

NAVIGATION WITH PERMISSION

Relevant for: International Relations | Topic: International Treaties & Agreements, and other important organizations

U.S. Navy ship John Paul Jones. Photo: Wikimedia Commons

On April 7, the U.S.'s 7th Fleet Destroyer, the *USS John Paul Jones*, [conducted a 'Freedom of Navigation Operation'](#) 130 nautical miles west of the Lakshadweep Islands inside India's Exclusive Economic Zone (EEZ). Not only was this exercise conducted without requesting India's consent, but the U.S. 7th Fleet noted in its press release that India's requirement of prior consent is "inconsistent with international law". In its response, India asserted that the [UN Convention on the Law of the Sea \(UNCLOS\)](#) "does not authorize other States to carry out in the Exclusive Economic Zone and on the continental shelf, military exercises or manoeuvres, in particular those involving the use of weapons or explosives, without the consent of the coastal state". Owing to the different positions of the two countries, legal questions emerge here. The question is, can countries carry out military exercises in another country's EEZ and if yes, subject to what conditions?

UNCLOS binds all its signatories and customary international law binds all states, subject to exceptions like the doctrine of persistent objector. Most of the provisions of the UNCLOS are the result of codification of the existing rules of customary international law. India is a party to the UNCLOS while the U.S. is not. As per the UNCLOS, EEZ is an area adjacent to the territorial waters of a coastal state where the sovereign coastal state has rights and duties relating to management of natural resources; establishment and use of artificial islands, installations and structures; marine scientific research; and protection of the marine environment.

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The present difference in legal interpretation brings into the picture Articles 58 and 87 of the UNCLOS. Article 58 (1) provides that in the EEZ, all States, whether coastal or landlocked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in Article 87 of navigation and overflight and of the laying of submarine cables and pipelines as well as other internationally lawful uses of the sea. Article 87 provides for freedom of the high seas under which all states have the freedom of navigation. However, the freedom of navigation is subject to the conditions laid down under the UNCLOS and other rules of international law. In addition to it, Article 58 (3) stipulates another qualification: "In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State..." The relevant Indian law in this regard is the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones of India Act, 1976. Section 7 sub-section 9 of this Act recognises the freedom of navigation of the ships of all States but makes them subject to the exercise of rights by India within the zone.

The declaration by India in 1995 also states that India "understands that the provisions of the Convention do not authorize other States to carry out in the exclusive economic zone and on the continental shelf military exercises or manoeuvres, in particular those involving the use of weapons or explosives, without the consent of the coastal State". An ancillary question that emerges is the legal effect of such declarations. Article 310 of the UNCLOS does permit states to make declarations in order to explain the relationship between the Convention and their own laws, but such declarations should not "purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State".

On a conjoint reading of Articles 58, 87 and 310, it can be argued that freedom of navigation cannot be read in an absolute and isolated manner. Given the nature of EEZ and the activities that a coastal state conducts in its EEZ, non-consensual military activities that hinder the lawful enjoyment of such rights need not be permissible. Also, a coastal state is naturally concerned about military exercises and manoeuvres posing a risk to its coastal communities, its installations or artificial islands, as well as the marine environment. Thus, any state which wishes to conduct such exercises must do so only in consultation with the coastal state since the coastal state is the best judge of its EEZ.

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Both India and the U.S. should negotiate such concerns for the maintenance of international peace and security. Riding roughshod over international obligations premised either in an erroneous interpretation of the law or the scope of its application will not only threaten friendly relations but also undermine the progress made towards codification and development of international law in an area such as the law of the sea, which is particularly complex.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

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