PREFACE

The history of the law of the sea has been dominated by the competition between *mare liberum* and *mare clausum*. Throughout history, coastal States have sought to expand their rights and jurisdiction beyond the coastline by establishing various jurisdictional zones, while other States, notably States concerned with maritime transit, trade and distant-water fisheries, have sought to safeguard high seas freedoms. This tension is still evident today, just as it was when the text of the United Nations Convention on the Law of the Sea (UNCLOS or the Convention) was negotiated in the 1970s and adopted in 1982. At the very heart of this tension and crucial to the success of UNCLOS is the exclusive economic zone (EEZ), a *sui generis* legal regime officially codified by UNCLOS in which the rights and duties are attributed to the coastal State and other States according to its provisions. The EEZ represented a mini-package deal within UNCLOS in which States made various compromises at all levels. The consequence of these compromises and the necessarily ambiguous language contained in the relevant provisions of UNCLOS is that many States have adopted different interpretations of their rights and duties in the EEZ. This, in turn, has led to conflicts, frequently between the coastal State and other user States in the same maritime space.

This book examines the conflict and stability in the EEZ in light of State practice since the adoption of UNCLOS. It explores whether the basic premises and essential compromises of the EEZ legal regime still hold true or whether there has been evolution in the regime in terms of, for example, accommodating the EEZ regulatory scheme to meet new needs and challenges. Significantly, the survey of State practice indicates that coastal States have progressively asserted greater authority in defending their rights and jurisdiction in the EEZ, which have been broadly tolerated by the legal regime and other user States.

In exploring the theoretical basis for the stability of the EEZ legal regime, a core argument is made that the delicate balance is sustained by a body of flexible prescriptions for dynamic adjustment to prevent and

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resolve conflicts, which ultimately has the potential to strengthen the *sui generis* legal regime. Two key legal doctrines formed the body of flexible prescriptions. The first is the formula of attributing rights and freedoms between the coastal State and the other States that runs through Part V of UNCLOS and is further highlighted in Article 59. As such, rights and duties attributed to coastal States must be adequately associated with their sovereign rights over natural resources and explicitly recognised jurisdiction. The second legal doctrine is the reciprocal due regard obligation relating to the exercise of rights and freedoms that applies to both the coastal State and other user States in Articles 56(2) and 58(3) towards each other's rights and duties. This means that neither parties' rights nor freedoms are absolute and must be exercised in recognition of the legitimacy of their counterpart's freedoms or rights.

The book applies these two legal doctrines to analyse State practice in five thematic issues since the adoption of the Convention. The five thematic issues have been grouped into two categories. First, competing uses between rights and freedoms that have been explicitly attributed by provisions of UNCLOS Part V are examined, in particular whether and to what extent coastal State's rights and jurisdiction may affect the exercise of the freedoms of navigation and overflight and the laying of submarine cables and pipelines. Second, un-explicitly attributed rights and jurisdiction that have attracted conflicting interpretations and applications are analysed, specifically how States, both coastal and other States, can assert and exercise their rights over the conduct of military activities, the combat of threats to maritime security, and the protection of archaeological and historical objects found in the EEZ.

The evaluation of State practice presented in this book demonstrates conclusively that through the application of this body of flexible prescriptions under UNCLOS and related instruments, States have predominantly been operating within rather than significantly diverging from the *sui generis* legal regime. This feature of the EEZ has the potential to maintain the stability and balance of rights and duties of States in the contemporary law of the sea. This, in turn, contributes to good order at sea and thus international peace and security.

This work reflects the law and State practice as they stood, to the best of the author's knowledge, on 26 July 2024, unless otherwise indicated. All website addresses were accurate as at 26 July 2024, unless otherwise indicated.

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