
MILITARY ACTIVITIES IN THE EXCLUSIVE ECONOMIC ZONE UNDER UNCLOS: A FUNCTIONAL PROPORTIONALITY TEST FOR THE DUE REGARD STANDARD

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ABSTRACT

The exclusive economic zone under the United Nations Convention on the Law of the Sea, 1982, represents a carefully drawn compromise between coastal State resource authority and the navigational freedoms of other States. That compromise has become increasingly contested where coastal States claim that foreign military exercises or manoeuvres in the EEZ require prior consent. Several maritime States reject such claims, arguing that UNCLOS preserves navigation, overflight, and other internationally lawful uses of the sea in the EEZ. The difficulty lies in Article 58(3), which requires States exercising EEZ freedoms to have due regard to the rights and duties of the coastal State. This article argues that due regard should not be read as a general coastal State security veto. Using the interpretive approach reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, and drawing on UNCLOS, State practice, and jurisprudence including the Chagos Marine Protected Area Arbitration, *M/V Saiga* (No. 2), *Corfu Channel*, and the South China Sea Arbitration, the article proposes a Functional Proportionality Test. A coastal State restriction should be treated as legally sustainable only where it has a treaty nexus, does not disproportionately impair navigational freedoms, and is based on observable conduct rather than abstract security apprehension. Applied to India's declaration and the 2021 United States Freedom of Navigation Operation near Lakshadweep, the test suggests that broad prior-consent requirements are difficult to reconcile with UNCLOS, while limited and fact-specific measures protecting recognised EEZ interests may remain permissible.

Keywords: UNCLOS; exclusive economic zone; due regard; military activities; freedom of navigation; India; proportionality; maritime security.

I. INTRODUCTION

The United Nations Convention on the Law of the Sea, 1982 ("UNCLOS") divides the ocean into legal zones and allocates different rights within each zone¹.

Its most delicate compromise is the exclusive economic zone ("EEZ"). The coastal State receives sovereign rights over natural resources and limited jurisdiction over artificial islands, marine scientific research and environmental protection². Other States retain freedoms of navigation and overflight, together with other internationally lawful uses of the sea related to those freedoms³. The EEZ was therefore not designed as a second territorial sea. Nor was it intended to remain an unqualified extension of the high seas. It is a functional maritime zone in which authority depends on the subject matter of the activity.

That balance has become contested. Several coastal States have taken the position that foreign military exercises or manoeuvres in their EEZ require prior consent, especially where such activities involve weapons or explosives⁴. Maritime States have objected that these claims restrict navigational freedoms in a manner not authorised by UNCLOS⁵. The dispute is not merely academic. On 7 April 2021, USS John Paul Jones conducted a Freedom of Navigation Operation ("FONOP") approximately 130 nautical miles west of the Lakshadweep Islands, within India's EEZ, without seeking India's prior consent⁶.

The United States described India's consent requirement as inconsistent with international law⁷. India objected and restated its position that UNCLOS does not authorise other States to conduct military exercises or manoeuvres in the EEZ or on the continental shelf

¹ United Nations Convention on the Law of the Sea arts. 55–58, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

² Id. art. 56(1).

³ Id. art. 58(1).

⁴ See India, Declaration upon Ratification of the United Nations Convention on the Law of the Sea (June 29, 1995), <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/IND.htm> [hereinafter India Declaration]; J. Ashley Roach & Robert W. Smith, *Excessive Maritime Claims* 249–63 (3d ed. 2012).

⁵ See Roach & Smith, *supra* note 4, at 249–63; Raul A. Pedrozo, *Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone*, 9 *Chinese J. Int'l L.* 9, 13–18 (2010).

⁶ Commander, U.S. 7th Fleet, 7th Fleet Conducts Freedom of Navigation Operation, U.S. Navy (Apr. 7, 2021), <https://www.c7f.navy.mil/Media/News/Display/Article/2563538/7th-fleet-conducts-freedom-of-navigation-operation/> [hereinafter U.S. Seventh Fleet Statement].

⁷ Id.

without coastal-State consent⁸.

The legal difficulty is the meaning of "due regard" under Article 58(3). States exercising freedoms in the EEZ must have due regard to the rights and duties of the coastal State and must comply with coastal-State laws adopted in accordance with UNCLOS⁹. Coastal States invoke this language to justify security-based regulation. Maritime States respond that due regard cannot create jurisdiction that the Convention did not confer. The phrase is therefore important but incomplete. It requires legal content without becoming a source of unilateral coastal-State control.

The existing debate has often been framed as a binary question: whether foreign military activities in the EEZ are lawful or unlawful¹⁰. That framing is too broad. The more difficult question is how particular coastal-State restrictions should be assessed when they are justified by security concerns but operate in a zone where the coastal State has only functional jurisdiction. This article addresses that gap by proposing a Functional Proportionality Test for Article 58(3). The test asks three questions: whether the restriction is connected to a coastal-State right or duty recognised by UNCLOS; whether the restriction impairs navigational freedoms no more than is proportionate to the protected interest; and whether the restriction is based on the observable conduct of the foreign vessel rather than a general apprehension of military purpose.

II. OBJECTIVE OF THE STUDY

This article has four objectives. First, it examines whether UNCLOS permits a coastal State to require prior consent for foreign military exercises or manoeuvres in the EEZ. Secondly, it evaluates the legal effect of Article 58(3) and the extent to which the due regard obligation may support coastal-State regulation. Thirdly, it analyses relevant State practice and jurisprudence to identify the limits of security-based restrictions in the EEZ. Finally, it proposes a Functional Proportionality Test as a structured method for assessing whether a particular coastal-State measure is consistent with the Convention.

⁸ Ministry of External Affairs, Government of India, Passage of USS John Paul Jones Through India's EEZ (Apr. 9, 2021) [hereinafter MEA Statement].

⁹ UNCLOS, *supra* note 1, art. 58(3).

¹⁰ See generally Pedrozo, *supra* note 5, at 13–18; Haiwen Zhang, Is It Safeguarding the Freedom of Navigation or Maritime Hegemony of the United States? Comments on Raul Pedrozo's Article on Military Activities in the EEZ, 9 Chinese J. Int'l L. 31, 33–38 (2010).

III. METHODOLOGY

The study adopts a doctrinal and analytical method. The interpretation of UNCLOS proceeds through the ordinary meaning, context, and object and purpose approach reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties ("VCLT")¹¹. The analysis also considers State declarations, official government practice, decisions of international courts and tribunals, and leading academic commentary. This method is appropriate because the dispute concerns the interpretation of treaty provisions, the legal significance of State practice, and the application of general principles of maritime proportionality to a contested area of the law of the sea.

IV. RESEARCH QUESTION

The central research question is whether Article 58(3) of UNCLOS permits coastal States to impose broad prior-consent requirements on foreign military exercises or manoeuvres in the EEZ. If such broad requirements are not supported by UNCLOS, the further question is what legal test can distinguish permissible coastal-State regulation from excessive restrictions on navigational freedoms.

V. THE EEZ AS A FUNCTIONAL MARITIME ZONE

Article 55 of UNCLOS defines the EEZ as an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in Part V. Article 57 limits its breadth to 200 nautical miles from the baselines from which the territorial sea is measured¹². These provisions are significant because they place the EEZ between sovereignty and freedom. It is not part of the territorial sea, but it is also not governed by the same regime as the high seas.

Article 56(1) sets out the coastal State's rights and jurisdiction. The coastal State has sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, whether living or non-living. It also has jurisdiction with regard to artificial islands, installations and structures, marine scientific research, and the protection and preservation of the marine environment¹³. General security jurisdiction over foreign military navigation is not

¹¹ Vienna Convention on the Law of Treaties arts. 31–32, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

¹² UNCLOS, *supra* note 1, arts. 55, 57.

¹³ *Id.* art. 56(1)(a)–(b).

included in that list. This omission is legally significant. Part V allocates competences by function, and a claim not connected to those functions requires careful justification.

Article 58(1), by contrast, preserves for all States the freedoms of navigation and overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms¹⁴. The phrase "other internationally lawful uses" is important, but it should be handled with care. Some States and commentators have treated naval movement and certain peacetime military operations as uses of the sea associated with navigation¹⁵. At the same time, UNCLOS does not expressly resolve the status of all military activities in the EEZ. It is therefore more accurate to say that the Convention does not expressly prohibit peacetime military activities in the EEZ than to claim that it affirmatively settles every category of such activity.

Article 58(3) qualifies these freedoms. It requires States exercising rights in the EEZ to have due regard to the rights and duties of the coastal State and to comply with coastal-State laws and regulations adopted in accordance with UNCLOS and other rules of international law, insofar as they are not incompatible with Part V¹⁶. The provision is reciprocal in character. It prevents navigational freedoms from being exercised without regard to lawful coastal-State interests. At the same time, it does not allow the coastal State to legislate beyond the Convention and then demand compliance through due regard.

The phrase "in accordance with the provisions of this Convention" is central. A coastal-State law does not become binding on other States simply because it has been enacted. It must be compatible with the Convention's allocation of rights. A domestic rule requiring prior consent for all military exercises in the EEZ must therefore be justified by reference to rights that UNCLOS actually confers on the coastal State.

The structure of UNCLOS supports this reading. In the territorial sea, the coastal State enjoys sovereignty subject to innocent passage. Article 19(2) identifies activities that render passage non-innocent, including weapons exercises, intelligence collection and acts prejudicial to the security of the coastal State. Article 25(3) permits temporary suspension of innocent

¹⁴ Id. art. 58(1).

¹⁵ See James Kraska, *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics* 239–45 (2011); Sam Bateman, *Prospective Guidelines for Navigation and Overflight in the Exclusive Economic Zone*, 144 *Maritime Stud.* 17, 18–21 (2005).

¹⁶ UNCLOS, *supra* note 1, art. 58(3).

passage in specified areas where suspension is essential for security and is duly published¹⁷. In straits used for international navigation, transit passage may not be suspended¹⁸. Where UNCLOS intended to create security-based coastal-State controls, it did so expressly and with conditions. Part V contains no equivalent power allowing the coastal State to suspend, prohibit or condition foreign military navigation throughout the EEZ.

Article 59 does not by itself alter this conclusion. It provides a residual rule for resolving conflicts concerning rights or jurisdiction not attributed by the Convention, having regard to equity and all relevant circumstances¹⁹. It is not a general source of new coastal-State jurisdiction. It assists in resolving unallocated conflicts; it does not authorise a coastal State to convert a broad security concern into a consent requirement covering the entire EEZ.

VI. STATE PRACTICE AND THE INDIA–UNITED STATES DISPUTE

State practice on military activities in the EEZ is divided. Some coastal States have made declarations stating that foreign military exercises or manoeuvres in the EEZ require prior consent, particularly where weapons or explosives are involved²⁰. Brazil, Bangladesh, India, Malaysia and Pakistan have been associated with this restrictive view²¹. Maritime States, including Germany, Italy, the Netherlands, the United Kingdom and the United States, have objected to such claims as inconsistent with the navigational freedoms preserved by UNCLOS²².

India's position is particularly significant because it is clear and operationally contested. India ratified UNCLOS on 29 June 1995. Its declaration states that the Convention does not authorise other States to carry out military exercises or manoeuvres in the EEZ or on the continental shelf, particularly those involving weapons or explosives, without the consent of the coastal State²³. This declaration reflects a security-sensitive understanding of the EEZ. India's Maritime Zones Act, 1976 also adopts a strong coastal-State approach to maritime

¹⁷ Id. arts. 17, 19(2), 25(3).

¹⁸ Id. art. 44.

¹⁹ Id. art. 59.

²⁰ See Declarations and Statements, U.N. Div. for Ocean Affs. & the Law of the Sea, https://www.un.org/depts/los/convention_agreements/convention_declarations.htm (last updated Apr. 24, 2026).

²¹ See Roach & Smith, *supra* note 4, at 249–63.

²² Id.; Moritaka Hayashi, Military and Intelligence Gathering Activities in the EEZ: Definition of Key Terms, 29 *Marine Pol'y* 123, 126–28 (2005).

²³ India Declaration, *supra* note 4.

regulation, although its specific prior-notice provision for foreign warships concerns the territorial sea rather than the EEZ²⁴.

The 2021 FONOP brought the disagreement into public view. The U.S. Seventh Fleet stated that USS John Paul Jones asserted navigational rights and freedoms approximately 130 nautical miles west of the Lakshadweep Islands, inside India's EEZ, without requesting India's prior consent²⁵. It described India's requirement of prior consent for military exercises or manoeuvres in the EEZ or on the continental shelf as inconsistent with international law²⁶. India's Ministry of External Affairs responded that the vessel had been continuously monitored while transiting from the Persian Gulf towards the Malacca Straits and that India had conveyed its concerns to the United States through diplomatic channels²⁷.

The United States is not a party to UNCLOS. That fact does not remove the relevance of the dispute. The United States has long treated the Convention's navigation and overflight provisions as reflecting customary international law and conducts FONOPs on that basis²⁸. India is a party to UNCLOS and frames its objection through the Convention. The disagreement therefore concerns the content of the law of the sea as reflected in UNCLOS, not merely treaty relations between the two States.

The public record does not identify any particular interference by USS John Paul Jones with Indian resource rights, offshore installations, marine scientific research or environmental protection. The dispute appears instead to have concerned India's general prior-consent requirement. That distinction matters. A fact-specific measure responding to a concrete threat to an installation or research activity presents a different legal question from a categorical requirement of consent for military exercises or manoeuvres throughout the EEZ.

The divided practice prevents an easy customary-law answer. Restrictive declarations show that some coastal States regard military activities in the EEZ as implicating security interests. Persistent objections by maritime States show that such claims have not crystallised

²⁴ Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, No. 80 of 1976, s. 4(2), India Code.

²⁵ U.S. Seventh Fleet Statement, *supra* note 6.

²⁶ *Id.*

²⁷ MEA Statement, *supra* note 8.

²⁸ See United Nations Convention on the Law of the Sea, S. Treaty Doc. No. 103-39, at III–IV (1994); Roach & Smith, *supra* note 4, at 5–8.

into a generally accepted rule requiring coastal-State consent²⁹. In that setting, the treaty text, structure and object of Part V remain the strongest starting points.

VII. JURISPRUDENCE ON DUE REGARD AND MARITIME PROPORTIONALITY

The most useful judicial guidance on due regard comes from the Chagos Marine Protected Area Arbitration. Mauritius challenged the United Kingdom's establishment of a marine protected area around the Chagos Archipelago, arguing that the United Kingdom had failed to have due regard to Mauritius' fishing and related rights³⁰. The tribunal treated due regard as a real legal obligation rather than a formula of courtesy. It required an assessment of the rights at stake and a balancing of interests in good faith³¹. The tribunal criticised the United Kingdom's consultation process and found that Mauritius' rights had not been adequately taken into account before the marine protected area was declared³². Chagos was not a military-activities case, and it should not be overstated. Its importance lies in its method. The tribunal treated due regard as both substantive and procedural. Substantively, the State must identify the rights of others and weigh them against its own proposed action. Procedurally, it must engage with those rights before acting, rather than merely offering justification afterwards³³.

M/V Saiga (No. 2) adds a jurisdictional and proportionality principle. Guinea arrested the Saiga for alleged customs violations connected to bunkering activities³⁴. ITLOS held that Guinea had no right to apply its customs laws in the EEZ in the manner claimed and also found that the force used in arresting the vessel was excessive³⁵. The Tribunal stated that force must be avoided as far as possible and, where unavoidable, must not go beyond what is reasonable and necessary in the circumstances³⁶. Although Saiga concerned enforcement rather than military exercises, it shows that maritime restrictions must be connected to a lawful jurisdictional basis and must be reasonable in execution.

Corfu Channel contributes a conduct-based principle. The International Court of Justice

²⁹ See Roach & Smith, *supra* note 4, at 249–63; Hayashi, *supra* note 22, at 126–28.

³⁰ Chagos Marine Protected Area Arbitration (Mauritius v. U.K.), Case No. 2011-03, Award, ¶¶ 519–20 (Perm. Ct. Arb. Mar. 18, 2015).

³¹ *Id.*

³² *Id.* ¶¶ 521, 528, 531–33.

³³ *Id.* ¶¶ 519–20, 531–33.

³⁴ M/V "SAIGA" (No. 2) (St. Vincent & the Grenadines v. Guinea), Judgment, 1999 I.T.L.O.S. Rep. 10, ¶¶ 127–36 (July 1).

³⁵ *Id.*

³⁶ *Id.* ¶ 155.

recognised that warships in time of peace could pass through an international strait without prior authorisation, provided the passage was innocent³⁷. Albania's security concerns did not permit it to prohibit such passage or subject it to special authorisation³⁸. The Court nevertheless examined the conduct of the British vessels and the factual context³⁹. Corfu Channel therefore supports an inquiry focused on what vessels actually do in a maritime space, not merely on their military character.

The South China Sea Arbitration reinforces the primacy of the UNCLOS zonal framework. The tribunal rejected China's historic-rights claims to living and non-living resources within the nine-dash line because they were incompatible with the Convention's allocation of rights⁴⁰. The case did not decide the legality of foreign military activities in the EEZ. Its relevance is more limited but still important: additional maritime rights must be grounded in the Convention rather than asserted outside it.

Taken together, these authorities suggest three propositions. Due regard requires meaningful balancing. Restrictions in the EEZ must be connected to a jurisdictional competence recognised by UNCLOS. The legality of a measure should be assessed by reference to concrete conduct and proportionate impairment, not by abstract security apprehension alone.

VIII. THE FUNCTIONAL PROPORTIONALITY TEST

A functional test is appropriate because the EEZ is a functional zone. The coastal State does not possess sovereignty over all activities in the EEZ. It possesses particular rights for particular purposes. Other States do not enjoy absolute freedom either; their freedoms must be exercised with due regard to lawful coastal-State interests⁴¹. The legal task is to distinguish between legitimate protection of Part V interests and an unauthorised extension of territorial-sea control.

The Functional Proportionality Test proposed here has three cumulative requirements. It is not presented as settled law. It is a structured doctrinal model drawn from the text of

³⁷ Corfu Channel (U.K. v. Alb.), Judgment, 1949 I.C.J. 4, 28–30 (Apr. 9).

³⁸ Id. at 29–30.

³⁹ Id. at 30–32.

⁴⁰ South China Sea Arbitration (Phil. v. China), Case No. 2013-19, Award, ¶¶ 246, 261–62, 278 (Perm. Ct. Arb. July 12, 2016).

⁴¹ UNCLOS, *supra* note 1, arts. 56, 58.

UNCLOS, the functional character of the EEZ, and the reasoning of international courts and tribunals on due regard, jurisdiction and proportionality.

A. Treaty-Nexus Requirement

First, the coastal-State measure must have a treaty nexus. It must be connected to a right or duty that UNCLOS confers on the coastal State in the EEZ. Article 56 is the starting point⁴². Measures protecting living or non-living resources, artificial islands, installations and structures, authorised marine scientific research, or the marine environment may satisfy this requirement. Measures grounded solely in general national security, without connection to any Part V competence, do not.

This requirement follows from Article 58(3). Other States must comply only with coastal-State laws adopted in accordance with UNCLOS⁴³. If a law claims a power that UNCLOS did not confer, due regard cannot transform it into a binding obligation. Otherwise, Article 58(3) would allow unilateral expansion of EEZ jurisdiction.

B. Impairment-Proportionality Requirement

Second, the measure must not impair the freedoms of other States more than is proportionate to the protected interest. A safety zone around an offshore installation may be lawful if it is limited in area, published, and connected to the protection of that installation⁴⁴. A temporary exclusion area around a specific marine scientific research operation may also be defensible if narrowly tailored. By contrast, a blanket prior-consent requirement for all military exercises throughout the entire EEZ imposes a serious burden on Article 58 freedoms while protecting no identified resource or environmental interest.

This requirement does not demand mathematical precision. It asks whether the scope, duration and intensity of the restriction correspond to the concrete interest being protected. Relevant factors include geographical reach, duration, notice, availability of alternative routes, risk to installations or resources, and whether less restrictive measures could address the same risk.

⁴² Id. art. 56(1).

⁴³ Id. art. 58(3).

⁴⁴ Id. art. 60(5).

C. Conduct-Based Verification Requirement

Third, the restriction must be based on observable conduct rather than the mere military status or presumed strategic purpose of the vessel. Warships are State vessels, but their presence in the EEZ is not automatically unlawful. A coastal State may have stronger grounds to act where a foreign vessel damages a submarine cable, interferes with an offshore platform, conducts unauthorised marine scientific research, or creates an identifiable environmental risk. A general belief that a warship might gather intelligence or project power cannot, by itself, justify a categorical consent requirement⁴⁵.

This requirement reduces the risk of securitisation in a narrow descriptive sense: the tendency to frame ordinary navigational activity as a security threat in order to justify exceptional control⁴⁶. If any military presence can be characterised as a security threat, the EEZ may gradually become a zone of coastal-State exclusion. A conduct-based approach keeps the inquiry anchored in facts and preserves the Convention's allocation of rights.

IX. APPLICATION TO INDIA'S PRIOR-CONSENT POSITION

India's declaration is understandable as a security position. India has a long coastline, island territories, energy interests and strategic vulnerabilities in the Indian Ocean. UNCLOS does not require a coastal State to be indifferent to security. The legal question is narrower: whether UNCLOS permits India to require prior consent for foreign military exercises or manoeuvres across the EEZ⁴⁷.

Under the treaty-nexus requirement, a broad prior-consent rule faces difficulty. Article 56 does not confer general security jurisdiction over military navigation in the EEZ⁴⁸. India could regulate conduct that interferes with resource exploration, offshore installations, marine scientific research or environmental protection. A categorical rule covering military exercises or manoeuvres as such is not clearly connected to a listed Part V competence.

Under the impairment-proportionality requirement, the breadth of the rule is also problematic. The EEZ may extend up to 200 nautical miles. A requirement of prior consent

⁴⁵ See Corfu Channel, *supra* note 37, at 30–32; M/V "SAIGA" (No. 2), *supra* note 34, ¶ 155.

⁴⁶ See Natalie Klein, *Maritime Security and the Law of the Sea* 47–54 (2011).

⁴⁷ India Declaration, *supra* note 4.

⁴⁸ UNCLOS, *supra* note 1, art. 56(1).

throughout that space significantly burdens the navigational freedoms of other States⁴⁹. If the concern is the use of weapons near installations, fishing activity or environmentally sensitive operations, narrower restrictions could address those risks. A general consent requirement is difficult to justify unless tied to specific areas, specific times and specific risks.

Under the conduct-based verification requirement, the 2021 FONOP does not appear, on the public record, to involve an identified interference with India's resource rights, installations, marine scientific research or environmental protection. India's response focused on the lack of consent and the vessel's passage through the EEZ⁵⁰. The United States focused on challenging India's legal claim⁵¹. The dispute therefore concerned a general rule rather than a specific harmful act. On the proposed test, the broad formulation of India's position is difficult to reconcile with Article 58.

This conclusion should not be overstated. It does not mean that all coastal-State regulation of military-related conduct in the EEZ is unlawful. If a foreign warship conducts weapons firing near an offshore platform, interferes with a seismic survey, threatens marine research equipment or creates a concrete environmental hazard, the coastal State may have stronger grounds to act. The key is that the measure must protect a recognised Convention interest and must be proportionate to observable conduct.

X. COUNTERARGUMENTS AND LIMITS

Three counterarguments deserve attention. The first is that Article 58(3) itself requires other States to have due regard to coastal-State rights and duties, and therefore allows coastal States to define what due regard requires. This view correctly treats due regard as legally meaningful, but it gives too much weight to unilateral definition. Article 58(3) requires compliance only with laws adopted in accordance with UNCLOS⁵². The coastal State may identify risks, but it cannot be the sole judge of the scope of its own EEZ jurisdiction.

The second counterargument is that military activities were deliberately left unresolved during the negotiations of UNCLOS, so restrictive coastal-State practice should be allowed to develop. This reflects a real ambiguity. Yet persistent objections by maritime States prevent

⁴⁹ Id. art. 58(1).

⁵⁰ MEA Statement, *supra* note 8.

⁵¹ U.S. Seventh Fleet Statement, *supra* note 6.

⁵² UNCLOS, *supra* note 1, art. 58(3).

the emergence of a clear customary rule requiring consent⁵³. In the absence of such a rule, the Convention's allocation of competences remains controlling.

The third counterargument is institutional. Article 298(1)(b) allows States to exclude disputes concerning military activities from compulsory dispute settlement⁵⁴. Many disputes of this kind may therefore never reach a tribunal. That does not make legal standards irrelevant. States still invoke law in diplomatic exchanges, operational planning and public justification. A structured test can guide conduct even where adjudication is unavailable.

The test also has limits. It cannot answer every factual dispute at sea. It does not determine what intelligence-gathering activities are lawful in every circumstance. It does not eliminate the political sensitivity of naval operations near another State's coast. Its more modest purpose is to discipline the use of security arguments within the EEZ by requiring treaty connection, proportionality and conduct-based justification⁵⁵.

XI. CONCLUSION

The due regard standard in Article 58(3) is central to the EEZ compromise. It prevents maritime powers from exercising navigational freedoms without regard to coastal-State interests. It also prevents coastal States from transforming the EEZ into a security-controlled zone without treaty authority. The standard must therefore be interpreted functionally.

The Functional Proportionality Test proposed in this article gives practical content to due regard without overstating existing law. It requires a treaty nexus, proportionate impairment and conduct-based verification. These elements are drawn from the structure of UNCLOS and from the reasoning of Chagos, Saiga, Corfu Channel and the South China Sea Arbitration. The test does not deny coastal-State security concerns. It requires those concerns to be connected to recognised EEZ interests and concrete facts.

Applied to India's declaration and the 2021 U.S. FONOP near Lakshadweep, the test suggests that a broad prior-consent requirement for military exercises or manoeuvres in the EEZ is difficult to justify under UNCLOS. India may regulate specific conduct that threatens

⁵³ See Hayashi, *supra* note 22, at 126–28; Pedrozo, *supra* note 5, at 13–18; Zhang, *supra* note 10, at 33–38.

⁵⁴ UNCLOS, *supra* note 1, art. 298(1)(b).

⁵⁵ See Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* 260–69 (2005); Roach & Smith, *supra* note 4, at 249–63.

resources, installations, research or the marine environment. But due regard does not support a general veto over foreign military navigation in the EEZ. A narrower, fact-specific approach better preserves the balance that UNCLOS sought to achieve between coastal-State rights and the freedoms of all States.