



MARMARA ÜNİVERSİTESİ MARMARA UNIVERSITY  
ULUSLARARASI İLİŞKİLER RESEARCH CENTER FOR  
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# MURCIR Analiz

## Res Communis: A Race to Secure the Future of the Freedom of Navigation at Seas in Crises

*Freedom of Navigation (FoN) is vital to global trade and security, forming the foundation of the Liberal International Order. While codified under the United Nations Convention on the Law of the Sea (UNCLOS), FoN faces growing threats from grey tactics, blockades, and disputed maritime claims. This report examines FoN's evolution, its vulnerabilities, and case studies, such as Russia's blockade in the Black Sea, Houthi disruptions in the Red Sea, and China's operations in the South China Sea. It concludes with policy recommendations for multilateral cooperation and adaptive security strategies to safeguard FoN amid increasing geopolitical uncertainty.*

**Nobuhide Mert Matsumoto**

### How The Concept of Freedom of Navigation Developed?

Freedom of navigation (FoN) at sea has been a cornerstone of the Liberal International Order since World War II, promoting open and unrestricted sea lines of communication (SLOCs). Hugo Grotius framed it as humanity's shared right (res communis) to use the seas for trade and mutual benefit. For centuries, FoN upheld the principle of open seas, largely free from hegemonic interference, until Western notions of sea power began reshaping this dynamic. Alfred Thayer Mahan linked control of sea lines of communication (SLOCs) to global hegemony, transforming the seas' political structure as states sought to dominate chokepoints like straits and canals. From the 1500s, FoN became tied to maritime hegemony, serving the interests of dominant powers and their allies. This required a hegemon to be both benevolent – facilitating sea use and protecting aligned states – and coercive – projecting power and restricting rivals. Maritime hegemony thus secured the seas under an agenda aligned with its system, often shaping FoN to fit its influence.

Since the 1500s, maritime hegemony has evolved through the Spanish, Dutch, British, and American eras. In the 16th century, Spain's strict sea control prompted strategies like guerre-de-course – state-backed privateering to disrupt hegemonic trade routes – adopted by the French in the 18th century and later by the Germans until 1945. The British, facing French challenges, redefined FoN as a civic right, culminating in the 1856 Paris Declaration to universalize its protection. Efforts continued through the League of Nations and Wilsonian Principles, but FoN's development and enforcement consistently relied on the coercive power of the maritime hegemon.

### **How Governance of Seas Changed with the UNCLOS?**

In the post-WWII order, the U.S. assumed the role of protecting FoN, a commitment that had drawn it into two world wars. Under the U.S.-led Liberal Order, FoN was treated as almost sacrosanct. Despite challenges like the Tanker War and piracy, the U.S. and its coalition safeguarded the seas. However, FoN underwent significant changes, as Geoffrey Till noted, due to factors like the reduced role of navies with nuclear weapons, decolonization, privatization of maritime logistics, and new communication and transport modes, such as airplanes and the Internet. These shifts lessened global reliance on sea power and Western maritime capabilities. The signing of UNCLOS marked a pivotal moment in maritime governance, introducing legal frameworks that reshaped coastal control and Exclusive Economic Zones (EEZs). Article 17 upheld the right of innocent passage through territorial seas, reinforcing FoN, while Article 56 granted coastal states primacy over economic and scientific activities within EEZs, balancing sovereignty with FoN preservation. While UNCLOS institutionalized FoN, its enforcement often depended on coastal states, creating grey areas in implementation. The territorialization of waters and EEZs has also enabled hybrid and grey zone activities, complicating maritime dynamics. By curbing hegemonic influence and boosting coastal state control, UNCLOS has introduced a more uncertain era for FoN.

### **How Guerre-de-Course Returned with Presence versus Intimidation?**

Following the Tanker War, the relevance of guerre-de-course diminished. Historically used by rising powers to challenge maritime hegemony, the strategy faded by the 21st century. Interdependence, economic growth, and trade now serve as key deterrents, discouraging great powers from targeting commerce. For example, China's security policies emphasize open SLOCs over such tactics. Douglas Peifer noted that blockades, once tools of weaker states against stronger ones, have become instruments of hegemonic powers, further underscoring this shift. The decline of traditional guerre-de-course strategies stems from diversified transportation methods and the challenges of sustaining a naval presence. During its 2022 invasion of Ukraine, Russia blockaded ports like Odessa and Mykolaiv and deployed ships, including the cruiser Moskva, near Snake Island. However, predictable operations made the Moskva vulnerable, leading to its destruction by Ukrainian missiles. Following losses, Russia reduced its presence, lifted the blockade, and accepted the Turkish-mediated Black Sea Grain Deal. This underscored the difficulty of enforcing blockades through direct presence. Nevertheless, guerre-de-course has evolved into subtler forms, relying on intimidation rather than prolonged naval deployments.

### **How Russia used Grey Guerre-de-Course?**

After lifting its blockade on Ukraine, the Russian Navy adopted a grey zone strategy. During the Grain Deal, Russia used long-range strikes to target civilian ships and Ukrainian port facilities, deterring shipping companies from operating in Ukraine. In July 2023, Russia withdrew from the deal, declaring all ships bound for Ukraine hostile. Although these threats were not fully executed and lived short, many shipping companies avoided Ukraine, leading to a sharp decline in grain exports during the critical 2023 harvest, as reported by the BBC. Ukraine countered by creating alternative grain routes through NATO partners' waters and using maritime unmanned surface vehicles (MUSVs) to target the Russian Black Sea Fleet. While Russia reduced its naval presence, it intensified long-range strikes on Ukrainian ports, aiming to pressure Ukraine into negotiations on Russia's terms and exploit emerging markets to strengthen its position.

### **How Houthis and Iran use Grey Guerre-de-Course?**

Iran and the Houthis employed intimidator guerre-de-course tactics in the Strait of Hormuz and the Red Sea from 2020 to 2024. In late 2023 and 2024, after Israeli operations in Gaza, the Houthis launched a widespread campaign using long-range missiles, MUSVs, and drones to target civilian ships. While they claimed to target vessels linked to Israel, their attacks spanned a broad range of ownership, cargo, insurance and crew. These actions paralleled Iranian operations in the Strait of Hormuz, indicating a coordinated maritime campaign in the Middle East's critical chokepoints. The escalating threats led the U.S. and EU to form separate maritime coalitions to protect shipping. Despite U.S. and allied airstrikes, Houthi attacks persisted, deterring civilian shipping and increasing logistical and human costs. According to Lloyd's Shipping Company, the number of container ships rerouting via the Cape of Good Hope increased from 40 to 130, underscoring the significant risks guerre-de-course and maritime grey activities – even without naval presence – pose to the concept of FoN.

### **How China uses Grey Guerre-de-Course?**

The Asia-Pacific region, housing critical global trade arteries, faces increasing tensions over Freedom of Navigation (FoN). China, relying heavily on global trade, has enhanced its naval presence and coercive capabilities, particularly through quarantine and blockade capabilities. As a major player in maritime trade, shipbuilding, and insurance, China holds a strategic advantage over the West, its regional allies, and Taiwan. China continues its artificial island construction and intimidation campaign in the South China Sea using its Maritime Militia and Coast Guard. In its naval drills aimed at Taiwan, China has used fleet dispersions, combined with the PLAN, Air Force and Rocket Forces, to blockade Taiwan and prevent U.S. and Japanese support from reaching the island. China's growing naval partnership with Russia, including joint drills in the First Island Chain, is aimed at creating a shared area-denial/anti-access framework.

Beyond conventional military threats, China employs grey and hybrid tactics with global reach. Its deep ties with the local and global shipping industry have raised concerns, as evidenced by the October 2024 incident where a Chinese cargo ship damaged a submarine fibre-optic Internet cable linking Finland and Germany. While China dismissed the event as an accident and blocked criminal proceedings, this incident underscores China's expanding grey capabilities, with the Western response remaining largely constrained.

### **How to Protect Freedom of Navigation in an Age of Geopolitical Crisis?**

These developments show that Freedom of Navigation (FoN) is increasingly threatened, not just by traditional *guerre-de-course* but through subtler methods. Legal changes, particularly through UNCLOS, have reinforced this trend. Despite these challenges, the seas remain vital for global trade, with the shipping serving as the backbone of the global economy. As a result, safeguarding FoN is critical, and there are several strategies to ensure its protection.

Firstly, the legal ambiguities in UNCLOS should be addressed through deterrent and binding measures, laws, and institutions. International organizations, states, and non-state actors must recognize the significance of FoN. State groups and coalitions should reach a consensus to refrain from using *guerre de course* as a political tool. Secondly, if this consensus fails, the U.S. and its allies must continue to uphold maritime order in cooperation with coastal and partner nations. Thirdly, actors resorting to *guerre-de-course* or grey zone/hybrid *guerre-de-course* tactics should be isolated and prevented from achieving political goals through such methods. Once a state succeeds in advancing its interests through intimidation, protecting FoN becomes more difficult. Fourthly, maritime war and strategy education should go beyond conventional conflicts and include these grey activities. Lastly, multinational companies and maritime organizations must collaborate with states and international institutions to ensure the safety and well-being of all maritime seafarers, offshore workers, ships, and the environment. The seas are a shared heritage, and their use is a common right for all of humanity. Despite increasing scrutiny on this shared future, there remains hope for a better and more inclusive governance of the seas that benefits the global community as a whole.

### About the Author

**Nobuhide Mert Matsumoto**, is a PhD Candidate from Marmara University. He completed his masters degree in Marmara University, Institute of Social Sciences, International Relations. His master's thesis was on sea power and great power competition. He is a bachelor graduate from Marmara University Communication Faculty Journalism. He did double-major in Political Sciences and International Relations Department. He participated in various international exchange programs and currently works on various international projects. He works on war and strategic studies, defence policies, international security, digital politics, maritime strategy and rising-hegemonic power relationship. He speaks Turkish, English, Japanese and Russian.

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