they might do in the future. If there's a chance one country's actions could affect another, they're supposed to talk it out. That's actually spelled out in Article 9, too.

If a country thinks something it wants to do in space might interfere with someone else's activities, it has to reach out and consult with them first. The same goes the other way—if you think another state's plans could get in your way, you can ask for talks. That's the basic rule: talk before you act, especially if there's a risk of causing trouble for others. (OST, 1967: art. 9)

3.3.2 The 1979 Moon Agreement

The Outer Space Treaty set the ground rules for how countries act on the Moon and other celestial bodies. Article 2 made it clear: international law and the UN Charter apply in space, and countries have to respect each other's interests up there. The Moon Agreement from 1979 took things further. Its Article 3 said that when exploring or using space, we need to consider not just our own interests, but also those of future generations. Article 15, paragraph 3, insisted on respecting the rights and interests of all countries when they settle space disputes.

When they talk about "due regard for future generations," what they mean is simple: today's actions shouldn't ruin the chances for peaceful space activities tomorrow. Future generations deserve the same opportunities as we have now. This idea covers everything from mining resources on the Moon to investigating crimes in space.

One of the biggest challenges is space debris. We're talking about bits and pieces—some tiny, some larger—that end up in orbit and just float there, unused. Don't let their size fool you. These objects zip around the Earth at incredibly high speeds, and even the smallest fragment can punch a hole through a satellite or a spacecraft. That's why countries need to keep improving their space programs to cut down on the junk they leave behind.

The problem's only gotten worse with anti-satellite weapon tests. In 1984, the US Air Force shot down one of its own satellites with a missile launched from an F-15 fighter. China followed in 2007 with its own anti-satellite missile test, and the US did it again in 2008, this time from a warship. Russia joined in 2021, and India's also developed these weapons. Each of these tests created more debris, and now, some countries are starting to worry. More debris means more danger for everyone's satellites. Because of this, the US government announced in 2022 that it would stop testing anti-satellite weapons. After that, Canada, New Zealand, Japan, South Korea, Germany, and the UK also pledged to end these tests. The hope is, if more countries follow, maybe we'll have a cleaner, safer space for everyone—now and in the future.

4. Due diligence as a general legal principle

A lot of countries have signed air, space, and maritime treaties that require them to act with due diligence. States have generally stuck to this idea, following the spirit and goals of those agreements. These treaties clearly lay out the obligation, and international courts have backed this up, treating due diligence as part of international law (see ICJ Rep, 1974: 96).

So, really, due diligence has become a standard expectation in air, space, and maritime law (Larsen, 2009: 404). Some scholars like Lyall and Has have asked if international law has changed, but the core idea stands: general legal principles can come from similarities between countries' domestic laws or from what the international system itself needs. But here's something interesting: most domestic legal systems don't use "due diligence" the same way international law does. Instead, you'll find rules about responsibility, which are related but not quite the same. Sometimes, domestic laws have to sort out clashes between personal and public rights, and their solutions aren't always what you'd call "due diligence." This principle, called "due regard," doesn't show up everywhere in international law, but that hasn't stopped it from developing into a general legal principle. Take non-harm, for example—it's a core idea in international environmental law. In humanitarian law, you see principles like non-injury and avoiding unnecessary suffering. General legal principles step in when specific rules are missing, offering guidance so that legal gaps don't leave problems unsolved.

The first sense of "due regard" is basically just paying attention, so it's not really a general principle. But in another sense, it's tied to the equality of states—meaning, every state has equal rights, and these rights help prevent arguments from getting out of hand.

In maritime law, conflicts can easily crop up between states over various regions of the sea. The relevant conventions spell out who can do what and where, laying out rights and responsibilities in pretty clear terms. Sometimes, though, you just can't find matching rights or interests on both sides.

Now, space law takes a different approach. Here, due diligence is seen as necessary everywhere—no matter what the activity or where it's happening in space. Because space treaties apply so widely, due diligence has basically become a general requirement for all states. But unlike maritime law, a lot of space activities aren't even possible with today's technology, and the rules don't get very specific. There just aren't enough details yet to really pin down the limits and conditions for what states can do in space.

The idea behind freedom of activity in space sounds simple: explore and use space, but always for the good of everyone. That's the core rule. Still, space law isn't packed with clear rules—there's a lot we

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just don't know yet about what people might do up there or what could happen next. So, we need a guiding principle, something broader than just saying "do whatever you want." We need something that keeps countries from stepping on each other's toes and keeps space activities focused on benefiting humanity. That's where due diligence comes in. It's become a kind of catch-all principle for space law.

When people or countries do things in space, they have to think about the bigger picture. For instance, you shouldn't take up more space than you need, whether you're exploring or using resources. If you hog too much room, you mess things up for everyone else trying to launch satellites. Space isn't infinite when it comes to usable orbits. Old, dead satellites floating around in low-Earth orbit can smash into new ones, especially when a country's "sky" above gets crowded (Kingston, 2016: 191). And think about small countries. Sometimes their territory is so tiny that getting a satellite up without crossing someone else's airspace is almost impossible. It's even worse if the area above them is already jam-packed with satellites. Different orbits shift around, but there's only so much space to go around (Bittlinger, 1991: 126, as cited in Hacket, 1994: 100). So, we need everyone to show some restraint, plan ahead, and act with the world in mind. That's really what due diligence is all about in space law.

5. Due diligence and due care

People often mix up "due diligence" with something called "due care" in international law. They sound alike, but they aren't quite the same. Due care comes from the law of international responsibility. Basically, when a private person—let's say, a citizen—does something that connects back to their country, the state has to make sure that person's actions don't break international rules. You mostly see this idea pop up in environmental law. Think about companies or individuals causing environmental harm. If a private actor creates damage, the state isn't automatically on the hook. The state only gets blamed if it didn't exercise due care in the first place.

This rule is clear when it comes to private sector activities, but it can also apply to the cross-border actions of states themselves. Still, it's most obvious when we talk about governments overseeing what companies and people do.

If there's no rule requiring states to supervise, their territorial sovereignty gives them free rein inside their borders. But that means they also have to pay for any damage inside their territory that affects another country—like if someone damages a foreign embassy.

Here's where due diligence comes in. It puts limits on a state's sovereignty and says, "You need to take steps to stop problems before they start." But at the same time, if the state actually tries to follow due diligence, it can't be blamed just because something bad happened. So, due diligence doesn't force a state to guarantee a perfect outcome. Instead, it pushes the state to set up the right laws, licensing systems, and monitoring for private actors. It's a promise to try, not a promise to succeed.

That's why due care and due diligence look similar. Neither one demands the state to act without thinking. Both expect the state to find a balance between protecting its own interests and respecting the rights of other countries. But at the end of the day, it's about honest effort, not guaranteeing the result.

Sometimes, due diligence works both ways. It's not just big companies or governments — even private individuals can be responsible. Take international investment, for example. Before putting money into another country, investors need to actually understand what they're getting into. They have to look at local laws, get a feel for the environment, and think about the risks. That's not just good business sense — it's a legal expectation. People see this as both a practical step and a legal obligation (Krieger et al., 2020: 280). So, it's not only the host country that needs to protect the investment. The foreign investor also has to take steps to keep their capital safe. And if they don't, especially if it's by their own choice, they lose the protection offered by most bilateral investment treaties (Krieger et al., 2020: 281).

There's another connection here: both due diligence and these obligations sit under primary rules in international law. Due diligence isn't just a suggestion. It creates real duties — some things states must do, and other things they must avoid. If a state ignores these duties, they're on the hook under international law.

Now, due diligence also pops up when we talk about secondary rules. It helps decide when a state is actually responsible for something that went wrong. But, funny enough, when the International Law Commission drafted its articles on state responsibility, they barely mentioned due diligence at all — it only came up once, tucked away in a commentary about who gets blamed for what (ILC, 2001: 34).

Still, most experts see due diligence as a core rule of international law (Ollino, 2022: 187). Basically, it's about what a state actually does — the steps it takes to manage the actions of people or companies on its territory. That can mean passing laws, keeping an eye on business, and respecting the relationship between different countries as equals (Koivurova, 2010: Para.2).

Even though the rules are technically separate, there are times when due diligence is exactly what's needed (Ollino, 2022: 129). Imagine a country fails to keep tabs on offshore drilling by companies based there, and that leads to pollution — maybe it wipes out fish that people from another country rely on. In that case, the state didn't do its job, and it's responsible for the harm.

What counts as "enough" action — what's really appropriate — depends on the situation (Ollino, 2022: 129, 167). The bar isn't always the same, either. Developed countries might be expected to do more than developing ones (Koivurova, 2010: Para.40). It's all about context and what's reasonable in each case.

6. Conclusion

The duty to pay due regard is a newer rule in international law. You see it pop up in both space law and the law of the sea. When it comes to the seas, courts and treaties have wrestled with what this actually means, trying to nail down its details.

Looking at international law, there are really two meanings here, each with its own level of attention. First, due regard means you have to treat something as important when making decisions or taking action. It's a factor you just can't ignore. Second, due regard is about recognizing the rights and interests that might get affected by what a State does, and then finding a balance between everyone's interests.

In that first sense, it's simple: you need to factor something into your decisions. In the second, things get trickier—you have to balance the rights and interests of two or more States. Whenever several States hold rights, each one has to consider how its own actions touch on the rights and interests of the others, and try to avoid stepping on anyone else's toes more than necessary. If you share a resource, everyone faces some limits because of everyone else, but due regard

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isn't about banning use altogether. Instead, it sets a line for how much you can affect others, not whether you can affect them at all.

How much weight you give to each side depends on the details of the situation and how important these interests are for the States involved.

It's also important to tell the difference between States in general and those directly affected by an activity. Article 9 of the Outer Space Treaty makes this clear. If a country thinks its space actions are interfering with another country's activities, it has to start talks with them. And if a country thinks someone else is interfering with its space work, it can ask for consultations. Put simply, the State taking action has to make sure it's not disrupting others, and if there's a risk, it needs to talk things out. But here's the problem: with so many States active in space and not always sharing what they're up to, it's tough to know exactly what's going on or how much interference there really is. You can't expect a State to investigate every possible activity happening now or soon, all over the world.

The treaty says that if a country thinks another country's space activities might get in the way of its own, it should ask for a consultation. When people talk about "due regard," what they really mean is finding a fair balance between the rights and interests of everyone involved. You can't do that unless you actually understand what matters to the other side.

So, in practice, showing "due regard" usually means you have to make a real effort to communicate and listen. Now, it's easy to mix up "due regard" and "due diligence." They sound alike and sometimes show up in the same situations, but they actually mean different things. "Due regard" is about how countries treat each other when their rights or interests might clash — it's a basic obligation between states. On the other hand, "due diligence" is about the steps a country takes to avoid being held responsible for what its citizens do.

Some people say due regard is more of a secondary rule in international law, working behind the scenes, while due diligence is a primary rule — break it, and your country is on the hook. In the law of the sea, due diligence gets mentioned a lot in different treaties, but honestly, it's not quite strong enough there to count as a universal legal principle. But space law is different. The rules are still new and not all that detailed, so due diligence actually steps up and acts like a basic principle everyone follows. Space is a truly international zone — every country has the same rights up there. That's not how it works at sea, where complicated national and international rules overlap. So in space law, "due regard" really does stand out as one of the core principles.

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