

## PART III

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### Resolving Conflicts Regarding Unattributed Rights and Jurisdiction in the Exclusive Economic Zone

Overall, the whole package deal of the legal order of the ocean as adopted in the United Nations Convention on the Law of the Sea (UNCLOS) is the result of a trade-off of negotiations and compromises.<sup>1</sup> The *sui generis* exclusive economic zone (EEZ) legal regime established at the margin between the two distinctive regimes – the territorial sea and the high seas – is an area of compendium rights and duties between the coastal State and other States.<sup>2</sup> As discussed in Part II, UNCLOS has covered the more obvious uses of the EEZ.<sup>3</sup> However, not all potentially relevant rights and jurisdiction have yet been attributed, at least explicitly.

Part III discusses three subjects that UNCLOS has not stipulated specifically as pertaining to either the coastal State or other States, namely military activities, maritime security and underwater archaeological and historical objects. State practice and scholarly writings show different interpretations of whether these three subjects fall under the scope of unattributed rights and jurisdiction in the EEZ, particularly those relating to military activities. Following a strict reading of the provisions of UNCLOS, these three subjects are not automatically associated with either the sovereign rights or jurisdiction granted to the coastal States or the preserved communicational freedoms available to all States. Nevertheless, it is clear that some of the activities relating to these subjects are more clearly affiliated with a specific State than others, such as law enforcement activities over certain threats to maritime security in the EEZ.

<sup>1</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, in force 16 November 1994) 1833 UNTS 3 (UNCLOS); Arnd Bernaerts, Bernaerts' Guide to the 1982 United Nations Convention on the Law of the Sea (Fairplay 1988), 8; Tommy Koh, *Building A New Legal Order for the Oceans* (NUS Press, 2020), 25–47; Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea* (4th ed., Manchester University Press, 2022), 23–24.

<sup>2</sup> UNCLOS, Articles 55 and 57.

<sup>3</sup> UNCLOS, Articles 56 and 58; Churchill, Lowe and Sander (2022), 262–291.

By giving these three subjects the status as unattributed rights and jurisdiction in the EEZ, it leaves room for both the coastal State and other States to discuss their attribution based on the general principle applied to this *sui generis* legal regime: that is, to reserve the rights and jurisdiction over those activities that may affect economic interests to the coastal States while minimising the erosion of the communicational freedoms enjoyed by all States, and to preserve these freedoms for all States insofar as they are compatible with the EEZ. The exercise of these rights and jurisdiction will continue to be guided by the mutual obligation of due regard as explicitly required in both Articles 56(2) and 58(3) of UNCLOS, whereby no State may exercise their rights or freedoms in an absolute manner. The principle of equity and other circumstances as set out in Article 59 will be drawn on when a conflict arises between States on the attribution of rights and jurisdiction over these three subjects.

In the age of globalisation and interdependency, the former primary objective of winning command of the sea has gradually given way to the peaceful and secure use of the ocean by the international community. The implication is that instead of competing for exclusive jurisdiction, the coastal State and other States must recognise the need and right of each other to pursue their interests in the same marine area, and prepare to make compromises if the respective importance of the interests of the other party or the international community outweighs its own interest.