

Status of Maritime, Airspace and Military with Indian Perspective: A Legal Analysis

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INTRODUCTION

Maritime control, the sovereignty of the airspace and the military operations are considered one of the biggest and the most rapidly developing sectors of international law. The ownership and utilization of oceans and airspace have invariably taken center stage in matters of national security, economic progress and geopolitical balance due to the globalization, strategic rivalry and the swift technological enhancement.

The law of the seas used to be founded on the idea of *mare liberum* (freedom of the seas) and it permitted to navigate freely on the seas that were located beyond the territorial waters. But as the struggle intensified among the powers over the seas and maritime national interests, this precept rapidly became a more formal legal system. The codification of maritime spaces by the United Nations Convention on the Law of the Sea (UNCLOS), 1982 was a breakthrough in maritime zone regulation as well as balancing between the sovereignty of the state and the global commons.¹ just as airspace is governed by the absolute sovereignty doctrine of the Chicago Convention, 1944, granting states the exclusive control over the airspace above its territory.²

Although these structures are clear in determining the borders of jurisdiction the legal position of military actions in the waters and in the airspace is debatable. Military activities- be it in sea drills, border patrol or aerial flights- tend to encroach upon national sovereignty and international liberties. Such overlap causes legal irregularities specifically in areas like the Exclusive Economic Zone (EEZ) regions where the states most affected by this have economic rights but other states have the freedom of navigation and flight.

¹ United Nations Convention on the Law of the Sea pmb., Dec. 10, 1982, 1833 U.N.T.S. 397.

² Convention on International Civil Aviation art. 1, Dec. 7, 1944, 15 U.N.T.S. 295.

The growing prevalence of geopolitics, particularly over the areas like the South China Sea and the Indo-Pacific, has only heightened the controversy regarding the maritime and aerial jurisdiction. States do not agree on the interpretation of international law and especially the legality of foreign military actions within the EEZ and the extent of innocent passage. These divergences do not only question the unified enforcement of international law but also give another subject to worry on the escalation of conflicts and maritime security.

These problems are of particular importance in the Indian point of view. With its strategic location and a vast coastline in the Indian Ocean Region, India is a very important country in terms of maritime security as well as safeguarding the navigation freedom. Simultaneously, it has a prescriptive attitude to the foreign military actions in its maritime areas, focusing on sovereignty and national security. Likewise, India has a tight grip on its air space that is a broader concept in terms of territorial integrity.

Moreover, new technologies, including unmanned aerial vehicles (UAVs), autonomous maritime systems and cyber warfare have introduced new aspects into the legal discourse. The current legal institutions frequently find it difficult to cope with such developments and that requires new standards and more cooperation on the international level.

It is against this backdrop that this article intends to critically discuss the legal framework surrounding the maritime zone, sovereignty of airspace and military operations. It examines the appropriate texts of the international law, the most important judicial decisions and the assessment of state practice, addressing the specific issue of Indian approach. The research tends to define the available gaps and challenges and proposes that there is a need to be clearer and more synchronized in international legal regimes.

Maritime Zones and Legal Form (UNCLOS).

The modern legal order pertaining to maritime zones can be described as the zonal order codified in the United Nations Convention on the Law of the Sea (UNCLOS), 1982, commonly referred to as the "constitution of the oceans" in that the zonal order strikes balance between the sovereignty of the coastal states and the principles of the global commons.

The sovereignty of the coastal state extends to the territorial sea 12 nautical miles offshore, including the sovereignty over the airspace above and the seabed beneath the territorial water³ but this sovereignty is conditional by the right of innocent passage, i.e. the foreign ships (including war ships) are not barred to transit through the territorial water provided that they do not carry out activities that have an adverse effect on the peace, good order or security of the coastal state.

Outside this is the contiguous zone (24 nautical miles) where states have limited rights to control the coastal area to avert the violation of the customs, fiscal, immigration, and sanitary laws.⁴ The Exclusive Economic Zone (EEZ), which spans to 200 nautical miles, provides the sovereign rights to the coastal states in order to explore and exploit natural resources.⁵

By implication, the high seas belong to the principle of *res communis*, which guarantees freedom of navigation, overflight, fishing and scientific studies.⁶

In the Anglo-Norwegian Fisheries Case, the International Court of Justice (ICJ) defended the way Norway had drawn baselines, underlining that the state had the freedom of doing so in the maritime delimitation under some conditions. This case is still seminal in the interpretation of the rights of the coastal states.

India has also enshrined the principles of UNCLOS in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976. According to the Act the maritime zones of India have been defined and the provision provided to regulate the navigation, exploration of resources and enforcing

³ United Nations Convention on the Law of the Sea art. 2, Dec. 10, 1982, 1833 U.N.T.S. 397.

⁴ Id. art. 33.

⁵ Id. art. 56.

⁶ Id. art. 87.

jurisdiction.

Through its claims over the EEZ especially when it comes to offshore energy exploration, regulation of fisheries and at the same time promoting freedom of movement in the international waters, India has taken active care to uphold its rights in EEZ.

Sovereignty Airspace (Chicago Convention, 1944).

The principle of absolute sovereignty dominating airspace law is more restrictive than the maritime law. According to the Chicago Convention, 1944, each state enjoys full and absolute sovereignty on the airspace that is over its territory.⁷

There is also no equivalent to innocent passage in the airspace, as there is in the maritime law. Prior permission has to be made to foreign aircrafts before they fly into the airspace of another state.⁸ The concept is paramount to the national security and border control.

The airspace above the high seas will be regarded as international and not restricted by any country and- therefore- will reflect the legal regime of the high seas.

This doctrine of sovereignty was strengthened in the Aerial Incident of 27 July 1955 (Israel v.). In Bulgaria, the ICJ dealt with the issue of the state responsibility regarding the destruction of a civilian plane, focusing on the fact that the acting person bears the responsibility in case the rules of international aviation are broken.

India has Aircraft Act, 1934 and Aircraft Rules, 1937 as a regulator of its airspace, though; civil aviation is regulated by the Directorate General of Civil Aviation (DGCA), whereas, military-related airspace is controlled by the Indian Air Force.

⁷ Convention on International Civil Aviation art. 1, Dec. 7, 1944, 15 U.N.T.S. 295.

⁸ Id. art. 6.

India is of strict control to its airspace, especially in its sensitive borders. Unauthorized operations are classified as a severe violation and, in most cases, the procedure results in interception or forced landing.

Maritime Zones: Military Activities.

One of the most controversial problems in international law is military operations in the maritime areas. UNCLOS does not directly regulate everything in the military behavior; it is simply a framework.

Foreign war-ships are only allowed innocent passage in the territorial sea, although the vessels are not allowed to conduct other activities, including weapons training, surveillance or intelligence collection.⁹

The EEZ is still unclear legally. Though the freedom of navigation and overflight in UNCLOS in the article 58, is open to freedom of choice, the question that remains ambiguous in the process is whether or not military exercises are covered during the freedom of choice.

In the Corfu channel Case, the ICJ declared that states could have a right of passage through straits utilized in the international navigation but, they underlined that no right of passage could be applied to chilly hostilities. This case is often referred to when there are disputes about the military actions and the motions of the navies.

India has adopted a limiting policy on foreign military actions on its EEZ. It needs previous approval to military drills and surveillance activities, which is indicative of concerns on national security and safeguarding resources.

As an example, India has been protesting the actions of some foreign naval forces in the Indian Ocean region which it feels is encroachment or lack of consistency to its interpretation of UNCLOS.

Security and Airspace Military Usage.

Rules followed by military aircraft are more stringent as compared to civil planes. In the Chicago Convention, state aircraft are to be given a prior permission to fly in foreign airspace, such as military aircraft.¹⁰

The breach of sovereignty through unauthorised entry can be taken as a defensive action and can be a reason to intervene by interception.

To track the incoming air-traffic outside the territorial airspace, states also create Air Defense Identification

Zones (ADIZ). Though ADIZ practices are not legally known as such under international conventions, they are considered as a popular practice in conjunction with national security.¹¹

The principles of force use were further made in the Military and Paramilitary Activities (Nicaragua v. United States), the ICJ stated that the use of force should be in accordance with the international law, such as necessities and proportionality.

India has strong air defense systems, such as radar monitoring and interception systems. The Indian Air Force maintains a constantly checked airspace violation especially on the sensitive borders with Pakistan and China.

The Indian stance defines a compromise between the balance between the international law and the consideration of the national interests of national security.

Connection Between Airspace, Maritime

⁹ UNCLOS, supra note 1, art. 19.

¹⁰ Chicago Convention, supra note 8, art. 3.

¹¹ Peter A. Dutton, *Caelum Liberum: Air Defense Identification Zones Outside Sovereign Airspace*, 103 Am. J. Int'l L. 691 (2009).

And Military Jurisdiction.

Maritime and airspace jurisdictions have complex interactions, which have resulted in overlapping jurisdictions. A coastal state has a sovereignty in the territorial sea over the water and airspace over the territory. However, in the EEZ, the coastal state remains resource entitlement, other states are not deprived of freedom of navigation and overflight.

These overlapping areas are usually involved in military operations especially when carrying out surveillance and reconnaissance missions. This is causing tensions between:

- Coastal state sovereignty
- Freedom of navigation
- Security considerations

Senegal and Shriueeshem South China Sea Arbitration (Philippines v.. China) made it clear that there are a few dimensions to be considered in regards to the maritime entitlements under the UNCLOS and that it did not support and in fact renounced whatever was more than is necessary. Although it did not directly relate to military operations, it had a vast effect on how the maritime rights and freedom were interpreted.¹²

India promotes international order based on rules, upholding UNCLOS and stressing on the sovereignty. It is also actively involved in the region in maritime security efforts and holds joint exercises on naval operations which reveal its strategic position in the Indo-Pacific.

Emerging Complications and Legal Issues

¹² South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Award (July 12, 2016).

Rapid technological advancements have significantly disrupted traditional frameworks governing maritime, airspace, and military jurisdiction. The emergence of Unmanned Aerial Vehicles (UAVs), autonomous maritime vessels and cyber capabilities has created complex challenges in determining jurisdiction, attribution of responsibility and legality of operations. Unlike conventional systems, these technologies often

operate across borders without clear physical presence, thereby complicating the application of existing international legal norms.

One of the major concerns lies in the difficulty of attribution and accountability. For instance, the deployment of drones for surveillance or targeted operations raises questions regarding state responsibility, especially when such systems are remotely operated or autonomous in nature. Similarly, autonomous ships challenge traditional maritime rules that are premised on human control and decision-making.

Geopolitical tensions have further intensified these legal uncertainties. Disputes in strategically significant regions such as the South China Sea and the Arctic reflect competing claims over maritime zones and airspace rights. These conflicts highlight the lack of uniform interpretation of international law and expose gaps in enforcement mechanisms.

Several critical ambiguities continue to persist in international law, including:

- Legality of military exercises in the Exclusive Economic Zone (EEZ): While some states interpret freedom of navigation to include military activities, others consider such actions as violations of sovereign rights.
- Scope of innocent passage: There is no universal consensus on what constitutes “prejudicial” activities, particularly in the context of surveillance and intelligence gathering.
- Regulation of surveillance technologies: The increasing use of drones and electronic monitoring systems has outpaced legal regulation, creating a grey area in international law.

The evolving nature of warfare and technology was recognized by the International Court of Justice in the Legality of the Threat or Use of nuclear weapons, where the Court emphasized that international law must adapt to changing methods and means of warfare. This observation is particularly relevant today, as technological innovation continues to challenge traditional legal doctrines.

India has increasingly focused on strengthening its capabilities in maritime security, drone technology and space-based surveillance systems. Given its strategic location in the Indian Ocean Region and its growing role as a regional power, India recognizes the importance of safeguarding its maritime and aerial interests.

India has also actively participated in international norm-building processes through platforms such as the United Nations and various regional initiatives. Its approach reflects a commitment to a rules-based international order, while simultaneously asserting its sovereign rights.

From a legal standpoint, India adopts a cautious and security-oriented interpretation of international law, particularly with respect to foreign military activities in its Exclusive Economic Zone and unauthorized entry into its airspace. This approach demonstrates a dual objective:

Protection of national security and territorial integrity
Contribution to the progressive development of international legal standards

CONCLUSION

The legal regulation of maritime zones, airspace, and military activities represents a delicate balance between state sovereignty and the concept of global commons. While instruments such as UNCLOS and the Chicago Convention provide a foundational legal framework, their adequacy is increasingly being tested by evolving geopolitical realities and rapid technological advancements.

In the Indian context, there is a clear emphasis on sovereignty, security, and adherence to international law. However, divergent interpretations among states continue to create legal uncertainty and potential conflict. This underscores the urgent need for greater clarity, cooperation and harmonization of international legal norms

Ultimately, ensuring stability in maritime and aerial domains will require not only the reinterpretation of existing laws but also the development of new regulatory mechanisms capable of addressing the challenges of a technologically advanced and geopolitically complex world.

REFERENCES

1. James Crawford, *Brownlie's Principles of Public International Law* (9th ed. 2019).
2. Natalie Klein, *Maritime Security and the Law of the Sea* (2011). Douglas Guilfoyle, *Shipping Interdiction and the Law of the Sea* (2009).
3. Myron H. Nordquist et al., *United Nations Convention on the Law of the Sea 1982: A Commentary* (1985).
4. Malcolm N. Shaw, *International Law* (8th ed. 2017).
5. D.P. O'Connell, *The International Law of the Sea* (1982).
6. Michael N. Schmitt, *Military Activities in the EEZ: Navigational Freedoms or Coastal State Jurisdiction?*, 6 *Harv. Nat'l Sec. J.* 1 (2015).
7. Peter A. Dutton, *Caelum Liberum: Air Defense Identification Zones Outside Sovereign Airspace*, 103 *Am. J. Int'l L.* 691 (2009).
8. Robin R. Churchill & Alan V. Lowe, *The Law of the Sea*, 3 *Cambridge L.J.* 456 (1999).
9. James Kraska, *Maritime Power and the Law of the Sea*, 5 *J. Int'l Aff.* 33 (2011).
10. United Nations, *United Nations Convention on the Law of the Sea (Full Text)*, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
11. United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS), *Oceans and Law of the Sea*, <https://www.un.org/depts/los/>
12. International Maritime Organization (IMO), *United Nations Convention on the Law of the Sea Overview*, <https://www.imo.org/en/OurWork/Legal/Pages/UnitedNationsConventionOnTheLawOfTheSea.aspx>
13. Permanent Court of Arbitration (PCA), *UNCLOS Arbitration Resources*, <https://pca-cpa.org/en/services/arbitration-services/unclos/>
14. International Civil Aviation Organization (ICAO), *Convention on International Civil Aviation (Chicago Convention)*, https://www.icao.int/publications/Documents/7300_cons.pdf
15. International Civil Aviation Organization (ICAO), *Airspace and Civil-Military Cooperation*, <https://www.icao.int/safety/airnavigation/AirspaceManagement/Documents/International-Airspace-Civil-Military-Cooperation.pdf>
16. International Maritime Organization Library, *Law of the Sea Research Guide*, <https://imo.libguides.com/c.php?g=659467&p=4655217>
17. United Nations, *Division for Ocean Affairs and the Law of the Sea – Maritime Zones*, <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/index.htm>