10.21544/2359-3075.v28n1.a

FOREIGN MILITARY EXERCISES OR MANEUVERS IN THE EXCLUSIVE ECONOMIC ZONE: AN INTERNATIONAL LAW PERSPECTIVE

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SUMMARY[2]

This article aims to analyze the legal regime of the exclusive economic zone (EEZ) regarding military exercises or maneuvers (MEMs) conducted by third States. First, we check whether the Convention on the law of the Sea directly gives the coastal State jurisdiction over MEMs or all States the freedom to conduct them. Then, in the case of no direct attribution, we analyze the residual attribution by Art.
59. Next, in the event of direct or residual attribution to all States, we examine how that freedom should be exercised and its limits. Finally, we address the application of the prohibition on the use of force to MEMs in the EEZ. We conclude that the coastal State may require its consent for third States to conduct such activities in their EEZ. Discretion in the exercise of this power will depend on the interpretation adopted and our primary point is that discretion is absolute. These conclusions give legal support to positions adopted by Bangladesh, Brazil, China, India and others.

Keywords: Law of the sea. Exclusive economic zone. Military exercises or maneuvers. Use of force.

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2 The author would like to thank Professor Alessandra Correia Lima Macedo Franca, who guided him in the final monograph of the law course at the Federal University of Paraíba. This article is part of the Scientific Dissemination of the results obtained in this work. A beta version of this article was published in 2021 at Nuova Antologia Militare (CAVALCANTI DE MELLO FILHO, 2021). The original version of this article was published in Portuguese at this journal in 2022 (MARCOS; CAVALCANTI DE MELLO FILHO, 2022). Section 5 of this article was object of a more detailed analysis in a publication at the University of Pennsylvania Journal of International Law in 2023 (CAVALCANTI DE MELLO FILHO, 2023).

INTRODUCTION

The contemporary law of the sea divides the sea into maritime spaces and stipulates legal regimes applicable to each of them. The exclusive economic zone (EEZ) is one of these maritime spaces. However, its legal regime is unclear regarding foreign military exercises or maneuvers (MEMs), in particular those that imply the use of armaments or explosives.

The legal regime of the EEZ has its source in the United Nations Convention on the Law of the Sea (UNCLOS) and corresponding rules of customary international law (CIL).[3]Part V of the convention, on the EEZ, brings in Arts. 56 and 58 the fundamental features of its regime. According to Art. 56 (1), the coastal State has sovereign rights over the resources and economic potential of the EEZ. In addition, the riparian State also has jurisdiction over environmental matters, marine scientific research, and the construction and use of artificial islands, installations, and other structures. Under Art. 58 (1), all States have freedoms of navigation, overflight and laying of submarine cables and pipelines, in addition to the freedoms of internationally lawful uses of the sea related to said freedoms, such as those involving the operation of ships, aircraft and submarine cables. If the right over a certain interest is not directly assigned by Arts. 56 or 58, it is a case of residual assignment from Art. 59. The right and obligations conferred shall be exercised with due regard to the rights and duties of the other States in the EEZ (duty of due regard). Finally, all States must comply with the internationally lawful laws and regulations of the coastal State. It is the content of Arts. 56 (2) and 58 (3).

As it turns out, there is no explicit mention of military activities, let alone MEMs. Indeed, the treatment of this category was controversial during the Third United Nations Conference on the Law of the Sea (TCLOS), which culminated in the convention (ORREGO VICUÑA, 1989, p.108). There were attempts to insert provisions that privileged the security interests of the coastal State (NORDQUIST; GRANDY; NANDAN; ROSENNE, 1993, p.568) or that made explicit the need for consent of the coastal State for the practice of foreign MEMs (FRANCIONI, 1985, p. 215).

However, the absence of any mention of the issue prevailed, a result intended by the United States as "constructive ambiguity" that

3 The general rules contained in Arts. 56, 58 and 59, which are at the heart of this work, can be considered International Customs (CHURCHILL; LOWE, 1999, p.161-162).

would advance its interpretations and interests of establishing a supposed freedom to conduct MEMs in foreign EEZs (BECKMAN, DAVENPORT, 2012, p.26). More specifically, this freedom would be included in "internationally licit uses of the sea" related to communication freedoms (navigation, overflight and laying of submarine cables and pipelines), which involve the "operation of ships, aircraft " (RICHARDSON, 1980, p.915).

In the face of ambiguity, countries such as Bangladesh, Brazil, India and Pakistan have made interpretative declarations to the effect that the provisions of the convention would not authorize other states to conduct MEMs, especially if they involve the use of weapons or explosives, in other States ' EEZs without the consent of the coastal State[4-5]. They were based both on Part V and on the prohibition on the use of force, present in the convention through Art. 301. Counteracting that position, Germany, the Netherlands, Italy, and the United Kingdom made their own declarations.[6]

Today, the issue is even more controversial. In the absence of pacification of the issue, Attard's prediction in 1987 that "many States will in the future be inclined to restrict military uses in the EEZ " seems to hold true (ATTARD, 1987, P.68). As early as 1990, a US Navy document reported that more than 30 countries somehow restricted military activities in their EEZs (ROSE, 1990, p.134-135). In 2019 and 2020, the United States, through its *Freedom of Navigation Operations* (FONOPs) considered "excessive maritime claims" the requirements of coastal State consent to conduct MEMs made by Bangladesh, Brazil, China, Ecuador, India, Iran, Malaysia, Pakistan, Thailand, Uruguay, and Venezuela (US Department of DEFENSE, 2020; US DEPARTMENT of DEFENSE, 2021).[7] Indeed, subsequent State

4 UNCLOS, in Art. 309, does not allow reservations, but disciplines interpretative declarations in Art.310, which determines that declarations shall not be used to modify or exclude the effect of the convention's provision.

5 The Brazilian declaration, in its first paragraph, brings Art. 301 of the UNCLOS, which contains the Prohibition of the use of force, and, in the following paragraph, states that the provisions of the Convention do not authorize third parties to conduct EMMs without the consent of the coastal State. Bangladesh, Ecuador, India, Pakistan and Malaysia made only statements similar to the Brazilian second paragraph. Thailand, Uruguay and Cape Verde have declared that the freedoms of navigation (Thailand) and international communication (Uruguay and Cape Verde) exclude non-peaceful uses such as military exercises. All statements are available at:<https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI - 6&chapter=21&Temp=mtdsg3 & clang=_en#EndDec>. Accessed 27 jul. 2021.

6 All statements are available at the same link as Note 5.

7 These are only the countries against which the United States made operational challenges.

practice may be an important means of interpreting the imprecise terms of UNCLOS, in accordance with Art. 31 (3)(b) of the Vienna Convention on the Law of Treaties (VCLT).

State practice also reveals the timeliness of the issue: major disputes in the South China Sea and the Persian Gulf, for example, involve the legal regime of the EEZ regarding foreign MEMs. The issue for Brazil is no less important. Art. 9 of Law 8.617 / 1993 requires the consent of the federal government for the conduct of MEMs in the EEZ[8] and the strategic environment of Brazil has the presence of naval powers. Among them are France to the north (French Guiana), the United Kingdom through its oceanic islands, the Fourth Fleet of the United States in the South Atlantic, China and even Russia, with a research ship with espionage technologies sailing in the Brazilian EEZ with monitoring systems turned off in February 2020 (MONTEIRO, 2020).[9] More recently, a German scientific research vessel in the Atlantic was considered a "threat" by the Brazilian Navy Commander (CARVALHO, 2023).

Thus, our final objective is to analyze the legal regime of the EEZ insofar as foreign MEMs are concerned. Clarification thereofis necessary to determine whether coastal States can require their consent for MEMs to be conducted in their EEZ or whether third States have freedom to do so –and, in this case, to examine the limits of this freedom.

To achieve this goal, we will go through four intermediate objectives. First (Section 2), we will verify whether Part V has directly attributed jurisdiction to the coastal State or the freedom to all States to conduct MEMs in foreign EEZs. It will be a stage focused on Arts. 56 and 58. Second (Section 3), in the event that there is no direct attribution, we will analyze the residual attribution via Art. 59. Third (section 4), in case of direct or residual assignment of the freedom to conduct MEMs in the EEZ to all states, we will examine in what way such freedom is limited by the obligations contained in Art. 58 (3) –a to take the rights and duties of the

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According to the latest FONOPS Annual Report, as of this article's revision for the English language, there were only two countries limiting foreign military activities in their EEZ against which operational challenges had been made: Malaysia and Iran (US DEPARTMENT OF DEFENSE, 2023).

8 Art. 9: "the conduct by other states, in the exclusive economic zone, of military exercises or maneuvers, in particular those involving the use of weapons or explosives, may only occur with the consent of the Brazilian governmnt".

9 More in this sense, cf. (SUÁREZ de VIVERO et al, 2014)

coastal State into due account and that to comply with the internationally lawful laws and lawful regulations of the coastal State. Fourth (Section 5), we will assess in what manner the prohibition on the use of force applies to MEMs in the EEZ. The method of approach is deductive. The research is explanatory, qualitative, and theoretical, based on literature review and international jurisprudence. Finally, this article is set to comprehensively explore the law of the sea rules relevant for the issue of foreign MEMs in the EEZ. It does not do so exhaustively. However, another piece, of which the present author is a co-author, deals more in depth with the Brazilian position, based on the prohibition on the use of force (MARCOS; CAVALCANTI DE MELLO FILHO, 2023).

2. THE DIRECT ATTRIBUTION OF RIGHTS OVER MILITARY EXERCISES OR MANEUVERS IN THE EEZ

In Part V of the convention, the express assignment of Rights is made by Arts. 56 and 58. Specialized scholarship does not raise the possibility that Art. 56 gives the coastal State jurisdiction over MEMs.[10] The debate is on Art. 58 (1): does it include or not the freedom to conduct MEMs? It contains the freedoms of navigation, overflight and laying of submarine cables and pipelines, referred to in Art. 87 on the High Seas, and of other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft, submarine cables and pipelines.

Some authors, almost all of them US-Americans, understand that the freedoms of navigation and overflight and "other internationally lawful uses of the sea " related to communication freedoms (Art. 58 (1)) encompass the freedom to conduct MEMs (RICHARDSON, 1980, p. 916; OXMAN, 1984, p. 837; FRANCIONI, 1985, p. 216; PEDROZO, 2010, p. 10; KRASKA, 2011, P. 270). The arguments for this interpretation are generally three: (i) at the Third Conference, the attempt to limit such a centuries-old freedom failed and military activities are comprised in the freedoms of

10 Art. 56 only becomes relevant when analyzing military activities of a more intellectual dimension, such as hydrographic surveys for military purposes and reconnaissance operations. It is controversial whether such activities should be considered marine scientific research, and therefore under the jurisdiction of the coastal State, or not. The present work deals only with MEMs, that is, activities of material dimension. The distinction between military activities of intellectual and material dimensions was made by Prezas (2019).

navigation and overflight or in "other internationally lawful uses of the sea" related to these freedoms; (ii) through a contextual interpretation, it is perceived that military activities were explicitly limited in other maritime spaces; and (iii) State practice favors such an interpretation (PEDROZO, 2010, p.11).

Regarding the first argument, two considerations are pertinent: (i) the freedom to conduct military exercises as an international custom, which has long existed, has always been related to the regime of the *high seas*. Since before the Third Conference, everything beyond territorial waters was high seas and only after the convention was the EEZ established;[11] and (ii) the fact that the attempt to explicitly limit such freedom in the EEZ has failed does not make it sufficiently clear that third States are free to conduct military exercises without prior notification or consent. It is an *a contrario* interpretation, that is, a negative implication.

On the second consideration, it is known that at the beginning of the TCLOS negotiations, following the Latin American and African law of the sea developments, there was mention only of the freedoms of navigation and overflight. In the proposal of the Evensen group, the formula "other internationally lawful uses of the sea related to freedoms of navigation and communication" was added. The Group of 77 (G-77), made up of developing States, proposed that, in the second paragraph, other States must take into consideration the security interests of the coastal State. The demand was not incorporated into the negotiating text (NORDQUIST; GRANDY; NANDAN; ROSENNE, 1993, p. 566-568). Francioni reports that Latin American countries have even tried to introduce the need for consent for the conduct of non-navigational naval operations (FRANCIONI, 1985, p. 215).

Furthermore, believing that the Evensen group's formula was still too restrictive for their interests, the head of the U.S. delegation, Elliot Richardson, spearheaded the final proposal of the informal Castañeda negotiating group. It adopted the formula "other internationally licit uses of the sea related to the aforementioned freedoms, such as those related

11 The EEZ has a sui generis legal regime, different from that of the high seas. Although it incorporates some norms of the high seas' regime, by means of Arts. 58 (1) and (2), they are modified by the devices themselves. This is to the extent that they determine that the freedoms of Art. 58 (1) are " compatible with the other provisions of this convention", that is, with the provisions of Part V itself that provide for the rights and jurisdiction of the coastal State and that Arts. 88-115 shall apply to the EEZ "to the extent not inconsistent with this Part [V]".

to the operation of ships, aircraft, submarine cables and pipelines", in addition to referring to communication freedoms with reference to Art. 87 on the freedoms of the high seas. Richardson spelled out his proposal academically. He nderlines the fact that Art. 58 (1), when mentioning the freedoms of communication, refers to them as "Article 87 freedoms", i.e., of the high seas. Traditionally, on the high seas, freedoms of movement and communication comprised that of conducting MEMs.[12] Finally, he points out that the exemplification 'such as those connected to the operation of ships, aircraft ' would also include the conduct of EMMs (RICHARDSON, 1980, p. 915).

Thus, in addition to the failure of the proposals of the G-77 and Latin American countries, the fact that the United States proposed the approved text precisely to encompass military activities would imply that such a provisionwould include the freedom to conduct MEMs (GALDORISI; KAUFMAN, 2002, p. 271-272).

This perspective, however, is problematic. The US strategy was not to achieve a text that categorically supported its position, but to contain a constructive ambiguity that would allow it to sustain its position (BECKMAN; DAVENPORT, p. 26). Therefore, it cannot be categorically stated that Art. 58 (1) contains such freedom. On the contrary, following Art. 31 (1) of the CVDT, when analyzing the ordinary meaning of the words of the device in its context, the most reasonable conclusion seems to be that Art. 58 (1) does not include the freedom to conduct MEMs. Indeed, for other authors, it cannot be concluded that, in the context of the EEZ, the conduct of MEMs, especially those involving the use of weapons and explosives, has a legitimate link with the freedoms of navigation and overflight (BOCZEK, 1988, p. 451; XIAOFENG; XIZHONG, 2005, p. 142; QUINCE, 2019, p. 97). However, most of the doctrine understands that Art. 58 (1) is ambiguous enough for both positions to be supported (CHARNEY, 1985, p. 256; CHURCHILL;

LOWE, 1988, p.311; VAN DYKE, 2004, p. 31; PROELSS, 2017, p. 453).

The second argument refers to the absence of a specific limitation to MEMs in the EEZ, while MEMs are explicitly considered not innocent in the territorial sea and is not understood to be within the right of passage through archipelagic sea lanes(PEDROZO, 2010, p. 11).[13] It is alleged that if

12 This argument is refuted in Note 11.

13 Art. 19 (2) (a), UNCLOS, provides that a non-innocent passage is one that violates the

the negotiators had wanted to impede such freedom in the EEZ, they would have done so. However, this interpretation is undue in case of constructive ambiguity. The maritime powers in TCLOS would not have accepted an explicit limitation, nor would many of the developing coastal States have accepted an express freedom.[14] In our view, Art. 58 (1) is unambiguous: it does not cover the freedom to conduct MEMs. But even if one considers the provision ambiguous, the second argument is flawed.

For authors who see ambiguity in the provision, observing the practice of States can be enlightening (VAN DYKE, 2004, p. 32). Here, practice is not only a constitutive element of customary law, but also part of the general rule of interpretation, according to Art. 31 (3)(b) of the VCLT, which codifies customary law (DÖRR, 2018, p. 598).

We proceed to the third argument: contemporary State practice speaks in favor of the American position. In the most cited article of the *Chinese Journal of International Law*, retired U.S. Navy captain and U.S. Naval College professor of international law Raul (Pete) Pedrozo (2010) insistently contends that State practice favors the U.S. interpretation but offers no proof thereof. This was even the criticism made by Zhang (2010, p. 37). Kraska (2011, p. 269), on exercises and military operations in foreign EEZs, also does not make a comprehensive listing, mentioning Australia, Russia, Canada, and Japan as examples of countries conducting them. Interestingly, it is known that Australia and Canada ask the coastal State for permission to conduct military hydrographic surveys (ZHANG, 2010, p. 45).

On the other hand, from the analysis of State practice and concrete cases, Van Dyke concludes that:

Prohibition of the unlawful use of force. In addition, subparagraphs "b" and" f " provide, for example, for exercises or practices with weapons and the launching or landing of military devices as non-innocent. Art. 52 applies this regime of innocent passage to archipelagic waters. As an exception to this provision, Art. 53 guarantees the right of passage through archipelagic sea lanes on certain pre-designated (or high-flow) lanes, which more closely resembles the right of transit passage. According to Art. 53, vessels must follow their passages in normal mode, not doing something unrelated to them.

14 It is important to note that the rules of procedure of the Third Conference provided for text adoption by consensus and that the convention would be a *package deal* in which reservations are not allowed, that is, not isolated provisions are approved, but a package at once. Thus, recognizing that the system should bind the main subjects to be effective, even if the maritime powers were a minority, the rules of procedure resulted in a system in which everyone should be minimally satisfied (PEREIRA DA SILVA, 2015, p. 59).

> In light of the creation and acceptance of the EEZ and the recognition of coastal State resource rights, 'further limitations on said freedoms (of navigation and overflight) must be accepted'. These limitations are both of ''a political nature' and related to the security concerns of coastal States (VAN DYKE, 2004, p. 38).[15]

This position seems to be in line with the observed increasingly restrictive practice of military activities in the EEZ, more specifically in foreign MEMs, as highlighted in the introduction.

From the foregoing, we understand that the freedom to conduct MEMs is not present in Art. 58 (1), but neither is any jurisdiction conferred on the coastal State over military activities in Art. 56. Therefore, if there is no direct attribution of jurisdiction or freedom, Art. 59 is engaged. This is the same consequence envisioned by those who see ambiguity in Art. 58 (PROELSS, 2017, p.453).

3. THE RESIDUAL ALLOCATION OF RIGHTS RELATING TO MILITARY EXERCISES OR MANOEUVRES IN THE EEZ

The provision under focus for this Section 3 is Art. 59, which is not applicable if there is a conflict of rights, but rather a gap in the establishment of rights. Art. 59 provides that the conflict of interest between the coastal State and any other State, in the absence of a normative solution, shall be resolved on the basis of equity and in the light of all relevant circumstances, considering the importance of the interests concerned to the parties and to

15 There is another relevant position that understands that if the conflict of interest indirectly affects the resources of the EEZ, there is a relative presumption in favor of the coastal State. Otherwise, the presumption militates in favor of other States and the international community (NORDQUIST; GRANDY.; NANDAN; ROSENNE, 1993, p. 569). This position seems mistaken, since the existence of Art. 59, as seen in Note 18 below, is proof that the coastal state may have rights beyond those over the resources of the EEZ. This position would make sense if it were a case of conflict of rights already assigned by Arts. 56 and 58. Another position, more based on ideological than legal convictions, is that there is a presumption in favor of the international community, because the creation of the EEZ, by itself, would already represent a loss for the international community (more than 30% of the high seas) and, therefore, any doubt about residual rights would be resolved in favor of it and contrary to the coastal State (KRASKA, 2011, p. 278). In this argument, there is clear arbitrariness in defining what the interests of the international community are.

the international community. This unassigned right is called a "residual right" (HAYASHI, 2005, p.127).

The solution in the light of all the relevant circumstances, alongside the adoption of equitable principles, implies that Art. 59 is not applied in the abstract, to determine to whom the eventual residual right will be assigned, but in concrete, following a casuistic approach (NORDQUIST; GRANDY; NANDAN; ROSENNE, 1993, p.569).

The last excerpt contains a mention of the importance of conflicting interests for the parties and the international community. Here, the majority doctrine understands that there is no priority of the international community over individually considered States (CHURCHILL LOW, 1988, p. 144; BECKMAN; DAVENPORT, 2012, p. 12).[16]

Most scholars, when referring to this provision in the context of military activities, do not do it in depth.[17] Sienho Yee (2010) stands out. Considering that Art. 59 contains rights other than rights over resources,[18] as well as Art.56 (1) (c) – which contains "other rights", in addition to the rights of sovereignty and jurisdiction – Yee argues that the security interests of the coastal State fall within the scope of Art. 59.[19] Then he points out that:

> If the fight since the beginning of the drafting process between the maritime powers and the group of developing States regarding the security interest of the coastal State did not result in any specific express language on the point, the framework as interpreted above seems to contain the wherewithal to deal with such

16 In this sense, Tanaka (2015, p. 396): "in light of the high degree of political sensitivity involved in this issue, it seems difficult, if not impossible, to give a definitive answer to this question. Therefore, only provisional comments can be made." In light of the high degree of political sensitivity involved in this subject, it appears difficult, if not impossible, to give a definitive answer to this question. Thus only tentative comments can be made here".

17 During the Third Conference, the Singaporean delegation proposed deleting Art. 59, after all, the coastal state would only have rights to marine resources. The maintenance of Art. 59 demonstrates that there may, in fact, be other rights not directly related to marine resources. NORDQUIST; GRANDY; NANDAN; ROSENNE, op. cit., p. 568.)

18 In this sense: (YEE, 2010, p. 3; NANDAN, 1986, p. 186; CASTAÑEDA, 1984, p. 620; TANAKA, 2015, p. 396).

19 This is the formula used in Thailand's 2011 Interpretative Declaration. FC. Note 5.

> an interest and military in favour of the coastal State, because of the importance of security interest in the light of the proximity of the zone of activities to the coastal State.
> Indeed, if the security interest of the coastal State cannot be guaranteed, so that the life of that State cannot be maintained, what is the point of having all the rights to the resources in the EEZ anyway? Accordingly, the security interest of the coastal State is an issue of inherent, primal importance and must be given paramount consideration (YEE, 2010, p. 3-4).

That said, how important is it to the third State that it conducts MEMs in a foregin EEZ, especially those that use weapons and explosives without the consent and, not infrequently, against the express will of the coastal State? The Americanists present in general terms the right to defend oneself, to create the means for defense. Their interests are strategic (KRASKA, 2011, p. 258-260). It should be noted that this work does not even deal with intelligence operations or information collection, but only with military exercises and maneuvers that often aim to intimidate the coastal State, even against the prohibitionon the threat of the use of force. At other times, because maritime powers have ships and aircraft on much of the oceans, it is logistically and strategically feasible to conduct the exercises in foreign EEZs.

The right of Defense does not seem to guarantee the foreign State, having its EEZ and the entire high seas available, the freedom to conduct military exercises and maneuvers in the EEZ of third parties. Any strategic interests attached to such exercises do not appear to outweigh the primary security interests of the coastal State. And what would be the interest of the international community in this right of defense? Certainly, "international community" does not mean a handful of maritime powers that conduct exercises and maneuvers either to intimidate a coastal State or so that their own EEZ is not impacted by the adverse effects of such activities. On the contrary, the alleged right of defense becomes a growing source of conflict, something contrary to the real interests of the international community.

On the side of the security interests of the coastal State, we could not be more emphatic than Yee. Thus, we understand that, in the face of the typical reality of foreign MEMs in foreign EEZs, the security interests

of the coastal State should always prevail, being assigned the right to regulate such activities in the EEZ, which includes absolute discretion over consent to the practice of these activities.

4. THE MATERIAL AND PROCEDURAL LIMITS OF THE FREEDOM TO CONDUCT MILITARY EXERCISES OR MANEUVERS IN FOREIGN EEZ

If the freedom to conduct MEMs is to be recognized by means of Art. 58 (1) or Art. 59, it shall be exercised in accordance with Art. 58 (3): "States shall have due regard to the rights and duties of the coastal State [duty of due regard] and shall comply with the laws and regulations adopted by the coastal State" that are internationally lawful.

First, we will examine the duty of due regard. It is a procedural duty, that is, it represents a procedure with which freedom must be exercised (PREZAS, 2019, P. 99). Usually such a procedure consists of being aware of the rights and duties of the coastal State and weighing them with the third State's own rights and duties in order to determine what will be done. Evidently, that does not mean that awareness and weighing are done solely by the third State. The consequence of this understanding would be absurd, after all, the only option of the coastal State would be to seek a remedy to a violation, in the event of this duty of due regard not being followed. Indeed, it would be as if the very duty of due regard did not exist (PREZAS, 2019, p. 106).

More recently, an arbitral tribunal has had the opportunity to clarify the concept of the duty of due regard. In the case of the Chagos Marine Protected Area, between Mauritius and the United Kingdom, it understood that:

> The extent of the regard required by the Convention will depend upon the nature of the rights held by Mauritius, their importance, the extent of the anticipated impairment, the nature and importance of the activities contemplated by the United Kingdom, and the availability of alternative approaches. In the majority of cases, this assessment will necessarily involve at least some consultation with the rights-holding States (PERMANENT COURT OF ARBITRATION,

2015, para. 519).[20]

As can be seen, the tribunal determined the weighing of the importance of the activities undertaken, but also scored the availability of alternatives. Including the third State's EEZ and the high seas, are there no alternatives for conducting MEMs in foreign EEZs? As said, most of these MEMs serve to intimidate the coastal State, ward off the adverse effects of such activities from the third State's own EEZ or for strategic interests. Given the likelihood that alternatives are available, it seems reasonable, therefore, for the coastal State simply to raise any legitimate activity related to its sovereign rights or jurisdiction compromised by military activities. In this sense, says Prezas:

> A regulation requiring prior notice or even authorization to conduct some mainly "material" military activities, such as naval exercises or weapons tests in the EEZ, would not be unlawful, if it finds its true justification in the protection of the economic rights of the coastal state. (PREZAS, 2019, p. 112).

This justification would not take the form of requiring consent only for activities that affect such rights.19 That would be impractical, because there must be a judgment to determine whether or not the intended MEM will affect the rights of the coastal State. But, requiring consent only for activities that affect such rights, it is up to the third State to seek the consent of the coastal State in those activities that it deems to affect the coastal State's rights and duties. The ideal way seems to be to require consent for all MEM, but for the coastal State to be able to withhold it only when military activities affect their rights. This is the way consent for the conduct of marine scientific research in the EEZ works. The consent of the coastal State is needed, but it is obliged to give it, except in four specific hypotheses related to sovereign rights over resources and the jurisdiction of the State (HUH; NISHIMOTO, 2017, p. 1652).[21]

20 Art. 246, UNCITRAL.

21 In this case, a dispute or controversy would be characterized. A dispute is "a disagreement on a point of law or fact, a conflict of legal views or of interests" (PERMANENT COURT of

Therefore, we understand that if a coastal State establishes in law the requirement of consent but determines the hypotheses in which it may withhold it because of rights or duties compromised by the intended military activity, there is no excess on the part of the coastal State. As such, that would be an internationally lawful regulation, the compliance with which is an obligation of all States, under Art. 58(3).

The Chagos Tribunal also noted that, in most cases, it is a duty to consult the rights-holding State in order to assess of the respective importance of the rights, the possible harms and the availability of alternatives. Due to the risks imposed by a military activity of a more material dimension, MEMs certainly fit into "most cases" (PREZAS, 2019, p. 109). Thus, the absence of consultation should be seen as a violation of the duty of due regard. Such an understanding is particularly relevant for States that do not have internationally lawful laws disciplining the matter.

In addition, after the consultation has been made and there is an objection from the coastal State, if the third State still conducts MEMs,21 the coastal State can see hostility. Indeed, the third State acted unilaterally to the detriment of a peaceful means (negotiation, judicialization, etc.), violating Arts. 279 of UNCLOS, 2(3), of the UN Charter, and possibly 2(4), also of the Charter.[22]

5. THE USE OF FORCE IN THE EEZ AND MILITARY EXERCISES OR MANOEUVRES

The prohibition on the use of force applies autonomously to MEMs, via Arts. 301, UNCLOS, and 2 (4), UN Charter, but also integrates the EEZ regime. In accordance with Art. 58 (2), Arts. 88-115 apply to the EEZ insofar as they are not incompatible with Part V. Art. 88 reserves the high seas (and, by Art. 58 (2), also the EEZ) for peaceful purposes.

The majority of scholars defend that "peaceful purposes" should be interpreted using Art. 301, on "Peaceful Uses of the Sea", which prohibits the use of force (WOLFRUM, 1981, p. 203; OXMAN, 1984, p. 832; FRANCIONI,

1985, p. 223; BOCZEK, 1988, p. 457; NORDQUIST; ROSENNE;

INTERNATIONAL JUSTICE, 1924, p. 11).

22 Arts. 279 and 2(4) contain the obligation to seek to resolve disputes peacefully and Art. 2 (4), the Prohibition of the use of force. They will be further discussed in Section 5 below.

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1989, p. 155; CHURCHILL; LOWE, 1999, p. 411 HAYASHI, 2005, p. 125;

KRASKA, 2011, p.257). Furthermore, according to Art. 58 (1), the freedoms of internationally lawful uses of the sea must not only be related to communication freedoms, but also compatible with the other provisions of the convention, including Art. 301.

Such observations allow two conclusions. First, the eventual recognition of the freedom to conduct MEMs does not constitute an exception to the broader rule prohibiting the use of force, since this freedom must be compatible with the provision of the convention prohibiting the use of force. This clarification is necessary, since part of the doctrine considers that exercises of extraterritorial jurisdiction on the high seas and in the EEZ, for example, constitute exceptions to the prohibition of the use of force (DÖRR; RANDELZHOFER, 2012, p.212; GUILFOYLE, 2008, p. 272-277).[23] Second, the reference to Art. 58 alone already contains the obligation of third States to refrain from the use of force in the exercise of their freedoms.

That said, before we analyze specifically the use of force in the EEZ, we quote the content of Art. 301, for clarity:

> In exercising their rights and fulfilling their obligations under this convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.

From this provision, we must examine two points: "territorial integrity "and" principles of international law embodied in the Charter" of the UN. Having satisfied these inquiries, we will be able to assess the application of the prohibition on the use of forceto foreign MEMs in the

23 In 2020, in the Enrica Lexie case, the Arbitral Tribunal found that Italy did not violate Art. 88 applied to the EEZ, because, seemingly, jurisdiction over pirate vessels and even the duty to suppress pirate activity represent an exception to the prohibition of the use of force in foreign EEZs (PERMANENT COURT of ARBITRATION, 2020, para. 1067).

EEZ.

On the first point, the golden question is: Should the EEZ be considered a territory to have its integrity safeguarded by the Prohibition of Art. 301 (FRANCIONI, 1985, p. 213)? The answer could simply be "no", not least because the coastal State does not enjoy territorial sovereignty over the 200 nautical miles. Consequently, the application of Art. 301 in the EEZ would not differ from that on the high seas. However, this answer is controversial. To satisfy the golden question, we must understand the nature of the sovereign rights and jurisdiction that the coastal State enjoys in the EEZ.

Initially, it is reiterated that one does not have full sovereignty, but only some sovereign rights and a materially limited jurisdiction. However, this does not mean that the *jus imperii* of the coastal State is less than in the territorial sea. Indeed, the difference between the territorial sea regime and that of the EEZ is material in scope. That is why it is said that the powers of the coastal State in the EEZ in terms of economic resources are exactly the same as it has in the territorial sea in the same matter (TANAKA, 2019, p.154). It would not be absurd, therefore, to say that the coastal State enjoys materially limited sovereignty in the EEZ.

Corroborating this thesis, in the Aegean Sea Continental Shelf case, between Turkey and Greece, the International Court of Justice (ICJ) held that:

> In short, continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State. It follows that the territorial régime – the territorial status – of a coastal State comprises, ipso jure, the rights of exploration and exploitation over the continental shelf to which it is entitled under international law (INTERNATIONAL COURT OF JUSTICE, 1978, para. 86).

In that case, the court would not have jurisdiction over the dispute if the matter before it concerned the "territorial status" of Greece. Before this quaestio juris, as quoted, the ICJ understood that the regime the territorial status of the coastal State includes the rights of exploration and exploitation on the continental shelf. Having made the necessary adaptations, the sovereign rights and jurisdiction of the coastal State in

the EEZ are also part of its territorial regime.

This understanding is a consequence of the principle according to which the land dominates the sea, a fundamental basis of the law of the sea, sustained from Grotius to famous cases of international jurisprudence (JIA, 2014). In 2009, in the maritime delimitation between Romania and Ukraine, the ICJ was explicit in also mentioning the EEZ as a result of this principle (INTERNATIONAL COURT of JUSTICE, 2009, para. 77). Therefore, it is clear that the sovereign rights and jurisdiction of the coastal State in the EEZ are protected by the prohibition on the use of force through the principle of territorial integrity.

The consequent questions are: when will a third-party activity offend the EEZ as territorial integrity? And who is responsible for verifying such an offense? To answer these questions, we must necessarily consider the legal regime of the EEZ. The first is generally simple: an act of a third party offends the EEZ as a territorial integrity when it infringes on the sovereignty, jurisdiction, or other rights of the coastal State in the EEZ.

As for the second, we resort to the duties of *due regard* and the obligation to comply with the internationally lawful laws and regulations of the coastal State. As seen (Section 4), the duty of *due regard* prevents third States from unilaterally verifying whether their intended activity affects the rights and jurisdiction of the coastal State, especially when it comes to material military activities. There is a duty to consult with the coastal State. Ignoring it and conducting the MEM can be considered hostile by the coastal State, even more so because, increasingly, the EEZ as a space has been viewed through quasi-territorial lenses (OXMAN 2006, p.836).If the consultation is made, the coastal State objects and the third State does not resign, there is a dispute.[24] According to Art. 279 of UNCLOS, "States Parties shall settle any dispute between them concerning the interpretation or application of this convention by peaceful means in accordance with Art. 2, Paragraph 3, of the Charter of the United Nations." Here we have already come to the third point to be analyzed in this section: the principles of international law embodied by the UN Charter, protected by the prohibition in Art. 301. Art. 2 (3) is one of them. Therefore, if there is an objection, even if ill-founded, there is illegal use or threat of force only for the fact of not seeking to resolve the dispute peacefully (PERMANENT COURT OF ARBITRATION, 2007, para. 423; MURPHY, 2019, p. 19).

24 See note 21.

Accordingly, the third State shall consult with the coastal State and, in the event of objection, attempt to resolve the dispute peacefully. If, with the consultation it is shown that the activity does not violate the sovereignty, jurisdiction, and other rights of the coastal State, it can be carried out. If the third State does not reach a solution but has tried in good faith and the coastal State has not provided a plausible justification, we consider that the third State can also conduct MEMs in this case.

With respect to the duty to comply with internationally lawful laws and regulations of the coastal State, refusal to comply – not seeking consent, for example – and the conduct of MEMs should be seen as a threat or use of force against the territorial integrity of the coastal State.

Finally, there is a specific type of MEMs that requires its own analysis: *Freedom of Navigation Operations* (FONOPs) and similar operations. Through these military operations, the United States claims to be actively resisting "excessive maritime claims", making the supposed freedom of navigation prevail (FREUND, 2017, p.19). In practice, the operations look like demonstrations of force in order to dissuade other countries from pursuing their maritime claims. In this context, the ICJ, in the case of the Corfu Channel, held that the conduct of removing mines by the United Kingdom was not a display of force for the purpose of exerting political pressure on Albania and therefore was not a threat of use of force (INTERNATIONAL COURT OF JUSTICE, 1949, p. 35). An interpretation *a contrario* would lead to considering that FONOPs are illegal threats of use of force, since they are a display of force for the purpose of exerting political pressure on the coastal State that has "excessive maritime claims".

In so doing, the United States distances itself from peaceful means of settling disputes, and while it is right about allegedly excessive maritime claims, it appears to adopt an illegal *procédé*. Even assuming the illegality of the targeted maritime claims, the threat or use of force would still be unlawful in the form of MEMs, as the illegality of the claims is not an armed attack that would authorize self-defense under Art. 51 of the UN Charter. In such cases, it is not only against the principle contained in Art. 2 (3), but also against the political independence of the coastal State, protected by Arts. 301 and 2 (4). It should be noted that, in such circumstances, the question of territorial integrity is not yet under consideration. Eventually, a FONOP could in fact be an illegal use of force against the territorial integrity and political independence of another State, as well as incompatible with the principle contained in Art. 2 (3).

Only one framework would suffice to trigger illegality.

As noted, the application of the prohibition on the use of force to foreign EMMs in the EEZ depends on the legal regime of the latter. Therefore, the perspective that the application of the prohibition in the EEZ is identical to its application on the high seas becomes mistaken. The considerations here become more pertinent if we consider the hypothesis in which third States directly or residually have the freedom to conduct MEMs, that is, the scenario that is most favorable to them. Assuming that jurisdiction over foreign MEMs is assigned residually to the coastal State, any unauthorized MEM may infringe upon the territorial integrity of the coastal State.

CONCLUSION

Based on the intermediate and final objectives, throughout the article, we have developed preliminary conclusions that necessarily result in a general conclusion: the coastal State can require its consent for third States to conduct MEMs in its ZEE. However, their discretion in exercising this power varies according to the interpretation of Part V adopted.

Our understanding is that this discretion is absolute, since, given the lack of direct attribution of jurisdiction to the coastal State or of freedom to all States, the residual attribution, Art. 59confers on the coastal State jurisdiction over foreign MEMs. As argued, this is justified by the prevalence of the security interests of the coastal State over the eventual strategic interests of others. By integrating the territorial status of the coastal State, the violation of this residually assigned right, depending on hostility, may also evidence a violation of the prohibition on the use of force.

Moreover, even conceding that the freedom to conduct MEMs is assigned directly or residually to all States, the coastal State can still require its consent. However, discretion in the exercise of this power is limited, comprising only the sovereign rights and jurisdiction of the coastal State affected by the third State's activity. On the side of the third State, its freedom is inversely limited: precisely where the coastal State has discretion. A conservative and better legally shielded approach has been proposed:[25] for the coastal State to require consent to any MEM but be able

25 As for our main position, inevitably there is a certain level of idiosyncrasy in asserting that one interest prevails over the other. In this second approach, the idiosyncratic margin is much

to withhold it only when military activities affect their rights. Because it is an internationally lawful law, all States are obliged to comply with it.

In this sense, Art. 9 of Law 8.617/1993[26] is clearly in line with our main position (absolute discretion). But even if it is tested by our secondary position, in our view irreproachable, it should not be considered internationally wrongful. This is because Arts. 7 and 8 of the law describe Brazil's sovereign rights and jurisdiction in the ZEE with the same words as UNCLOS and a systemic interpretation of the Law could link Art. 9 to these rights and jurisdiction, although there is an interpretation based on the history of the Brazilian position that proves that Art. 9 provides for complete discretion. Therefore, the law itself should not be considered unlawful. However, the way in which the Brazilian federal government and, possibly, the judiciary interpret it may give rise to an internationally wrongful act, even according to our secondary position, if, for example, the decision understands that the MEM in question does not affect the sovereign rights and jurisdiction of the coastal State and, even so, does not grant consent. This piece also answered the question about how these limitations happen in practice through the duty of due regard, especially important for countries that have not legislated on foreign MEMs in their EEZ. As stated, it is a procedural duty, that is, it stipulates the way a substantial right must be fulfilled. Following international jurisprudence, especially the Chagos arbitration, we understand that military activities of a material dimension such as MEMs will always require prior consultation with the coastal State. In this consultation, the rights actually in dispute are weighed and the alternatives are analyzed.

If the coastal State gives its consent, there is no controversy. If there is an objection from the coastal State and the consequent irresignation of the third State, a dispute arises. By Arts. 279, UNCLOS, and 2 (3), UN Charter, the third State shall seek to resolve the dispute peacefully. In other words, simply ignoring the objection of the third State results in violation of such provisions and, because of the forceful nature of MEMs, in threat or use of force incompatible with the principles embodied in the Charter and possibly against the territorial integrity of the coastal State. It would be a violation of Arts. 301, UNCLOS, and 2 (4), UN Charter. Thus, we find that the peaceful vocation of the prohibition on the use of force

smaller and, therefore, it is more difficult to be considered reprehensible

26 See Note 8.

also functions, in practice, as a procedural duty to be observed by the third State.

We also paid attention to the issue of FONOPs. Following the CIJ in the case of the Corfu Channel, we understand that these operations for the purposes of exerting political pressure on coastal States to dissuade them from their allegedly excessive maritime claims constitute a threat of use of force against the political independence of the coastal State– in addition to the considerations applied to MEMs in general.

Given the above, it is fair to conclude that U.S. diplomatic and academic efforts towards constructive ambiguity are illogical for one reason only: the EEZ regime itself, *sui generis, tertium genus*, distinct from that of the High Seas, makes it impossible for there to be an almost absolute freedom to conduct MEMs in the EEZ, as there was in areas that were once parts of the high seas. As Yee said, "Indeed, if the security interest of the coastal State cannot be guaranteed, so that the life of that State cannot be maintained, what is the point of having all the rights to the resources in the EEZ anyway?" The profound change brought about by the 1982 Convention, to make the legal order of the oceans more just and equitable, in fact and in law, could not neuter the *sovereign* rights and jurisdiction that the coastal State enjoys in the EEZ.

EXERCÍCIOS OU MANOBRAS

MILITARES ESTRANGEIRAS NA ZONA ECONÔMICA EXCLUSIVA: UMA PERSPECTIVA DO DIREITO INTERNACIONAL

RESUMO

Este artigo objetiva analisar o regime jurídico da zona econômica exclusiva (ZEE) no concernente a exercícios ou manobras militares (EMMs) conduzidos por Estados terceiros. Primeiro, verificamos se a Convenção sobre Direito do Mar atribui diretamente ao Estado costeiro a jurisdição sobre EMMs ou a todos os Estados a liberdade de conduzi-los. Depois, na hipótese de não haver atribuição direta, examinamos a atribuição residual pelo Art.59. Em seguida, no caso de atribuição ao Estado terceiro, esmiuçamos como a liberdade deve ser exercida e seus limites. Por fim, abordamos a aplicação da proibição do uso da força a EMMs na ZEE. Concluímos que o Estado costeiro pode exigir seu consentimento para que terceiros conduzam as referidas atividades na sua ZEE. A discricionariedade no exercício deste poder dependerá da interpretação adotada e nosso principal ponto é que a discricionariedade é absoluta. Essas conclusões dão sustento jurídico a posições adotadas por Bangladesh, Brasil, China, Índia, Irã e outros.

Palavras Chaves: Direito do mar. Zona econômica exclusiva. Exercícios ou manobras militares. Uso da força.

REFERENCES

ATTARD, D. J. The exclusive economic zone in International Law. Oxford: Clarendon Press, 1987.

BECKMAN, R; DAVENPORT, T. The EEZ Regime: Reflections after 30 Years. In: SCHEIBER, H. N.; KWON, M. S.; GARDNER, E. A. (orgs.) Papers

from the Law of the Sea Institute, UC Berkeley–Korea Institute of Ocean Science and Technology Conference, held in Seoul, Korea, May 2012.

BOCZEK, B. Peacetime military activities in the exclusive economic zone of third countries. Ocean Development and International Law, v. 19, n. 6, 1988 p 445-468.

BRASIL. Lei Nº 8.617, de 4 de janeiro de 1993. Dispõe sobre o mar territorial, a zona contígua, a zona econômica exclusiva e a plataforma continental brasileiros, e dá outras providências. Available at:<L8617 (http://www.planalto.gov.br/ccivil_03/LEIS/L8617.htmlto.gov.br)>. Access on: 27 jul. 2021.

CARVALHO, C. A. S. Comandante da Marinha classifica navio alemão como agressão ao Brasil, Gazeta do Povo. 2023. Available at: <https://www.gazetadopovo.com.br/republica/breves/comandante-da-marinha-classifica-navio-alemao-flagrado-na-costa-de-sc-como-agressao-ao-brasil/>. Access on: 07 oct. 2023

CASTAÑEDA, J. Negotiations on the Exclusive Economic Zone at the Third United Nations Conference on the Law of the Sea. In: MAKARCZYK, J. Essays on International Law in Honour of Judge Manfred Lachs. Haia: Nijhoff, 1984, p. 605-.

CAVALCANTI DE MELLO FILHO, E. The legal regime of the exclusive economic zone and foreign military exercises or maneuvers, Nuova Antologia Militare, v. 2, n. 8, 2021, p. 361–387.

_____.Exercícios ou manobras militares estrangeiras

na zona econômica exclusiva uma perspectiva do direito internacional, Revista da Escola de Guerra Naval, v. 28, n. 1, p. 13–40, 2002.

CHARNEY, J. The exclusive economic zone and public international law.

Ocean Development and International Law, v. 15, n. 3/4, 1985, p. 233-288.

CHURCHILL, R.; LOWE, A. V. The Law of the Sea. 2. ed. Manchester: Manchester University Press, 1988

. The Law of the Sea. 3. ed. Manchester: Manchester University Press, 1999.

DE SOUSA, M. A. L. O regime jurídico da Zona Econômica Exclusiva e as atividades militares após 35 anos da Convenção das Nações Unidas sobre o Direito do Mar. 2017, 83 f. Tese (Curso de Política e Estratégia Marítimas) — Escola de Guerra Naval, Rio de Janeiro.

DEPARTMENT OF DEFENSE. Annual Freedom of Navigation Report to the Congress: Fiscal Year 2019. 2020. Available at: <https://policy.defense.gov/Portals/11/Documents/FY19%20DoD%20FON%20Report%20FINAL. pdf?ver=2020-07-14-140514-643&timestamp=1594749943344>. Access on: 23 de abril de 2021.

_____.Annual Freedom of Navigation Report to the Congress: Fiscal Year 2020. 2021. Available at: <https://policy.defense.gov/Portals/11/Documents/FY20%20DoD%20FON%20Report%20FINAL. pdf>. Access on: 23 jul. 2021.

_____. Annual Freedom of Navigation Report to the Congress: Fiscal Year 2022. 2023. Available at: <https://policy.defense.gov/Portals/11/Documents/FON%20Program%20Report_FY2022.pdf?ver=8of4c3mCAOnzfa4AfTYIyg%3d%3d >. Access on: 07 oct. 2023

DÖRR, O. Article 31. In: DÖRR, O; SCHMALENBACH, K (orgs.) Vienna

Convention on the Law of Treaties: A Commentary. 2 ed. Berlim:

Springer, 2018, p. 559-616.

DÖRR, O.; RANDELZHOFER, A. Article 2 (4). In: SIMMA, B et al (org).
The Charter of the United Nations: A Commentary. Oxford: Oxford University Press, 2012, p. 200-274.

FRANCIONI, F. Peacetime use of Force, Military Activities, and the New Law of the Sea. Cornell International Law Journal, v. 18. n. 2, 1985, p. 203-226.

FREUND, E. Freedom of Navigation in the South China Sea: A Practical Guide. Belfer Center for School of International Affairs, Havard Kennedy School, 2017;

GALDORISI, G.; KAUFMAN. A. Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict. California Western International Law Journal, v. 32, n. 2, 2002, p. 253-302;

GAVOUNELI, M. Functional Jurisdiction in the Law of the Sea. Leiden: Martinus Nijhoff Publishers, 2008.

GUILFOYLE, D. Shipping Interdiction and the Law of the Sea, Cambridge: Cambridge University Press, 2011.

HAYASHI, M. Military and intelligence gathering activities in the EEZ: definition of key terms. Marine Policy, v. 29, 2005, p. 123-137.

HUH, S; NISHIMOTO, K. Article 246. In: PROELSS, A et al. (org.). United Nations Convention on the Law of the Sea: a Commentary. Munique: CH Beck Hart Nomos, 2017a, p. 1649-1664.
INTERNATIONAL COURT OF JUSTICE. Corfu Channel Case (United Kingdom v. Albania). Judgment of 9 April, ICJ Reports, 1949.
. Aegean Sea Continental Shelf (Greece v. Turkey), Jurisdiction, Judgment of 19 December 1978, ICJ Reports 1978.

. Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment of 3 February 2009, ICJ Reports 2009.

KRASKA, J. Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics. Nova Iorque: Oxford University Press, 2011.

JIA, B. B. The Principle of the Domination of the Land over the Sea: A Historical Perspective on the Adaptability of the Law of the Sea to New Challenges. German Yearbook of International Law, v. 57, 2014, p. 1-32.

MARCOS, Henrique; CAVALCANTI DE MELLO FILHO, Eduardo, Peaceful Purposes Reservations in the Law of the Sea Convention and the Regulation of Military Exercises or Maneuvers in the Exclusive Economic Zone, University of Pennsylvania Journal of International Law, v. 44, n. 2, p. 417, 2023.

MONTEIRO, T. Navio russo suspeito de espionagem é encontrado no Brasil. Terra. 21 fev. 2020. Available at: <https://www.terra.com.br/noticias/mundo/navio-russo-suspeito-de-espionagem-e-encontrado-no-br asil,0c2e80b408e29856e45acfdf60258f4daxnj3im6.html>. Access on: 23 jul. 2021.

MURPHY, S. D. Obligations of States in Disputed Áreas of the Continental Shelf. In: Heidar, T (org.). New Knowledge and Changing Circumstances in the Law of the Sea. Leiden: Brill, 2019

NANDAN, S. N. The Exclusive Economic Zone: A historical perspective. In: UN Food and Agricultural Organization (org.). The Law of the Sea: Essays in Memory of Jean Carroz.Roma: FAO, 1987, p. 171-.

NORDQUIST, M.; GRANDY, N.; NANDAN, S.; ROSENNE, S (org.). United Nations Convention on the Law of the Sea, 1982: a Commentary, Volume II. Leiden: Brill Nijhoff, 1993.

NORDQUIST, M.; ROSENNE, S; SOHN, L. (org.). United Nations Convention on the Law of the Sea, 1982: a Commentary, Volume V. Leiden: Brill Nijhoff, 1989.

ORREGO VICUÑA, F. R. The Exclusive Economic Zone — Regime

and Legal Nature under International Law. Cambridge: Cambridge University Press, 1989.

OXMAN, B. The Regime of Warships Under the United Nations Convention on the Law of the Sea. Virginia Journal of International Law, v. 24, 1984, p. 809-863.

. The Territorial Temptation: a Siren Song at Sea. American Journal of International Law, v. 100, 2006, p. 830-851.

PEDROZO, R. Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone. Chinese Journal of International Law, v. 9, 2010, p. 9-29.

PEREIRA DA SILVA, A. O Brasil e o Direito Internacional do Mar Contemporâneo: Novas Oportunidades e Desafios. São Paulo: Almedina, 2015.

PERMANENT COURT OF ARBITRATION. Guyana v. Suriname.

Judgment of 17 September 2007, PCA Reports 2007.

. Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), Judgment, Merits, PCA Reports 2015.

. The "Enrica Lexie" Incident (Italy v. India), Award of 21 May 2020, PCA Reports 2020.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Mavrommatis

Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2.

PREZAS, I. Foreign Military Activities in the Exclusive Economic Zone: Remarks on the Applicability and Scope of the Reciprocal 'Due Regard' Duties of Coastal and Third States. The International Journal of Marine and Coastal Law, v. 34, 2019, 97–116.

PROELSS, A. The Law on the Exclusive Economic Zone in Perspective: Legal Status and Resolution of User Conflicts Revisited. Ocean Yearbook, v. 26, 2012, p. 87-112.

. Article 58. In: PROELSS, A et al. (org.). United Nations Convention on the Law of the Sea: a Commentary. Munique: CH Beck Hart Nomos, 2017, p. 444-457.

QUINCE, C. The Exclusive Economic Zone. Wilmington: Vernon Press, 2019.

RICHARDSON, E. L. Power, Mobility and the Law of the Sea. Foreign Affairs, v. 58, n. 4, 1980, p. 902-919.

ROSE, S. Naval Activity in the Exclusive Economic Zone — Troubled Waters Ahead. Ocean Development and International Law, v. 20, 1990, p. 123-145.

RUYS, T. The Meaning of "Force" and the Boundaries of the Jus Ad Bellum: Are "Minimal" Uses of Force Excluded from UN Charter Article 2(4)? American Journal of International Law, v. 108, n. 2, 2014,

SUÁREZ DE VIVERO, J. L.; MARRONI, E. V.; RODRIGUEZ MATEOS, J.

C.; FIGUEIREDO, E. L.; VIOLANTE, A. R. Atlantismo no Atlântico Sul: Comunidade de Interesses e Governança Oceânica. Revista da Escola de Guerra Naval, v. 26, n. 1, 2020, p. 143-197.

TANAKA, Y. The International Law of the Sea. 2. ed. Cambridge: Cambridge University Press, 2015.

VAN DYKE, J. M. Military ships and planes operating in the exclusive economic zone of another country. Marine Policy, v. 28, 2004, p. 29–39.

WOLFRUM, R. Restricting the Use of the Sea to Peaceful Purposes: Demilitarization in Being. German Yearbook of International Law, v. 24, 1981, p. 200-241.

XIAOFENG, R.; XIZHONG, C. A Chinese Perspective. Marine Policy, v. 29, 2005, p. 139- 146.

YEE, S. Sketching the Debate on Military Activities in the EEZ: An Editorial Comment. Chinese Journal of International Law, v. 9, 2010, p. 1-17.

ZHANG, H. Is It Safeguarding the Freedom of Navigation or Maritime Hegemony of the United States — Comments on Raul (Pete) Pedrozo's Article on Military Activities in the EEZ. Chinese Journal of International Law, v. 9, 2010, p. 31-47.

***Received July 30, 2021, and approved for publication on April 12, 2022.**