

## Chapter XIV

# Navigation in Exclusive Economic Zones

### *Criteria*

In the exclusive economic zone (EEZ), all States enjoy, subject to the relevant provisions of the LOS Convention, the freedoms of navigation (referred to in Article 87) of navigation and overflight on and over the high seas and of the laying of submarine cables and pipelines, and of the internationally lawful uses of the sea related to those freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of the LOS Convention. Articles 88-115 and other pertinent rules of international law apply to the EEZ insofar as they are not incompatible with the LOS Convention.

In exercising their rights, and in performing their duties, under the LOS Convention in the EEZ, States shall have due regard to the rights and duties of the coastal State in accordance with the provisions of the LOS Convention and other rules of international law in so far as they are not incompatible with Part IV (EEZ) of the LOS Convention.

Regarding the rights of other States in the exclusive economic zone, the Restatement (Third) Foreign Relations Law of the United States provides that:

All states enjoy, as on the high seas, the freedoms of navigation and overflight, freedom to lay submarine cables and pipelines, and the right to engage in other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships or aircraft.<sup>1</sup>

The comments to this section describe these rights as “both qualitatively and quantitatively the same as the rights recognized by international law for all States on the high seas.”<sup>2</sup> Consequently, warships and military aircraft are entitled to exercise these rights.<sup>3</sup>

### *Excessive Claims*

On December 7, 1982, the representative of **Brazil** made the following statement at the closing plenary session of the Third UN Conference on the Law of the Sea:

. . . the Convention on the Law of the Sea is much less explicit concerning the security interests of the coastal State in the area between 12 and 200 miles. It was impossible to overcome the intransigence of the major naval Powers. As a result of the basic rule of consensus adopted by this Conference, gaps and ambiguities

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can be solved by resorting to the option defined in article 310 of the Convention, which allows formal declarations at the time of signature, ratification or adherence, “with a view, *inter alia*, to the harmonization of [national] laws and regulations with the provisions of this Convention.”

. . . [I]t is our understanding the provisions of article 301, which prohibit the threat or use of force on the sea against the territorial integrity or independence of any State, apply particularly to the maritime areas under the sovereignty or jurisdiction of the coastal State. In other words, we understand that the navigation facilities accorded third world countries within the exclusive economic zone cannot in any way be utilized for activities that imply the threat or use of force against the coastal State. More specifically, it is Brazil’s understanding that the provisions of the Convention do not authorize other States to carry out military exercises or manoeuvres within the exclusive economic zone, particularly when these activities involve the use of weapons or explosives. . . .<sup>4</sup>

On March 8, 1983, the United States exercised its right of reply, stating:

Some speakers described the concept of the exclusive economic zone in a manner inconsistent with the text of the relevant provisions of the Convention adopted by the Conference.

. . .

This concept, as set forth in the Convention, recognizes the interest of the coastal State in the resources of the zone and authorizes it to assert jurisdiction over resource-related activities therein. At the same time, all States continue to enjoy in the zone traditional high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, which remain qualitatively and quantitatively the same as those freedoms when exercised seaward of the zone. Military operations, exercises and activities have always been regarded as internationally lawful uses of the sea. The right to conduct such activities will continue to be enjoyed by all States in the exclusive economic zone. This is the import of article 58 of the Convention. Moreover, Parts XII [Protection and Preservation of the Marine Environment] and XIII [Marine Scientific Research] of the Convention have no bearing on such activities.<sup>5</sup>

Article 17, paragraph 11 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, concluded at Vienna on December 20, 1988, reads, in the context of enforcement at sea, as follows:

Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations of and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.<sup>6</sup>

The report of the U.S. Delegation to the Diplomatic Conference stated:

At the plenipotentiary conference, the U.S. delegation stated for the record its understanding that, consistent with the international law of the sea, with regard to illicit trafficking by sea, Article 17, paragraph 11 refers to the limited set of situations in which a coastal State has rights beyond the outer limit of the territorial sea, i.e., those involving hot pursuit in the exclusive economic zone and on the high seas and competent exercises of contiguous zone jurisdiction. The paragraph does not imply endorsement of any broader coastal State claims regarding illicit traffic interdiction in the exclusive economic zone. The United States delegation views this paragraph as a straightforward non-derogation clause intended to preserve, and not to affect in any way, existing rights and obligations under international law. As noted above, coastal State consent is not necessary under the international law of the sea for foreign flag law enforcement against vessels not flying the flag of that coastal State beyond the coastal State's territorial sea. The attempt to secure a broader coastal State right or claim to sovereignty in the exclusive economic zone failed during negotiations on the 1982 Law of the Sea Convention, and that result has not been altered here.<sup>7</sup>

On December 20, 1988, Brazil signed this Convention with the following declaration:

It is the understanding of the Brazilian Government that paragraph 11 of article 17 does not prevent a coastal State from requiring prior authorization for any action under this article by other States in its Exclusive Economic Zone.<sup>8</sup>

On December 27, 1989, the twelve States members of the European Community deposited identical objections to the Brazilian statement on signature, as follows:

. . . , Member State of the European Community, attached to the principle of freedom of navigation, notably in the exclusive economic zone, considers that the declaration of Brazil concerning paragraph 11 of Article 17, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 20 December 1988, goes further than the rights accorded to coastal states by international law.<sup>9</sup>

On May 10, 1988, Brazil deposited its instrument of ratification of the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof.<sup>10</sup> A note from the Brazilian Embassy containing an understanding read as follows:

. . . . It is the understanding of the Brazilian Government that the word "observation" in Article III, Paragraph 1 of the Treaty refers only to observation that is incidental to the normal course of navigation, in accordance with international law.<sup>11</sup>

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The United States Department of State responded to the Brazilian Embassy, on March 16, 1989, as follows:

The Government of the United States of America draws the attention of the Government of Brazil to the provisions of Article III of the Seabed Treaty that address verification and inspection rights of State Parties. The United States expects all States Parties to exercise their rights and fulfill their obligations in accordance with the Seabed Treaty.

Article III provides that all States Parties may “verify through observation the activities of other States Parties to the Treaty” beyond the 12-mile seabed zone, so long as such observation does not interfere with the activities of other States Parties and is conducted with due regard for rights recognized under international law. It is the view of the Government of the United States of America that, under customary international law and Article III of the Treaty, these observations may be undertaken whether or not they are incidental to a so-called “normal course of navigation,” and that such activity is not subject to unilateral coastal State restriction.<sup>12</sup>

In 1978, **Costa Rica** enacted a law requiring fishing vessels wishing to transit the Costa Rican EEZ but not intending to fish to notify Costa Rican authorities upon entering and leaving those waters and to transit within 48 hours.<sup>13</sup> In 1979, the United States protested this claim as follows:

It is the position of the United States that there is no basis in international law for a coastal state to require notification of entry and departure from fishing vessels transiting the waters within 200 miles of such state or to limit the time of transit.<sup>14</sup>

Relying in part on this law, in 1991, Costa Rica issued a decree requiring that every foreign flag fishing vessel navigating through Costa Rican waters “must, prior to entry, apply for a permit for passage or navigation” through Costa Rican waters.<sup>15</sup> On August 14, 1992, four U.S. fishing vessels transiting the Costa Rican EEZ en route to Hawaii via the Panama Canal were intercepted by the Costa Rican Coast Guard 97 miles offshore and detained. The vessels were neither fishing nor outfitted for fishing. The vessels were subsequently fined for transiting the Costa Rican EEZ without the permit required for fishing vessels.<sup>16</sup> On August 18, 1992 the United States protested the detention of these vessels, in part, as follows:

The seizure of the four U.S. vessels, and the decree upon which the seizure was based, directly contravene the freedom of navigation recognized under international law, as reflected in the 1982 United Nations Convention on the Law of the Sea (the Convention).

Under Article 56 of the Convention, a coastal State such as Costa Rica may exercise exclusive jurisdiction over fishing activities within its exclusive economic

zone (EEZ), which may extend up to 200 miles from shore. Under article 58 of the Convention, however, the vessels of all states, including fishing vessels, enjoy the freedom of navigation referred to in article 87 of the Convention while such vessels are within the EEZ of a coastal State.

The four U.S. vessels in question were not engaged in fishing activity, but were instead exercising their freedom of navigation through the Costa Rican EEZ. The four vessels have no fishing gear on board, and were merely in transit from Florida to California. Moreover, as subsequent inspection of the vessels by Costa Rican authorities revealed they were not engaged in the transport of any contraband or in any other illegal activity.

The United States Government cannot accept this clear and serious violation of the right of these vessels to freedom of navigation through the Costa Rican EEZ, a right which the Government of Costa Rica is bound to respect under international law. The United States Government accordingly protests the seizure of these vessels and insists upon their immediate release without fine or other penalty.<sup>17</sup>

The Government of Costa Rica replied, in a note delivered August 28, 1992, that its action and these decrees were consistent with Articles 73(1) and 58(3) of the LOS Convention.<sup>18</sup> Nevertheless, on September 4, 1992, a majority of the Superior Court of Liberia, Costa Rica, stayed the criminal proceedings on the grounds that these vessels were not "adversely affecting the ichthyological riches for which protection is sought." The Court noted, without ruling on the lawfulness of the challenged decree, that the law established a presumption that a fishing vessel with no transit permit is engaged in fishing activities in contravention of Costa Rican law.<sup>19</sup> The Court thereupon dismissed the charges against the vessels, masters and crew, and ordered their release from detention. On October 21, 1992, the United States delivered a *demarche*, which read in part:

We are disappointed, however, that the court dismissed the charges in a manner that leaves standing the requirement that foreign fishing vessels must obtain a permit to transit the Costa Rican EEZ.

. . . [F]oreign fishing vessels have the right under international law to freedom of navigation through Costa Rica's EEZ without being required to notify or to seek permission from Costa Rican authorities for such passage. The Government of the United States remains very concerned that the permit requirement in question remains a part of Costa Rican law. This requirement, if invoked again, could result in another serious incident like the one we recently experienced.

The Government of the United States understands that since the dismissal of the recent case by the Superior Court, the Government of Costa Rica has been reviewing the executive decree (Decree 20404-MOPT) that established the permit requirement. In light of this, and in light of Costa Rica's long-standing commitment to international law, the Government of the United States urges that

steps be taken to ensure that Costa Rican law is made compatible with the right to freedom of navigation guaranteed under international law.<sup>20</sup>

In February 1993, the Government of **Thailand** issued a circular note emphasizing the right of all vessels, including fishing vessels, to freedom of navigation in other States' EEZs, as well as to transit passage in international straits, and to innocent passage in foreign territorial seas.<sup>21</sup>

In giving its advice and consent to ratification of the **1989 Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific**,<sup>22</sup> the United States Senate attached its understanding that:

Article 3 provides for measures consistent with international law to restrict driftnet fishing activities by vessels within areas under a party's fisheries jurisdiction. It is the United States understanding that the measures in Article 3 will only be applied when consistent with navigation and other international transit rights under customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea.<sup>23</sup>

The **1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal**<sup>24</sup> establishes a notice and consent system in which any export, including any export by ship, of hazardous waste requires the prior approval of, inter alia, any transit State. That term is defined in Article 2(12) as any State "through which" wastes are transported on their way from an exporting State for disposal in another State. As noted in the Secretary of State's letter of submittal, "the United States has consistently maintained that, under international law, notification to or authorization of coastal States is not required for passage through . . . exclusive economic zones."<sup>25</sup> This is reflected in Article 4(12) of the Convention, which provides that the Convention does not affect "the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments." However, Article 4(12) also provides that nothing in the Convention "shall affect in any way . . . the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law."

This compromise formula prompted Portugal to declare that it required the notification of all transboundary movements of such wastes across its waters, and several Latin American countries, including Colombia, Ecuador, Mexico, Uruguay and Venezuela, to declare that, under the Basel Convention, their rights as coastal States were adequately protected. Germany, Italy and the United Kingdom, on the other hand, declared that nothing in the Convention requires any notice to or consent of the coastal State for vessels exercising freedom of navigation through the EEZ.<sup>26</sup>

In granting its advice and consent to ratification of the Basel Convention, the U.S. Senate stated the understanding of the United States of America that “a State is a ‘transit State’ within the meaning of the convention only if wastes are moved, or are planned to be moved, through its inland waterways, inland waters, or land territory.”<sup>27</sup>

#### *Survey Activities in the Exclusive Economic Zone*

A few States have questioned the activities of military survey and hydrographic vessels in their EEZs. The United States has explained along the following lines why such survey activities are not subject to coastal State regulation.<sup>28</sup>

International law, as reflected in the LOS Convention, authorizes coastal States to claim limited rights and jurisdiction in an EEZ. As noted above, the jurisdictional rights relate primarily to the exploration, exploitation, and conservation of natural resources, marine scientific research (MSR), and the marine environment. Beyond the territorial sea (in which the coastal State enjoys full sovereignty), all States enjoy the freedoms of navigation and overflight and other related uses of the sea within the EEZ, provided that such freedoms are exercised with due regard to the rights of the coastal State and other States.<sup>29</sup>

#### *Survey Activities vs. Marine Scientific Research*

The rights all States enjoy include the right to conduct survey activities within the EEZ. Survey activities are not MSR. The LOS Convention distinguishes clearly between the concepts of “research” and “MSR” on the one hand, and “hydrographic surveys” and “survey activities” on the other hand. Article 19(2)(j) of the LOS Convention includes “research or survey activities” among those activities identified as being inconsistent with innocent passage in the territorial sea. Article 21(1)(g) authorizes the coastal State to adopt laws and regulations, in conformity with the provisions of the Convention and other rules of international law, relating to innocent passage through the territorial sea in respect of “marine scientific research and hydrographic surveys”. Article 40, entitled “research and survey activities,” provides that in transit passage through straits used for international navigation, foreign ships, including “marine scientific research and hydrographic survey ships”, may not carry out “any research or survey activities” without the prior authorization of the States bordering straits. The same rule applies to ships engaged in archipelagic sea lanes passage (article 54).

On the other hand, Part XIII of the LOS Convention fully regulates marine scientific research; it does not refer to survey activities at all. Article 246 of the LOS Convention provides that coastal States, in the exercise of their jurisdiction within the EEZ, have the right to regulate, authorize and conduct MSR in accordance with the relevant provisions of the Convention. It specifies that MSR in the EEZ shall be conducted with the consent of the coastal State.<sup>30</sup>

And while the Convention, by its terms, limits survey activities during passage in the territorial sea, international straits and archipelagic sea lanes, it does not limit the activities of survey ships in the EEZ. Rather, the conduct of surveys in the EEZ is an exercise of the freedoms of navigation and other internationally lawful uses of the sea related to those freedoms, such as those associated with the operations of ships, which article 58 of the LOS Convention guarantees to all States.

This conclusion, that MSR is distinct from survey activities, is supported by other respected publications on this subject.<sup>31</sup>

### *Definitions*

The LOS Convention does not define the terms “marine scientific research”, “survey activities”, “hydrographic survey,” or “military survey”. However, the concepts are distinct.

The United States accepts that “marine scientific research” is the general term most often used to describe those activities undertaken in the ocean and coastal waters to expand scientific knowledge of the marine environment. MSR includes oceanography, marine biology, fisheries research, scientific ocean drilling and coring, geological/geophysical scientific surveying as well as other activities with a scientific purpose.

The generally accepted modern international interpretation of “hydrographic survey”, which is shared by the United States, is to obtain information for the making of navigational charts and safety of navigation. It includes determination of one or more of several classes of data in coastal or relatively shallow areas—depth of water, configuration and nature of the natural bottom, directions and force of currents, heights and times of tides and water stages, and hazards for navigation—for the production of nautical charts and similar products to support safety of navigation.

The United States considers that military surveys refer to activities undertaken in the ocean and coastal waters involving marine data collection (whether or not classified) for military purposes. Military surveys can include oceanographic, marine geological, geophysical, chemical, biological and acoustic data. Equipment used can include fathometers, swath bottom mappers, side scan sonars, bottom grab and coring systems, current meters and profilers. While the means of data collection used in military surveys may sometimes be the same as that used in MSR, information from such activities, regardless of security classification, is intended not for use by the general scientific community, but by the military.

Military surveys are not specifically addressed in the LOS Convention and there is no language stating or implying that military surveys may be regulated in any manner by coastal States outside their territorial sea or archipelagic waters. The United States therefore considers it to be fully consistent with the LOS

Convention that such surveys are a high seas freedom and the United States reserves the right to engage in military surveys anywhere outside foreign territorial seas and archipelagic waters. To provide prior notice or request permission would create an adverse precedent for restrictions on mobility and flexibility of military survey operations.

These definitions clearly distinguish between MSR, which the coastal State can regulate, and hydrographic survey and military survey activities, which are freedoms the coastal State cannot regulate outside its territorial sea.

### *Military Activities*

In the view of the United States, the LOS Convention recognizes that all States have the right to conduct military activities within the EEZ, provided that they do so with due regard to the rights of the coastal State and other States. Appropriate activities include launching and landing of aircraft, operating military devices, intelligence collection, weapons exercises, and military surveys.<sup>32</sup> There is no general competence of the coastal State over military activities in the EEZ. It follows that military survey activities conducted outside foreign territorial seas are not subject to coastal State regulation.<sup>33</sup>

### Notes

1. 2 RESTATEMENT (THIRD), FOREIGN RELATIONS LAW OF THE UNITED STATES § 514(2) [hereinafter RESTATEMENT (THIRD)]. The Court of Arbitration for the Delimitation of Maritime Areas between Canada and France, in its decision in the Case Concerning Delimitation of Maritime Areas (St. Pierre and Miquelon), June 10, 1992, 31 I.L.M. 1145 (1992), noted that:

In the written and oral proceedings both Parties have underscored the importance they attach to the principle of freedom of navigation through the 200 mile zone guaranteed by Article 58 of the 1982 Convention, a provision that undoubtedly represents customary international law as much as the institution of the 200 mile zone itself.

2. 2 RESTATEMENT (THIRD) § 514 comment d, at 58.

3. The various incidents at sea agreements entered into by the Soviet Union with Canada, France, the Federal Republic of Germany, Italy, and the United Kingdom all relate to activities by their military ships and aircraft "outside territorial waters". See UKTS No. 5 (1987), 37 Int'l & Comp. L.Q. 420 (1988), U.N. LOS BULL., No. 10, Nov. 1987, at 97 (UK, Jul. 15, 1986); No. 14, Dec. 1989, at 15 (FRG, Oct. 25, 1988); No. 16, Dec. 1990, at 23 (France, July 4, 1989); No. 16, at 35 (Italy, Nov. 30, 1989); No. 18, June 1991, at 25 (Canada, Nov. 20, 1989). The USSR has similar INCSEA agreements with Greece, the Netherlands, Norway, and Spain. FBIS-SOV-92-161, Aug. 19, 1992, at 18.

4. 17 Official Records of the Third U.N. Conference on the Law of the Sea 40, paras. 26 & 28. Brazil's declarations on ratification of the Convention were substantially similar to the above; they may be found in U.N. Current Developments in State Practice No. II, at 88. Brazil's implementing legislation, Law 8,617 of January 4, 1993, article 9, continues to assert these views which are inconsistent with the relevant provisions of the LOS Convention. U.N. LOS BULL., No. 23, June 1993, at 19. Uruguay made a similar declaration on signature and ratification of the Convention:

In the exclusive economic zone, enjoyment of the freedom of international communication in accordance with the way it is defined and in accordance with other relevant provisions of the Convention excludes any non-peaceful use without the consent of the coastal State, for instance, military exercises or other activities which may affect the rights or interests of that State . . .

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U.N., Multilateral Treaties Deposited with the Secretary-General: Status as of Dec. 31, 1992, U.N. Doc. ST/LEG/SER.E/11, at 774 (1993).

5. U.N. Doc. A/CONF.62/WS/37, 17 Official Records of the Third U.N. Conference on the Law of the Sea 244. On signature of the Convention Italy confirmed its written statement dated March 7, 1983 that:

according to the Convention, the Coastal State does not enjoy residual rights in the exclusive economic zone. In particular, the rights and jurisdiction of the Coastal State in such zone do not include the right to obtain notification of military exercises or maneuvers or to authorize them.

U.N., Multilateral Treaties Deposited with the Secretary-General: Status as of Dec. 31, 1992, U.N. Doc. ST/LEG/SER.E/11, at 770 (1993).

6. T.I.A.S. No. \_\_\_, 28 I.L.M. 519-20 (1989).

7. Sen. Exec. Rep. 101-15, 101st Cong., 1st Sess., at 97 (1989).

8. Multilateral Treaties Deposited with the Secretary-General, Status as of Dec. 31, 1992, at 268. Brazil does not appear to have maintained this understanding upon deposit of its instrument of ratification on July 17, 1991. *Id.* On signature, Tanzania stated its understanding that:

Subject to a further determination on ratification, the United Republic of Tanzania declares that the provisions of article 17 paragraph 11 shall not be construed as either restraining in any manner the rights and privileges of a coastal State as envisaged by the relevant provisions relating to the Exclusive Economic Zone of the Law of the Sea Convention, or, as according third parties rights other than those so recognized under the Convention.

*Id.* at 270. As of July 1994, Tanzania had not deposited its instrument of ratification.

9. *Id.* at 271; 61 Brit Y.B. Int'l L. 1990, at 588 (1991). In signing the Convention on Jan. 18, 1989, the Netherlands made the following statement:

[The Government of the Netherlands] understands the reference (in para. 3) to "a vessel exercising freedom of navigation" to mean a vessel navigating beyond the external limits of the territorial sea.

The safeguard-clause contained in para. 11 of the article aims in [its] view at safeguarding the rights and obligations of Coastal States within the contiguous zone.

To the extent that vessels navigating in the contiguous zone act in infringement of the Coastal State's customs and other regulations, the Coastal State is entitled to exercise, in conformity with the relevant rules of the international law of the sea, jurisdiction to prevent and/or punish such infringement.

*Id.* at 270. See also 59 Brit. Y.B. Int'l L. 1988, at 528-29 (1989).

10. Done at Washington, London and Moscow, Feb. 11, 1971, 23 U.S.T. 701, T.I.A.S. No. 7337, 955 U.N.T.S. 115.

11. Brazilian Embassy Note No. 138/88; State Department File No. P 93 0052-0811.

12. State Department File No. P 93 0052-0812. On May 18, 1989, the Embassy of the Federal Republic of Germany stated, in a note to the Department of State, as Depository of the Seabeds Arms Control Treaty:

The right of each State party under article III para. 1 of the aforementioned treaty to verify through observation the activities of other States parties is limited only insofar as it shall not interfere with such activities or activities of other State parties and as it shall be conducted with due regard to the recognized rights under international law. The understanding of the Government of Brazil of the term "observation" does not represent, in the view of the Government of the Federal Republic of Germany, an adequate interpretation of that term.

State Department File No. P 89 0083-0238.

13. Article 7, Law 6267, Aug. 29, 1978, which does not appear to have been published in English. See also KWIATKOWSKA, THE 200 MILE EXCLUSIVE ECONOMIC ZONE IN THE NEW LAW OF THE SEA 88-89, and sources cited in nn. 181 and 182 thereto.

14. American Embassy San Jose note verbale dated Mar. 14, 1979, American Embassy San Jose airgram A-21, June 15, 1979, State Department File No. P 79-0091-0720, delivered pursuant to instructions contained in State Department telegram 060844, Mar. 12, 1979.

15. Executive Branch Decree No. 20404-P-MOPT, La Gaceta, Diaro Oficial, San Jose, Costa Rica, May 24, 1991, article 2; State Department translation LS No. 139243.

16. American Embassy telegram 06921, Aug. 17, 1992.
  17. American Embassy San Jose *note verbale* No. 167, dated Aug. 18, 1992, reported in the Embassy's telegram 06982, Aug. 19, 1992, pursuant to instructions contained in State Department telegram 266938, Aug. 19, 1992.
  18. American Embassy San Jose telegram 07303, Aug. 28, 1992; State Department translation LS NO. 139294.
  19. State Department translation LS No. 139571.
  20. American Embassy San Jose telegram 08756, Oct. 21, 1992, pursuant to instructions contained in State Department telegram 337417, Oct. 15, 1992. In June 1993, Costa Rica issued new regulations dropping the requirement for fishing vessels to obtain a transit permit in the Costa Rican EEZ; a transit permit is, however, still required for a fishing vessel to transit the Costa Rican territorial sea, apparently restricting such vessels' right to innocent passage. American Embassy San Jose telegram 04698, Jun. 22, 1993.
  21. Letter dated Feb. 18, 1993 from the Permanent Representative of Thailand to the U.N., annexed to U.N. Doc. A/48/90, Feb. 22, 1993, reprinted in U.N. LOS BULL., No. 23, at 108 (June 1993). See above, Chapter X, n. 5.
  22. Done at Wellington, New Zealand, Nov. 24, 1989, and Protocol I, done at Noumea, New Caledonia, Oct. 20, 1990, entered into force for the United States, Feb. 28, 1992, T.I.A.S. No. \_\_\_, 29 I.L.M. 1449 (1990).
  23. S. Exec. Report 102-20, p. 6; Cong. Rec. S 18233, Nov. 26, 1991.
  24. I.L.M. 649 (1989), entered into force May 5, 1992. The States party as of Dec. 28, 1992 are listed in 32 I.L.M. 276 (1993).
  25. Sen. Treaty Doc. 102-5, 102d Cong., 1st Sess. (1991), at VI.
  26. Multilateral Treaties Deposited with the Secretary-General as of Dec. 31, 1992, at 832-33.
  27. Cong. Rec. S12292, Aug. 11, 1992. The Administration had sought such an understanding (Letter of Submittal, *supra* n. 25, at VI) and the Senate Foreign Relations Committee concurred. Sen. Exec. Rep. 102-36, 102d Cong., 2d Sess., May 22, 1992, at 17. Deposit of the U.S. instrument of ratification, which was signed on Oct. 17, 1992, awaits enactment of the necessary implementing legislation. See Sen. Exec. Rep. 102-36, at 15-16.
  28. See State Department telegram 092114, Apr. 8, 1994, para. 6.
  29. LOS Convention, article 58.
  30. The United States does not regulate MSR within its EEZ because of its desire to encourage MSR and to avoid any unnecessary burdens. President's Ocean Policy Statement, March 10, 1983, Appendix 1.
  31. For example, U.N. Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: Marine Scientific Research: A Guide to the Implementation of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, (U.N. Pub. Sales No. E.91.V.3 (1991)), notes that " 'survey activities' . . . are primarily dealt with in other parts . . . of the Convention rather than in Part XIII. This could indicate that these activities do not fall under the regime of Part XIII." (page 1)
- Professor Alfred H.A. Soons, Director of the Netherlands Institute for the Law of the Sea, in his book *MARINE SCIENTIFIC RESEARCH AND THE LAW OF THE SEA* (1982), has written: "From articles 19, 21 and 40, which use the term 'hydrographic surveying' separately from 'research', it follows that the term 'marine scientific research', for the purposes of the Draft Convention, does not cover hydrographic surveying activities." (page 125) Later in the same book, Professor Soons wrote: "With respect to hydrographic surveying (an activity which is not to be considered marine scientific research, although it is somewhat similar to it . . .), it is submitted that this activity, when it is conducted for the purpose of enhancing the safety of navigation . . ., must be regarded as an internationally lawful use of the sea associated with the operations of ships . . . in accordance with article 58, and can therefore be conducted freely in the exclusive economic zone . . ." (page 157)
32. See *supra* nn. 1-3 and accompanying text.
  33. See LOS Convention, article 56 and Oxman, *The Regime of Warships Under the United Nations Convention on the Law of the Sea*, 24 VA. J. INT'L, at 847 (1984).