

Legal Challenges and Constraints on Military Exploitation by Third States in Exclusive Economic Zones under the Law of the Sea

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ABSTRACT

The exclusive economic zone is recognized as one of the seven maritime zones under the Law of the Sea. It establishes specific conditions for exploitation under the jurisdiction of coastal states. Consequently, the Convention on the Law of the Sea delineates the rights of both coastal states and third states regarding exploitation. However, the Convention lacks a clear framework for military exploitation, leading to divergent interpretations among states. Although Article 58 of the Convention on the Law of the Sea addresses the passage of ships, it remains unclear how military exploitation by non-coastal states is regulated in this zone. In this context, maritime diplomacy plays a crucial role in fostering bilateral or multilateral cooperation for military exploitation in this maritime zone, preventing disputes, and resolving conflicts arising from such activities. The findings of this study suggest that the Convention on the Law of the Sea prohibits military activities in the exclusive economic zone due to their non-peaceful nature and their harmful effects on the marine environment. If third states fail to adequately respect the rights and interests of coastal states, appropriate restrictions should be imposed.

Keywords: 1982 Convention; Exclusive Economic Zone; Third State; Military Activities; Coastal State

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I. Introduction

Since the beginning of the 21st century, third states have consistently deployed their ships to the exclusive economic zones of coastal states for data collection, raising significant security concerns for these coastal states. In response, coastal states have deployed their own ships or aircraft to issue verbal warnings to third-state vessels or have sent diplomatic notes requesting reasonable explanations from third states, yet these measures have had little impact on their military activities.¹ In recent years, numerous incidents and disputes have arisen involving military activities by ships or aircraft of third states within the exclusive economic zone of a coastal state. Some of these incidents have been so severe that they resulted in the death of an individual and the emergency landing of a third-state aircraft on the territory of another coastal state.²

The exclusive economic zone (EEZ) encompasses 90% of exploitable fishery resources, 78% of oil reserves, and 10% of manganese nodules, and it includes some of the world's most critical shipping routes.³ The 1982 United Nations Convention on the Law of the Sea (hereinafter UNCLOS) defines the exclusive economic zone in Article 55 as follows: The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to a specific legal regime established in Part V, under which the provisions of this Convention govern the rights and jurisdiction of the coastal state and the rights and freedoms of other states in the zone.⁴

The exclusive economic zone was established under UNCLOS to grant coastal states greater control over resources within 200 nautical miles of their shores.⁵ Although Articles 56 and 58 of UNCLOS delineate the rights and obligations of coastal and third states, their silence on military activities has fueled disputes and tensions among states. Consequently, achieving mutual understanding among nations is essential to prevent serious incidents related to this issue. Moreover, resolving disputes over military activities conducted by third states within the exclusive economic zone underscores the significance of this matter. Additionally, given the presence of third states' naval forces in Iran's exclusive economic zone in the Persian Gulf and the Sea of Oman, determining the permissibility of such activities is critical to Iran's security interests, independence, territorial integrity, and sovereignty.

This study seeks to address the following questions: Considering Article 58 of UNCLOS, what limitations does the Convention impose on the military activities of third states within the exclusive economic zone of a coastal state? Furthermore, what methods should be

- 1 Dutton, Peter, (2010), *Military Activities in the EEZ: A U.S.-China Dialogue on Security and International Law in the Maritime Commons*, CMSI Red Books, 37- 40.
- 2 Moritaka Hayashi, 'Military Activities in the Exclusive Economic Zones of Foreign Coastal States' (2012) 27(4) *International Journal of Marine and Coastal Law* 795, 795–96.
- 3 Tiziana Melchiorre and Tomas Pléta, 'Military Activities in the Exclusive Economic Zone: A Contentious Issue of the International Law of the Sea' (2018) 8(2) *Journal of Security and Sustainability Issues* 127, 127–42.
- 4 United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS) art 55.
- 5 Z Sun, 'Introduction' in Z Sun (ed), *Finding a Balance in the Exclusive Economic Zone: Conflict and Stability in the Law of the Sea* (Cambridge University Press 2025) 1–10.

employed to achieve the peaceful settlement of disputes on this matter? To answer these questions, this study first provides a brief overview of the rights and obligations of coastal and third states within the exclusive economic zone. It then examines the perspectives of states that support and oppose military activities in this zone. Subsequently, the legal limitations on military activities in the exclusive economic zone are analyzed, followed by an evaluation of methods for the peaceful resolution of disputes regarding this issue.

II. Overview of the Regulations for the Exclusive Economic Zone in UNCLOS

The exclusive economic zone extends beyond and adjacent to the territorial sea, encompassing up to 200 nautical miles from the baseline of the territorial sea. The concept originated from the practices of Latin American countries after World War II, when, in 1947, Chile and Peru claimed such an extent to assert full sovereignty.⁶ The legal regime of the exclusive economic zone is regarded as an innovation of the Third United Nations Conference on the Law of the Sea. This zone has enabled coastal states' jurisdiction to extend over 37% of the world's oceanic waters. It holds a unique status, as articulated in Article 55 of UNCLOS, where it is defined as a distinct area with its own legal regime.⁷ The following section provides an overview of the rights and obligations of coastal states and other states within the exclusive economic zone, offering a comprehensive understanding of the legal framework established for this zone under UNCLOS.

A. Rights and Obligations of the Coastal State in the Exclusive Economic Zone

Article 56 of UNCLOS delineates the rights and obligations of the coastal state in the exclusive economic zone. The coastal state has: (a) sovereign rights for the exploration, exploitation, conservation, and management of natural resources, both living and non-living, in the water column, seabed, subsoil, and the waters above, as well as for other activities related to the economic exploitation and exploration of the zone, such as energy production from water, currents, and wind; (b) jurisdiction, in accordance with the provisions of this Convention, over: (1) the construction and use of artificial islands, installations, and structures; (2) marine scientific research; (3) the protection and preservation of the marine environment; and (c) other rights and obligations as provided for in this Convention. 2. In exercising its rights and fulfilling its obligations under this Convention in the exclusive economic zone, the coastal state must consider the rights and obligations of other states and act in a manner consistent with the provisions of this Convention. 3. The rights specified in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.⁸

According to paragraph 1 of Article 56, the coastal state holds sovereign rights for the economic exploration and exploitation of the zone, including activities such as energy production from water, currents, and wind. Consequently, the concept of the exclusive economic zone encompasses the airspace above it. The coastal state's sovereign rights over

6 Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge University Press 2019) 149–54.

7 Seyed Ziaaddin Madani, 'Geographical Scope of the Legal Regime on Marine Scientific Research in Different Marine Areas Under the UN Convention on the Law of the Sea (1982)' (2013) 16 *Oceanography* 113, 113–17.

8 UNCLOS art 56.

the exclusive economic zone are exclusive, meaning that other states cannot conduct operations in this zone without the coastal state's consent.⁹ Evidently, Article 56 explicitly grants coastal states jurisdiction over marine scientific research activities within the exclusive economic zone.¹⁰

Article 56 of the Convention highlights a significant conflict regarding the rights, jurisdiction, and duties of coastal states in the exclusive economic zone. This conflict arises between the economic interests of coastal states and the interests of major maritime powers seeking maximum access to these areas. Under Article 56, the coastal state's jurisdiction over marine scientific research in the exclusive economic zone derives from its sovereign rights to explore and exploit resources, as stipulated in the article. Thus, the concerns of coastal states regarding the resources of this region constitute the core of the exclusive economic zone regime.¹¹

It is apparent from Article 56 that the coastal state also possesses legislative and executive jurisdiction to protect the marine environment in the exclusive economic zone. Article 60 of UNCLOS states: "The coastal state has exclusive rights in the exclusive economic zone to establish, authorize, and regulate the construction, operation, and use of: (a) artificial islands; (b) installations and structures used for the purposes specified in Article 56 and other economic purposes; (c) installations and structures that may interfere with the exercise of the coastal state's rights in the zone".¹² Consequently, based on paragraph 1 of Article 60, the coastal state's exclusive right regarding artificial islands is not limited to a specific purpose, whereas installations and structures must serve the specific purposes outlined in paragraphs 1(b) and 1(c) of Article 60.¹³

B. Rights and Freedoms of Third States in the Exclusive Economic Zone

Article 58 of UNCLOS delineates the rights and obligations of other states in the exclusive economic zone. It states that all states, whether coastal or landlocked, enjoy the freedoms specified in Article 87, including navigation, overflight, and the laying of submarine cables and pipelines, as well as other internationally lawful uses of the sea related to these freedoms, provided they comply with other provisions of UNCLOS.¹⁴ Consequently, of the six freedoms enumerated in Article 87, three high seas freedoms—namely, freedom of navigation, freedom of overflight, and freedom to lay submarine cables and pipelines—apply to the exclusive economic zone. However, paragraph 3 of Article 58 mandates that states respect the rights and duties of the coastal state, as well as the laws and regulations adopted by the coastal state in accordance with UNCLOS and other rules of international law,

9 Tanaka (n 6) 163–64.

10 Raul Pedrozo, 'Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone' (2010) 9(1) Chinese Journal of International Law 9, 11–12.

11 Sun (n 5) 1–10.

12 UNCLOS art 60.

13 Sun (n 5) 4–6.

14 UNCLOS art 58.

provided these are consistent with Part V. Unlike the high seas, it is evident that the coastal state exercises jurisdiction over the freedoms practiced in the exclusive economic zone.¹⁵

III. Military Activities of Third States in the Exclusive Economic Zone

One of the less-explored topics in UNCLOS and customary international law is military activity within the exclusive economic zone.¹⁶ The term “military activities” appears only once in UNCLOS, specifically in Part XV, under the optional exceptions to the settlement of disputes between member states, as outlined in paragraph 1 of Article 298.¹⁷ Generally, military activities encompass the operations of warships and military aircraft, the deployment or launching of weapons, and the establishment of missile or satellite bases for surveillance and intelligence gathering in oceanic spaces. Military activities are typically classified into two categories: general military activities and those of an aggressive nature. They can also be categorized based on wartime and peacetime operations. Wartime military activities, such as armed aggression, occur between opposing armed forces. In contrast, peacetime military activities manifest as military exercises. A key criterion for classifying military activities is the level of deterrence they entail. For instance, large-scale naval military activities, such as military maneuvers, pose a significant deterrent threat to the security of the coastal state and often involve the use of destructive military weapons.¹⁸

Military activities can be divided into distinct levels. The first category includes ordinary navigation or flight activities explicitly recognized in the Convention. These military activities are generally non-threatening, lawful, reasonable, and widely accepted. The second category comprises military activities aimed at gathering military intelligence from coastal states, such as intelligence collection, naval force deployment, military exercises, testing of naval weapons, reconnaissance flights by manned or unmanned military aircraft, operations of nuclear submarines, and activities involving unmanned underwater vehicles. These activities carry a high level of deterrence and are often non-peaceful in nature. They pose serious threats and disruptions to the territorial and sovereign security of coastal states and play a pivotal role in warfare.¹⁹

IV. Perspectives of Supporters and Opponents of Military Activities in the Exclusive Economic Zone

Military activities by third states in the exclusive economic zones of coastal states have escalated due to the expansion and enhancement of naval forces and technological

15 Geneviève Bastid Burdeau, 'The Respect of Other States' Rights (Freedom of Navigation and Other Rights and Freedoms Set Out in the LOSC) as a Limitation to the Military Uses of the EEZ by Third States' (2019) 34(1) *International Journal of Marine and Coastal Law* 117, 117–20.

16 George V Galdorisi and Alan G Kaufman, 'Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict' (2002) 32(2) *California Western International Law Journal* 253, 254–57.

17 UNCLOS art 298(1)(b).

18 Tiziana Melchiorre and Tomas Pléta, 'Military Activities in the Exclusive Economic Zone: A Contentious Issue of the International Law of the Sea' (2018) 8(2) *Journal of Security and Sustainability Issues* 127, 127–42.

19 Ya-nan Qu and Xuan Xu, 'International Law Analysis of US Military Survey Activities in China's EEZ' (2022) 19(10) *US-China Law Review* 458, 464–68.

advancements in many countries. This rise in military activity has led to numerous disputes regarding its scope within the exclusive economic zone. A group of strategically located countries, including Iran, China, India, Brazil, and Malaysia, among others, condition military activities by other states within their exclusive economic zones on prior permission and have prohibited such activities. Conversely, countries such as the United States, the United Kingdom, the Netherlands, Germany, and Italy, among others, oppose this stance. The following section examines the positions of countries supporting and opposing military activities in the exclusive economic zones of coastal states.

A. The Positions of Maritime Powers on Military Activities

The United States, a prominent maritime power, asserts that such activities are unequivocally part of the freedoms of navigation. According to the United States, intelligence gathering is explicitly addressed only in Article 19 of UNCLOS, which pertains to innocent passage, with no equivalent provision in Part V of the Convention concerning the exclusive economic zone. Consequently, such activities may occur without the coastal state's consent under Article 58, paragraph 1, of UNCLOS. From the U.S. perspective, military activities are legitimate, non-aggressive, and consistent with the United Nations Charter. Furthermore, the United States contends that intelligence gathering does not violate the prohibition on the use of force under Article 301 of UNCLOS. Scholars generally argue that if the United States' interpretation is accepted, any military activity could proceed without restriction by coastal states, potentially undermining the regime established by UNCLOS.

Similarly, the United Kingdom, Germany, Italy, and the Netherlands—also regarded as maritime powers—maintain that military maneuvers are a traditional component of the freedoms of navigation and that UNCLOS imposes no specific conditions on this matter. These countries have issued declarations affirming their steadfast position that military activities, such as aircraft takeoffs and landings and maneuvers in the exclusive economic zone, are historically established and preserved under Article 58 of UNCLOS.²⁰

In contrast, China, an emerging maritime power, contends that military activities beyond navigation and overflight threaten its national security and are inconsistent with the peaceful purposes of UNCLOS. China has enacted legislation to this effect. It particularly objects to the United States' espionage activities in and above its exclusive economic zone. Chinese scholars generally assert that hydrographic surveys and intelligence gathering by third-state military ships and aircraft in the exclusive economic zone are not peaceful activities and thus contravene Article 301 of UNCLOS.²¹

B. Analysis and Examination of the Theory of International Waters

The term “international waters” was coined by the United States Navy. It posits that all sea waters, except for the territorial sea of coastal states, constitute international waters where

20 Hayashi (n 2) 801–02.

21 Pedrozo (n 10) 24–25.

freedoms of navigation and overflight are exercised.²² The United States Navy employs the term “international waters” for the exclusive economic zone to undermine the rights of coastal states under UNCLOS and the distinct legal status of the exclusive economic zone.²³ Disregarding or denying the rights of coastal states, or depriving them of their entitled rights, is untenable. This concept lacks foundation in international law, and asserting legal rights akin to those of the high seas within the exclusive economic zone exceeds the scope of the Convention. By advancing this claim, the United States unilaterally expands the boundaries of freedom of navigation, infringing upon the rights and legitimate interests of coastal states and contravening the spirit of the Convention. Moreover, the use of this term conflicts with the United States’ historical practice, notably the Truman Proclamation of 1945 concerning the continental shelf of the Americas.²⁴

C. Positions of Other Countries on Third States’ Military Activities in the Exclusive Economic Zone

Sixteen coastal states—Bangladesh, Brazil, Myanmar, Cape Verde, China, India, Iran, Kenya, Malaysia, Maldives, Mauritius, North Korea, Pakistan, Portugal, Thailand, and Uruguay—have enacted domestic regulations restricting military activities in the exclusive economic zone. Two coastal states, Indonesia and the Philippines, have not implemented such regulations but consistently oppose military activities in the exclusive economic zone.²⁵ Additionally, India, Brazil, Bangladesh, Malaysia, Pakistan, and Uruguay declared, upon signing or ratifying UNCLOS, that military activities—particularly the use of weapons or explosives—in the exclusive economic zone by third states require their consent.²⁶

D. Iran’s Position on the Military Activities of Third States

Iran’s representative signed UNCLOS, but the Islamic Consultative Assembly of Iran has not yet ratified it. In 1993, Iran enacted the Law on Maritime Zones, titled the *Law on the Maritime Zones of the Islamic Republic of Iran in the Persian Gulf and the Sea of Oman*²⁷ (hereinafter Maritime Zones Act), comprising 23 articles. According to some scholars, this represents the most comprehensive maritime legislation enacted in Iran. The Maritime Zones Act, alongside Iran’s interpretative declaration upon signing UNCLOS, delineates the country’s legal position on maritime issues in the Persian Gulf and the Sea of Oman.²⁸

22 Pirouz Mojtabeh-Zadeh and Bahador Zarei, 'Maritime Boundary Delimitations in the Persian Gulf' (2017) 14(2) International Studies Journal 49, 49–66.

23 Qu and Xu (n 19) 461–63.

24 Peter Dutton, Military Activities in the EEZ: A U.S.–China Dialogue on Security and International Law in the Maritime Commons (China Maritime Studies Institute, US Naval War College, Red Book Study No 7, 2010) 37–40.

25 Pete Pedrozo, 'Maintaining Freedom of Navigation and Overflight in the Exclusive Economic Zone and on the High Seas' (2020) 17(4) Indonesian Journal of International Law 477, 483–85.

26 Hayashi (n 2) 800.

27 The Marine Areas Bill of the Islamic Republic of Iran (Marine Areas in the Persian Gulf and the Sea of Oman) was enacted on 30 April 1993 by the Iranian Parliament. It is an important instrument for asserting Iran’s jurisdiction in its marine areas. See Act on the Maritime Areas of the Islamic Republic of Iran in the Persian Gulf and the Sea of Oman (1993) Law of the Sea Bulletin No 24 27.

28 Omran Rasti, 'Military Activities in the Exclusive Economic Zone: From Coastal State Jurisdiction Perspective' (2018) 14(50) Journal of Geopolitical Quarterly 136, 136–67.

Article 14 of the Maritime Zones Act addresses the exclusive economic zone, stipulating that the exploration, exploitation, protection, and management of all-natural living and non-living resources of the seabed, subsoil, and overlying waters, as well as other economic activities such as harnessing water, wind, and marine currents for energy production, fall under the sovereign rights and jurisdiction of the Islamic Republic of Iran. It further asserts that Iran may enact and enforce laws and regulations governing activities including the construction and use of artificial islands, installations, and structures; the laying of submarine cables and pipelines; the establishment of security and safety zones around them; and the conduct of research, protection, and conservation of the marine environment. The term “security zones” has drawn objections from the United States. Iran maintains that, given the numerous oil rigs and heavy shipping traffic in the region, establishing such zones is essential for the security of installations and international navigation.

Article 16 of the Maritime Zones Act prohibits foreign military activities, intelligence gathering, and any actions inconsistent with the rights and interests of the Islamic Republic of Iran in the exclusive economic zone and the continental shelf. Thus, Iran explicitly declares in this article that activities jeopardizing its security are forbidden to foreign forces, underscoring the critical importance of security for Iran. In this context, military exercises or maneuvers could disrupt economic activities in the exclusive economic zone, and consequently, such activities are prohibited.²⁹

Article 17 of the Maritime Zones Act mandates that marine activities, exploration, and scientific research in the exclusive economic zone require permission from the relevant authorities of the Islamic Republic of Iran. Iran asserts that scientific research should be conducted under normal conditions, aimed at enhancing scientific knowledge of the seas for the benefit of humanity, and falls under the coastal state’s jurisdiction. Accordingly, hydrographic research also requires authorization from the coastal state.³⁰ Article 18 provides that the government of the Islamic Republic of Iran will take necessary measures to protect and preserve the marine environment while optimizing the use of living resources and other reserves in the exclusive economic zone and the continental shelf. Consequently, Iran is empowered to enact the requisite laws and regulations. The provisions of the Maritime Zones Act clearly demonstrate that Iran adopts a stringent stance on military activities by third states in its exclusive economic zone, rejecting their presence without permission or compliance with its domestic laws and regulations. Iran views such activities as threats to its security, territorial integrity, independence, sovereignty, and national interests. This position extends to reconnaissance flights by both manned and unmanned military aircraft in its exclusive economic zone.³¹

V. The Limitation of Military Activities in the United Nations Convention on the Law of the Sea

29 Pirouz Mojtabeh-Zadeh and Bahador Zarei, 'Maritime Boundary Delimitations in the Persian Gulf' (2017) 14(2) International Studies Journal 49, 49–66.

30 Act on the Maritime Areas of the Islamic Republic of Iran in the Persian Gulf and the Sea of Oman (1993) Law of the Sea Bulletin No 24 27.

31 Sobhan Tayebi, International Law of the Sea Course Notes (LLM in International Law, Faculty of Law, Islamic Azad University, South Tehran Branch, 2025) (unpublished) 39–44.

Although UNCLOS does not explicitly address military activities in the exclusive economic zone or other maritime zones, its provisions can be invoked to prevent and restrict military activities by third states in the exclusive economic zone. The following section outlines the limitations established under UNCLOS.

A. Restriction for Non-Peaceful Purposes

Article 58 of UNCLOS stipulates that, in the exclusive economic zone, all states—whether coastal or landlocked—shall enjoy the freedoms outlined in Article 87 and other legitimate uses of the sea related to these freedoms, provided they comply with other relevant provisions of the Convention. Furthermore, paragraph 3 of Article 58 states: “In exercising their rights and performing their duties under this Convention in the exclusive economic zone, states shall have due regard for the rights and duties of the coastal state and shall comply with the laws and regulations enacted by the coastal state that are consistent with the provisions of this Convention and other rules of international law, insofar as they do not conflict with this Part”.³²

Article 87 of the Convention establishes the principle of freedom of navigation on the high seas. Paragraph 2 of Article 87 provides that this freedom must be exercised with due regard for the interests of other states, and Article 88 mandates that the high seas be reserved for peaceful purposes. Article 58 extends the freedoms of navigation and overflight to the exclusive economic zone of other states in accordance with Article 87. Consequently, the principle of freedom of navigation in the exclusive economic zone is subject to two conditions for its legitimacy: first, due regard must be given to the lawful rights of other states, and second, it must be exercised solely for peaceful purposes.³³

Military activities by a third state in the exclusive economic zone breach the obligation of due regard. This principle is explicitly enshrined in paragraph 2 of Article 56, paragraph 3 of Article 58, and paragraph 2 of Article 87 of the Convention. Thus, it can be inferred that the principle of due regard is universally recognized and widely applied in practice. Its purpose is to curb the abuse of power by certain states. Military activities by a third state in the exclusive economic zone contravene this obligation. Rooted in the Doctrine Against Abuse of Rights, this principle seeks to prevent and limit the misuse of rights by states. Accordingly, military activities by a third state in the exclusive economic zone without the coastal state’s consent constitute an abuse of rights and a violation of the obligation of due regard under the Convention.

When states exercise their freedoms in the exclusive economic zone, they must have due regard for all the rights and duties of the coastal state, and their actions must comply with the laws and regulations enacted by the coastal state. These obligations extend beyond mere ethical considerations, and their violation may entail state responsibility under international law. Thus, the obligations tied to due regard can be characterized as direct obligations.³⁴ Beyond the due regard obligation, paragraph 3 of Article 58 imposes a substantive duty to

32 UNCLOS art 58(3).

33 Qu and Xu (n 19) 464–66.

34 Rolf Einar Fife, ‘The Obligation to Have Due Regard in the Exclusive Economic Zone: A “Due Regard” of the Sea?’ (2019) 34(1) International Journal of Marine and Coastal Law 43, 45–47.

adhere to the coastal state's laws and regulations, provided they align with UNCLOS and other international legal norms. Consequently, third states must respect the domestic regulations of the coastal state concerning military activities. Following this logic, engaging in military activities that contravene these regulations can be deemed hostile, akin to an unauthorized military territorial incursion.³⁵

Article 301 of the Convention, which emphasizes the exclusively peaceful use of the sea and prohibits the use of force or any action contrary to the principles of the United Nations Charter, effectively restricts military activities in the exclusive economic zone. By examining the term "peaceful uses" in Article 301 alongside the concept of peaceful objectives, it becomes evident that a narrow interpretation applies when assessing UNCLOS provisions in the context of military activities by third states in the exclusive economic zone. Unlike the high seas, the exclusive economic zone constitutes a distinct regime, necessitating consideration of Article 301's provisions. Article 86 of UNCLOS clarifies that the provisions of Part VII, governing the high seas, apply to all parts of the sea not classified as territorial sea, internal waters, or archipelagic waters of a state. Thus, the exclusive economic zone is excluded from the high seas, and the freedoms therein apply only insofar as they are consistent with Part V of UNCLOS. From this perspective, the scope of freedoms in the exclusive economic zone differs from that on the high seas.³⁶ Consequently, the exercise of high seas freedoms by third states in the exclusive economic zone of a coastal state does not appear to be fully governed by Articles 86 and 87.³⁷ Using freedom of navigation and overflight to undermine the sovereignty and security of the coastal state cannot be deemed peaceful. Freedom in the exclusive economic zone is not unbounded; it must be exercised with respect for the coastal state's sovereignty. Hence, a general prohibition on the use of force by third states in the exclusive economic zone of a coastal state appears justified.³⁸

The phrase "other internationally lawful uses" in paragraph 1 of Article 58 of the Convention provides a key basis for third states to justify conducting military activities in the exclusive economic zone of coastal states. To establish that military activities are not legitimate, the nature of legitimate international uses must be clarified. According to the Convention, activities qualifying as "other internationally lawful uses" must relate to the freedoms of navigation and overflight under Article 87. Lawful uses of the sea encompass the exploitation of marine living resources, mineral resources, chemical resources, and other resources. Military activities at sea contravene the Convention's peaceful objectives and do not qualify as lawful uses of the sea. Therefore, coastal states are entitled to limit or prohibit military activities by third states. Accordingly, the obligations of other states toward the coastal state for the legitimate use of the sea include refraining from the use or threat of force, providing prior notification, avoiding damage to the coastal state's resources,

³⁵ Henrique Marcos and Eduardo Cavalcanti De Mello Filho, 'Peaceful Purposes Reservation in the Law of the Sea Convention and the Regulation of Military Exercises or Maneuvers in the Exclusive Economic Zone' (2023) 44(2) University of Pennsylvania Journal of International Law 417, 448–51.

³⁶ Tanaka (n 6) 464–71.

³⁷ Burdeau (n 15) 122–23.

³⁸ Marcos and De Mello Filho (n 35) 442–43.

protecting the environment, avoiding military activities in busy maritime areas, and refraining from military exercises in the exclusive economic zone of the coastal state.³⁹

B. Limitations on Military Exercises

Military exercises or maneuvers (MEMs) in the exclusive economic zone of coastal states must be conducted in accordance with Article 58 and with due regard for the rights and obligations of the coastal states. Consequently, it can be argued that military activities in the exclusive economic zone that impede the lawful exercise of the coastal state's rights and jurisdiction—such as the exploration and exploitation of resources, navigation, and marine environmental protection—are impermissible. When fishing vessels and facilities are present in an exclusive economic zone, safety measures must be implemented to protect human lives and infrastructure from the hazards posed by these activities. Thus, it would be prudent for any third state planning military maneuvers in the exclusive economic zone of a coastal state to consult with that state, recognizing the distinct status of the exclusive economic zone and accounting for humanitarian and environmental considerations.⁴⁰

It should be emphasized that Article 58 must be interpreted restrictively, such that it does not permit third states to conduct military activities in a coastal state's exclusive economic zone without the coastal state's consent. In light of Article 301 of UNCLOS, the coastal state may view military maneuvers by third states in its exclusive economic zone as a threat or use of force.⁴¹

C. Restriction on Military Intelligence Gathering

Military intelligence gathering can take various forms and inevitably raises concerns for the coastal state. The collected information may be classified or unclassified and is typically not disclosed to the public or scientific communities unless it is unclassified or gathered on the high seas. Military maritime intelligence gathering may encompass hydrography⁴², oceanography⁴³, marine geology, and geophysics. Such information is intended for military use or to enhance navigational safety.⁴⁴

Military intelligence gathering is fundamentally indistinguishable in form or content from marine scientific research; thus, it fully falls within the category of marine scientific research. UNCLOS does not provide an explicit definition of marine scientific research. Generally, marine scientific research can be defined as any scientific study or experimental work related to the marine environment, aimed at advancing knowledge.

39 Qu and Xu (n 19) 458–60.

40 Raul Pedrozo, 'Military Activities in the Exclusive Economic Zone' (2021) 97 International Law Studies 45, 59–74.

41 James Kraska, 'Intelligence Collection and the International Law of the Sea' (2022) 99 International Law Studies 89, 89–93.

42 The term 'surveys' relates to activities such as military surveys (gathering information about ocean conditions) and hydrographic surveys (mapping the seabed and coastal areas), usually for navigation and operational purposes. See Pedrozo (n 10) 16–17.

43 'Surveillance' generally refers to the observation and monitoring of activities or conditions, often through sensors or electronic means, and may include intelligence collection. See Pedrozo (n 10) 18–19.

44 Hyun-Soo Kim, 'Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict' (2006) 80 International Law Studies 257, 260–62.

The concept of marine scientific research typically distinguishes between two types: fundamental (pure) research and applied (resource-oriented) research. This distinction traces back to the 1958 Geneva Convention on the Continental Shelf. Fundamental research is characterized as research conducted solely for peaceful purposes, with the objective of enhancing scientific knowledge of the marine environment for the benefit of all humanity. In contrast, applied research is regarded as research directly relevant to the exploration and exploitation of natural resources.

Examples of applied research include chemical oceanographic studies aimed at regulating marine pollution, physical oceanographic research to improve weather forecasting, and marine biological research for managing living marine resources. The distinction between pure and applied research can be assessed by whether the findings are openly published; applied research results typically remain confidential. Nevertheless, under the law of the sea, marine scientific research encompasses both types. Marine scientific research must adhere to four key principles: (1) it must be conducted exclusively for peaceful purposes, (2) it must employ appropriate scientific methods, (3) it must not unjustifiably interfere with other legitimate uses of the sea, and (4) it must comply with all relevant provisions of UNCLOS, including conventions related to the protection and preservation of the marine environment.⁴⁵

Some scholars argue that intelligence gathering by the naval forces of third states extends far beyond marine scientific research. They also contend that the deliberate use of the term “marine scientific research” in UNCLOS was intended to differentiate it from other forms of marine data collection. It should be emphasized that the term “marine scientific research” in Article 56 of UNCLOS is not exhaustive and may encompass all activities involved in military intelligence gathering, serving as an illustrative rather than a definitive concept. The primary distinction between marine scientific research and military intelligence gathering lies in the use of the collected data. Although the data collection tools resemble those used in marine scientific research, the information obtained through military intelligence gathering is intended for military purposes or to enhance the safety of military navigation. Consequently, disclosing this information could jeopardize the national interests, territorial integrity, independence, and sovereignty of the coastal state.⁴⁶

Article 56 of UNCLOS grants coastal states jurisdiction over all marine scientific research activities, including military intelligence gathering. Article 246 of UNCLOS further stipulates those coastal states, in exercising their jurisdiction, have the authority to regulate, authorize, and conduct marine scientific research in their exclusive economic zone and continental shelf in accordance with the relevant provisions of the Convention. Additionally, paragraph 2 of this article mandates that marine scientific research in the exclusive economic zone and continental shelf requires the consent of the coastal state. Paragraph 3 specifies that such research must be conducted exclusively for peaceful purposes and aimed at advancing scientific knowledge of the marine environment for the benefit of all humanity. Moreover, paragraph 8 of Article 246 stipulates that marine scientific research must not

45 Keyuan Zou, 'Peaceful Use of the Sea and Military Intelligence Gathering in the EEZ' (2016) 22 Asian Yearbook of International Law 161, 169–71.

46 Pedrozo (n 10) 28–29.

unduly interfere with the coastal state's exercise of its sovereign rights and jurisdiction as outlined in the Convention. The scope of marine scientific research can be inferred from paragraphs 2 and 3 of Article 246. Under this provision, a coastal state has the right to deny marine scientific research in its exclusive economic zone.⁴⁷

Military intelligence gathering is an activity undertaken to obtain data for operational purposes and is inherently an aggressive endeavor with non-peaceful objectives. As such, these activities pose a threat to the national security of the coastal state and are inconsistent with the peaceful purposes enshrined in UNCLOS.

D. Restrictions on Military Aircraft Intelligence Gathering, Surveillance, and Identification in the Exclusive Economic Zone

Before the negotiation of UNCLOS, global airspace was generally divided into two categories: national (encompassing land areas and territorial waters) and international (areas traditionally regarded as high seas). This traditional classification of airspace is reflected in the 1944 Convention on International Civil Aviation⁴⁸ (hereinafter Chicago Convention), which grants each state complete and exclusive sovereignty over its territorial airspace, while the flight of civilian aircraft over the high seas is governed by air laws established by the International Civil Aviation Organization (ICAO). These air laws apply uniformly to all international civilian aviation, with their binding authority over the high seas derived from Article 12 of the Chicago Convention. In the exclusive economic zone, there exists complete freedom of overflight, which must be respected by all nations and coastal states in that area, as they lack the authority to enforce their own aviation laws or regulations there.

The ICAO's jurisdiction in the exclusive economic zone is limited to prescribing aviation laws for civilian aircraft and does not extend to the status of military aircraft in this zone. While international law applies the same airspace classification to military aircraft, entry into national airspace by military aircraft requires permission. Moreover, in international airspace, military aircraft must exercise due regard for the safety of civilian aircraft operations.

Under UNCLOS, military aircraft are entitled to operate in the exclusive economic zone. However, when transiting this zone, they must adhere to specific safety measures. UNCLOS explicitly permits military aircraft to be present in the exclusive economic zone, consistent with the freedoms applicable on the high seas. Nevertheless, the Convention imposes at least two limitations on this freedom. The first limitation, outlined in paragraph 3 of Article 58, requires states to have due regard for the rights and interests of the coastal state. This provision implies that military activities by third states that unduly interfere with the coastal state's rights and interests—such as those related to the marine environment, natural resources, and security within the exclusive economic zone—are impermissible. The second

47 Qu and Xu (n 19) 464–68.

48 Convention on International Civil Aviation (opened for signature 7 December 1944, entered into force 4 April 1947) 15 UNTS 295 (Chicago Convention) art 3.

limitation, found in paragraph 1 of Article 56, affirms the coastal state's jurisdiction over marine scientific research within the exclusive economic zone.⁴⁹

Consequently, reconnaissance flights (overflights) conducted by manned or unmanned aircraft for intelligence gathering are restricted within the exclusive economic zone. Aerial surveillance in this zone is prohibited by the Convention, as it often threatens the security of the coastal state. If a manned or unmanned military aircraft from a third state conducts unauthorized surveillance or photography within the exclusive economic zone of a coastal state, it violates the law, and its actions are deemed non-peaceful. Such an aircraft must immediately exit the coastal state's exclusive economic zone.⁵⁰ Furthermore, the threat or use of force by military aircraft of a third state against the territorial integrity or political independence of a coastal state is also prohibited.

E. Restriction on Environmental Hazards

UNCLOS may be the most comprehensive environmental treaty ever adopted. The Convention provides a robust framework with detailed guidelines for the preservation and conservation of the marine environment. It obligates member states to take necessary measures to protect and preserve vulnerable marine ecosystems. Specifically, it ensures that, where accepted global standards for environmental protection prove inadequate, member states can collaborate through the International Maritime Organization (IMO) to establish special measures for controlling ship-related pollution in the exclusive economic zone. Military activities can adversely affect the environment. For instance, sonar systems, underwater explosions, and the emission of sound waves are major sources of noise pollution with detrimental impacts on marine mammals, turtles, and coral reefs. Even when their immediate effects on the marine environment appear minor or uncertain, the cumulative impact of such activities can be substantial.⁵¹

Article 204 of UNCLOS requires states to observe, measure, evaluate, and analyze, to the extent practicable, the risks or effects of pollution on the marine environment and to monitor and assess the impacts of activities that may contribute to marine environmental pollution. Additionally, Article 206 mandates that when states have reasonable grounds to believe that activities under their jurisdiction or control may cause significant pollution or substantial harmful changes to the marine environment, they must, as far as practicable, assess the potential effects and report the findings in accordance with Article 205 procedures.

Article 206 ensures that activities with potentially harmful effects are subject to assessment, with other states informed of the risks. In the South China Sea arbitration, the tribunal underscored that conducting environmental impact assessments is a direct obligation under the Convention and a general duty under customary international law, rendering Article 206 a specific obligation for states. The tribunal noted that the use of explosives and

49 Peter Dutton, *Military Activities in the EEZ: A U.S.–China Dialogue on Security and International Law in the Maritime Commons* (China Maritime Studies Institute, US Naval War College, Red Book Study No 7, 2010) 37–40.

50 Burdeau (n 15) 125–26.

51 Pascale Ricard, 'Limitations on Military Activities by Third States in the Exclusive Economic Zone Resulting from Environmental Law' (2019) 34(1) *International Journal of Marine and Coastal Law* 144, 145–46.

cyanide in recent decades has been highly destructive, deeming both methods irresponsible and unsustainable for fishing under the FAO Code of Conduct. Consequently, it classified dynamite and cyanide as pollutants of the marine environment within the Convention's context. The tribunal further determined that these methods cause destructive effects, harming living resources and threatening fragile coral reef ecosystems and habitats of endangered species. It concluded that China's recent construction activities on coral reefs have caused environmental damage in the South China Sea.⁵²

Moreover, certain general and specific provisions of UNCLOS apply to the launching of weapons and intercontinental ballistic missiles by a third state in a coastal state's exclusive economic zone. Specifically, paragraph 5 of Article 210 prohibits the disposal of waste in the exclusive economic zone without the coastal state's express prior approval. The potential applicability of Article 210 underscores that the Convention's objectives extend beyond establishing peace and order at sea to include the protection and preservation of the marine environment. Additionally, the general obligations in Articles 192, 194, and 300 are of paramount importance. Article 192 establishes a broad duty for states to protect and preserve the marine environment, while Article 194 outlines measures to prevent and control pollution sources.⁵³ Furthermore, the naval forces of a third state must exercise due regard for the natural environment in the exclusive economic zone and refrain from operations that could harm it. For example, a military artillery exercise intentionally causing whale migration should be avoided. Coastal states may invoke their domestic environmental laws to restrict third-state military activities in the exclusive economic zone, pursuant to Article 56 of UNCLOS, which grants them exclusive rights and jurisdiction over marine environmental protection. In the event of an environmental incident in the exclusive economic zone caused by a third state's naval forces, the coastal state's domestic regulations supersede traditional high seas freedoms. This interpretation of the Convention does not reflect creeping jurisdiction by coastal states but rather a precise and restrictive reading of UNCLOS concerning third-state military activities in the exclusive economic zone.

VI. Peaceful Settlement of Disputes Regarding Third-State Military Activities in the Exclusive Economic Zone

Conflicts and disagreements over military activities in the exclusive economic zone are likely to persist, as no coastal state has consented to the unilateral military presence of third states in its exclusive economic zone. Article 59 of UNCLOS provides a framework for resolving disputes in the exclusive economic zone. Article 59 stipulates that, in cases where the Convention does not assign rights or jurisdiction to the coastal state or other states in the exclusive economic zone and a conflict arises between the interests of the coastal state and those of other states, the dispute shall be resolved equitably, taking into account all relevant circumstances and weighing the significance of the interests of the parties as well as the broader interests of the international community. In the event of an international dispute in the exclusive economic zone, states must settle such disputes through peaceful means of their own choosing, pursuant to Articles 279 and 280 of the Convention. If they fail to

52 In the Matter of the South China Sea Arbitration (Philippines v China) (Award, 12 July 2016) PCA Case No 2013-19, paras 970-79.

53 Ricard (n 51) 152-53.

resolve the dispute, they must refer it to Part XV of the Convention, which establishes mandatory dispute settlement procedures, unless the dispute falls within the specified limitations and exceptions.⁵⁴

Under Article 298 of UNCLOS, member states may exclude disputes concerning military activities from the mandatory dispute settlement framework. In practice, many states have opted to exclude the resolution of such disputes through declarations filed with international judicial bodies. Several countries, including France, Russia, and China, have invoked Article 298 to exempt disputes over military activities from mandatory settlement procedures.⁵⁵ Consequently, the ambiguity of Article 59 and the lack of mandatory dispute resolution for military activities in the exclusive economic zone make it exceedingly difficult to provide a clear legal interpretation in the event of a dispute. To prevent or minimize disputes, a state conducting military activities in the exclusive economic zone of a coastal state must exercise due regard for the interests of the coastal state and other states.⁵⁶

In other words, the rights and interests of the coastal state—related to the exploration, exploitation, conservation, and management of natural resources, the establishment and use of artificial islands, installations, and structures, marine scientific research, and the protection and preservation of the marine environment in the exclusive economic zone—as well as the rights and interests of other states in the same zone, such as freedom of navigation, overflight, and the laying of submarine cables and pipelines, must not be impaired by the military activities of a third state. Third states are permitted under international law to conduct military activities in the exclusive economic zone, provided these activities do not infringe upon the rights and interests of the coastal state or aim to intimidate coastal states through threats or the use of force, which would violate international law. Under such conditions, the military activities of a third state must comply with UNCLOS provisions, particularly Articles 58 and 301, as well as other international legal instruments, including the Charter of the United Nations. Although all states enjoy the rights of navigation and overflight in the exclusive economic zone of a coastal state under the Convention, these rights must be exercised in a balanced manner and must not undermine the interests of the coastal state. If military activities interfere with the coastal state's economic exploitation of its exclusive economic zone, restrictions on freedom of navigation and overflight above it should be deemed acceptable.⁵⁷

VII. Conclusion

Military activities by third states in the exclusive economic zones of coastal states are on the rise today, driven by technological advancements, resulting in numerous disputes. Article 56 of UNCLOS delineates the rights and duties of coastal states, granting them exclusive

54 Seyed Ziaaddin Madani, 'Geographical Scope of the Legal Regime on Marine Scientific Research in Different Marine Areas Under the UN Convention on the Law of the Sea (1982)' (2013) 16 Oceanography 113, 113–17.

55 Ioannis Prezas, 'Foreign Military Activities in the Exclusive Economic Zone' (2019) 34(1) International Journal of Marine and Coastal Law 97, 115–16.

56 Mohsen Behjati, 'Limitations on the Military Activity of Third States in the Exclusive Economic Zone of the Coastal State' (2024) 7(21) Journal of Legal Civilization 193, 193–218.

57 Kim (n 44) 260–61.

jurisdiction over specific activities within their exclusive economic zones. Article 58 addresses the rights and duties of third states, recognizing three high seas freedoms—navigation, overflight, and the laying of submarine cables and pipelines—within the exclusive economic zone, while affirming the coastal state's jurisdiction over these freedoms.

However, military activities remain underexplored in both UNCLOS and customary international law. These activities can be categorized into wartime and peacetime operations. Peacetime military activities encompass intelligence gathering, naval force deployment, military exercises, reconnaissance flights by manned or unmanned aircraft, and other operations often employed for deterrence or threats, rendering them non-peaceful. Some states argue that military activities by third states should require prior authorization, as they contravene the peaceful intent of UNCLOS, advocating for their prohibition within the exclusive economic zone. Conversely, other states assert that these activities fall within the freedoms of navigation and should be permitted accordingly.

Under UNCLOS, the principle of freedom of navigation in the exclusive economic zone is subject to two conditions: the peaceful exercise of such freedoms and due regard for the rights and interests of the coastal state. Due regard serves to prevent the abuse of rights by third states, thereby prohibiting military activities in a coastal state's exclusive economic zone without its consent. Moreover, by emphasizing the peaceful use of the seas and prohibiting the use of force or actions contrary to the principles of the United Nations Charter, as enshrined in UNCLOS, military activities in the exclusive economic zone are effectively restricted. Additionally, military activities adversely impact the marine environment, further justifying their prevention.

To date, no disputes over third-state military activities in the exclusive economic zones of coastal states have been formally raised, and most UNCLOS member states have excluded military-related disputes from the mandatory dispute settlement framework. To avert potential disputes, third-state military activities must not impair the rights and interests of the coastal state or those of other states in the exclusive economic zone. In such cases, these activities must comply with UNCLOS provisions and other international legal instruments, including the United Nations Charter. Should any interference with the coastal state's rights and interests occur, restrictions on these activities should be imposed. Recently, the use of decommissioned oil platforms on the high seas as sites for missile launches and weapon deployment by naval powers, particularly the United States, has emerged as a pressing issue. Assessing the legality of this practice under UNCLOS appears critical, given its implications for both the environment and the sovereignty of coastal states.

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