

PART II

Competing Uses of the Exclusive Economic Zone

As discussed in Part I, after nine years of intensive negotiations, the Third United Nations Conference on the Law of the Sea (Third Conference) concluded a comprehensive United Nations Convention on the Law of the Sea (UNCLOS) that – in so far as verbal formulae can do so – successfully encompassed a series of dedicated compromises into an integral whole package deal.¹ The legal status of the exclusive economic zone (EEZ) proved to be one of the most controversial issues at the Third Conference, and it has continued to be controversial in State practice.² There are various reasons contributing to the disagreements on the competing uses of the zone between different States, and the less-than-definitive language of Part V of UNCLOS is one of them. The provisions of Part V represent a comprehensive version of the EEZ concept and set out the essential juridical configuration of the legal regime, which must be read in line with pertinent provisions of other parts of UNCLOS as well as other relevant rules of international law. But treaty texts, however final and definitive they are intended to be, do not have the last word; that lies with the interpreters and appliers of the regime.

Part II examines in detail how this *sui generis* legal regime has been implemented in State practice, in particular whether, and to what degree, coastal State rights and jurisdiction have affected the exercise of the freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea

¹ United Nations, 'Third United Nations Conference on the Law of the Sea, 1973–1982' https://legal.un.org/diplomaticconferences/1973_los/; Tommy TB Koh and Shanmugam Jayakumar, 'The Negotiating Process of the Third United Nations Conference on the Law of the Sea', in Myron H Nordquist (ed.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. I (Martinus Nijhoff 1985) 29–134.

² Third United Nations Conference on the Law of the Sea (Third Conference), Note by the President of the Conference, A/CONF.62/L.12/Rev.1, 2 August 1976, para 12; Barbara Kwiatkowska, *The 200 Mile Exclusive Economic Zone in the New Law of the Sea* (Martinus Nijhoff 1989) 230–234.

related to these freedoms, in the EEZ. The balance of this regime relies on the continual assessment of the importance of the interests at stake and diligent obedience to the due regard obligation. Subsequent State practice indicates that the balance has shifted slightly in favour of the coastal State's interests, particularly in connection with its sovereign rights over living resources and jurisdiction for environmental protection. On the other hand, the overall balance has been maintained in that international freedoms of navigation and overflight and of the laying of submarine cables and pipelines in the EEZ have not been seriously, or in most contexts even materially, impaired.