

International Law Analysis of U.S. Military Survey Activities in China's EEZ

QU Ya-nan, XU Xuan

Dalian Ocean University, Dalian, China

With the development of maritime military science and technology, the important strategic position of the EEZ began to emerge, increasing conflict between the need to preserve the sovereignty of coastal states in the EEZ and growing military activities. However, the United Nations Convention on the Law of the Sea's vague provisions on military activities in the EEZ have led to enduring controversies over military activities. The maritime powers, led by the United States, assert that coastal states do not have the right to govern military surveying activities in their EEZ. This view contradicts the view of the vast number of developing coastal states represented by China. Therefore, it is necessary to explore the nature, boundaries, and legality of military activities in the EEZ and identify issues related to U.S. military survey activities in China's EEZ from the perspective of international law.

Keywords: EEZ, military survey activities, freedom of navigation

Introduction

From 2001 to the present, U.S. survey ships have repeatedly intruded into China's jurisdictional waters to conduct military survey activities, such as USS Bowditch, USS Evergreen, USS Effectiveness, USS Mary Sears, USS John F. McDonnell. It can be seen that the U.S. recklessly conducts military survey activities in the waters under Chinese jurisdiction in disregard of China's sovereignty and the authority of international law. The U.S. actions not only cause serious damage to our maritime rights and interests, but also violate and defy the principle of mutual respect for sovereignty and territorial integrity among nations. 1982 United Nations Convention on the Law of the Sea (hereinafter referred to as "the Convention"), although the EEZ regime was creatively established, and the Convention also regulates the rights and obligations of coastal and non-coastal states, does not provide positive and specific answers to many controversial questions. For example, the Convention does not address the most controversial issue of the legality of military surveying activities, and there is no consensus among academics in practice. Therefore, in response to the repeated provocations and disregard of the United States in recent years, to safeguard our territorial integrity and national maritime rights and interests, it is necessary to identify the legality and jurisdiction of foreign military surveying activities in the EEZ from the perspective of international law, and it is also of both theoretical and practical value.

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QU Ya-nan, Ph.D., associate professor, College of Marine Law and Humanities, Dalian Ocean University, Dalian, China.

XU Xuan, Master, College of Marine Law and Humanities, Dalian Ocean University, Dalian, China.

Dispute Between China and the United States Over Military Survey Activities in the EEZ

Long-standing U.S.-China dispute over military survey activities is in EEZ. From the first time the United States engaged in military survey activities in China's EEZ without permission, the definition of the nature of military survey activities and the controversy over jurisdiction had been widely concerned and hotly debated in the international community. The United States asserts that its activities in China's EEZ are lawful in full compliance with international customary law and the Convention; China believes that the United States' unauthorized military survey activities in China's EEZ are illegal acts that violate international law and seriously undermine the international maritime order.

Controversy Over the Nature of Military Surveying Activities

The Annual Financial Report on Freedom of Navigation issued by the United States in previous years shows that the U.S. considers military survey activities in China's EEZ as a manifestation of "freedom of navigation". The two types of survey activities, military survey and hydrographic survey, are basically the same in nature and are activities that can be carried out in the EEZ of the coastal state as stipulated in the Convention, without prior consent from China. The U.S. emphasizes that military surveys are nothing more than a collection of data on the biological and hydrographic conditions of the seafloor, just like hydrographic surveys.

It is easy to see that the U.S. deliberately conflates the two in its determination of the nature of military surveys and other related maritime operations; however, China is opposed to such views. The Convention specifies matters relating to the conduct of scientific research in the EEZ of the coastal state and confirms the right of the coastal state to give prior consent to marine scientific research, as well as the right to participate and the right to obtain samples and results of the final related materials. As the United States says, if military survey activities are no different from hydrographic survey activities, then all information obtained from U.S. military survey activities in China's EEZ should be shared with China, but the U.S. did not do so. It shows that the U.S. claim is contradictory and not valid, and is an act of "stealing" China's marine geographic information without China's consent. Chinese scholars point out that military survey is different from marine scientific research, and different from commercial or civilian survey ships used for marine scientific research, so military survey is a different kind of activity from marine scientific research. According to former Australian Navy Admiral Sam Bateman,

There are many hydrographic surveys that serve the military and are not on a peaceful footing, and those military assessment activities such as data surveys or coastal surveys that are conducted against coastal states can pose a significant threat to coastal states. (2009, p. 116)

Whether Military Survey Activities Are a Legitimate Maritime Use Related to "Freedom of Navigation"

The U.S. considers traditional "freedom of navigation" to include innocent passage through territorial waters, military exercises outside territorial waters, maritime flight training, information gathering, reconnaissance surveys, and other activities; these activities are not only covered by the principle of freedom of navigation and overflight, but also fall within the legitimate uses of the sea under the Convention. At the same time, the United States asserts that operations with military words like military survey activities are not necessarily non-peaceful.

And the EEZ is different from the territorial sea in that the coastal state does not enjoy full sovereign jurisdiction in the EEZ. Therefore, its military survey activities within China's EEZ are legitimate uses of the sea permitted by the principle of freedom of navigation and overflight, and do not threaten the security of China's coast, so China has no right to prohibit them.

However, China does not agree with the U.S. China finds it difficult to associate military surveying activities with the word "lawful" and "peaceful", and it is also inconsistent with the relevant provisions of its domestic law and the basic principles of international law. The United States' entry into China's EEZ to conduct unauthorized military surveys has seriously violated the principle of due regard and is an illegal maritime use. In addition, China has always abided by the norms of international law and international customs on freedom of navigation, and respects the reasonable and legitimate claims of freedom of navigation of various countries. As long as they are not contrary to "peaceful purposes" and do not pose a threat to their security or cause damage to the marine environment and natural resources, or are for humanitarian relief, rescue and disaster relief, maritime training and other activities, China considers them as legitimate maritime uses. However, due to the special nature of military survey ships, their consent is required to enter China's EEZ to conduct survey activities, and China's position on this issue has always been clear and firm.

Whether Military Survey Activities in the EEZ Should Be Subject to the Jurisdiction of the Coastal State

Some U.S. scholars have suggested that "Article 56 of the Convention gives the coastal state jurisdiction only over 'research' activities, not over 'measurement' activities. The U.S. argues that the Convention only provides for the coastal state's rights to develop, conserve, research, and protect resources in the EEZ, and does not provide for the coastal state's jurisdiction over military surveying activities in the EEZ, so the jurisdiction claimed by China is an abuse of that right. China stresses that it has always respected and maintained the freedom of navigation and overflight enjoyed by all countries in the South China Sea in accordance with international law, but firmly opposes the use of freedom of navigation and overflight to undermine China's sovereignty and security interests. And freedom of navigation and overflight does not mean that foreign warships and military aircraft can violate due regard and peaceful obligations, disregard the coastal security of other countries, and undermine their legitimate rights. Freedom does not mean unlimited, but the right freedom should be based on respect for the sovereign security of the coastal state and acceptance of the provisions of the Convention on the use of the sea, thus achieving relative freedom. The United States' actions have threatened China's national security and its purpose can hardly be considered peaceful, while according to Chinese law¹, marine scientific research, activities related to the exploration and development of natural resources, etc., should be approved or agreed by the competent authorities.

From the above controversy, it can be seen that a large part of the controversy between China and the United States regarding military surveying activities stems from the lack of clear provisions on relevant maritime acts in the Convention. Therefore, it is necessary to make a clear explanation and clarification of the definition of relevant maritime acts and identify the relationship between them.

¹ See the Law of the People's Republic of China on EEZ and Continental Shelf.

Distinction of Maritime Acts Related to Military Survey Activities

The traditional 12-mile territorial sea system has long been unable to meet the needs of countries for sovereignty and security as the maritime military power of countries around the world is increasing. In this context, each country has declared its own EEZ and claimed sovereign rights in these waters. The establishment of the EEZ system was the result of an eventual compromise between coastal states and other states, and there are no clear regulations on the nature of many maritime activities, so in order to clarify the nature of military surveying activities, it is first necessary to clarify the difference between military surveying activities and related maritime acts.

Marine Scientific Research

Marine scientific research involves the sovereign security interests and economic interests of coastal states, as well as the marine exploration and exploitation rights of other states. The nature of marine scientific research has been debated for a long time by a wide range of coastal states and other countries, and international law scholars from various countries have tried to define marine scientific research, but in the end, the differences are large because of the different positions of the countries they are in.

The first issue that should be considered is the definition of marine scientific research. There are two controversies: first, whether improving human knowledge of the ocean should be the purpose of marine scientific research; and second, whether marine scientific research should be divided into theoretical and applied research. Roach and Smith of the U.S. Naval Officer Academy assert that marine science research is research based on ocean data collection, in other words, marine scientific research is a branch of marine data collection, and the system of marine data collection includes two types of measurement activities: hydrographic measurements and military measurements. They assert that the two are not an inclusive relationship, but a juxtaposition. Other international law scholars have argued that marine scientific research is the act of investigating the marine environment, such as Soons, who defines marine scientific research as “an investigation of the marine environment, regardless of how and where it is conducted. They believe that marine scientific research should be divided into theoretical and applied research, and that activities dedicated to improving marine scientific knowledge are theoretical research. On the basis of this view, two different views arise as to whether the two measurement activities need to be integrated within the scope of marine scientific research.

Professor Mukherjee (1981), an internationally renowned expert in maritime law, believes that it should be incorporated. He advocates the division of marine scientific research into theoretical, applied, and military research, and divides theoretical research in marine science into marine physics, marine chemistry, marine biology, marine geology and marine geography, and surveying activities. In contrast, Soons asserts that marine scientific research does not include measurement activities. Yang Ying (2017), a Chinese scholar, has also proposed that marine science research includes the study of marine physics, marine chemistry, marine biology, marine technology, and marine geology and marine geography. It also does not include measurement activities as part of marine scientific research.

In addition, some scholars believe that coastal states can be regulated and governed based on the unique economic value of surveying activities, as the data collected from surveying activities are of great importance to the exploration, exploitation, utilization, and conservation of coastal state resources and the restoration of the

natural coastal environment. Although the United States also recognizes coastal state regulation of surveying activities, it is based on the economic value of surveying activities, so they still consider surveying activities to be an inherent freedom of the seas rather than an activity subject to coastal state jurisdiction. Our scholar Zhou Jiang suggested that, according to the provisions of Part XIII of the Convention on marine scientific research, the Convention still tacitly affirms the slightly stronger jurisdiction of the coastal state over marine scientific research in its EEZ.

The scope of marine scientific research can be inferred from the provisions of Article 246(2) and (3) of the Convention². Marine scientific research is a body of knowledge about the nature of the ocean, the environment, and the laws of change of different forms of the ocean, and also includes some aspects related to the management of the use of the ocean. It studies the ocean, including seawater, suspended matter in seawater, various marine organisms, submarine sediments, and submarine lithosphere, as well as the atmosphere above the sea surface and the coastal zone of estuaries. Marine scientific research is of irreplaceable importance in all aspects, and plays an important role in the development of marine resources, regulating climate change, building ecological civilization, predicting marine disasters, as well as safeguarding marine rights and interests and maintaining national security.

According to Article 246 of the Convention and in its context, a coastal state has the right to consent to or refuse marine scientific research in its EEZ, a right that can be called the "right of limited consent". And through the provisions of this article, it can be seen that the marine scientific research referred to in the Convention includes not only theoretical research, such as research on the nature, definition, and other concepts, but also exploration, exploitation, and other applied research. Therefore, marine scientific research is not only an activity that aims only to improve human marine knowledge as mentioned above, but it is also a wide range of activities with a practical nature. Although there is no clear definition and classification of marine scientific research in the Convention, and scholars from different countries have different opinions; I believe that no matter how marine scientific research is interpreted, the purpose of marine scientific research must be the starting point. The relationship between measurement activities and marine scientific research is still very controversial in practice, so to clarify the relationship between the two, measurement activities should be further explored.

Hydrographic Survey Activities

Discussions about hydrographic survey activities necessarily revolve around their relationship with marine scientific research, and there are two main perspectives: First, the two are opposed to each other and mutually exclusive; second, the two contain each other. Scholars who hold the first view believe that marine scientific research is a research activity for the purpose of improving human understanding of the ocean, and hydrographic measurement refers to the measurement of water level, water depth, and other parameters; the main content includes the measurement of wind direction, flow, humidity, sediment, precipitation, radiation, water quality, and other geographical elements, so as to draw a map about the topography of the seabed; the purpose is to maintain navigation safety and is a service to navigation safety and geographic discipline research surveying activity. Since they have different purposes, it is difficult to categorize them as two identical activities. It is written in the Guide

² Article 246 of the United Nations Convention on the Law of the Sea.

to Marine Scientific Research that one of the purposes of marine scientific research is to promote the development of navigation. Therefore, it is inaccurate and unscientific to distinguish the two by the criterion of purpose alone.

Scholars who hold the second view believe that the two have the same essence, but differ only in terms of motivation and purpose. So if we take a broad definition of marine scientific research, then hydrographic surveys are part of marine scientific research. Some scholars also assert that the two are essentially the same and gradually converge. To make a careful distinction between hydrographic and marine scientific research is an over-interpretation of the Convention and has no other convincing basis, so the relationship between hydrographic and marine scientific research should be further analyzed. The first is a point of view that has been advocated by scholars in various countries, that is, from the provisions of the Convention, in the provisions of Article 19, Article 54, and other articles of the Convention juxtaposed with marine scientific research, in the format of the distinction between the two. Second, from the way and means, although the two are now commonly used, sonar detection method, but in the process of hydrographic measurement is not only the sonar detection method, but also the use of radar water level sensor, ultrasonic flowmeter, and other instruments. Since the two can overlap in terms of methods, tools, and means, there may be activities that are both marine scientific research and hydrographic surveys. However, it is not reasonable to conclude that hydrographic measurements and marine scientific research are gradually integrated and assimilated.

In summary, hydrographic survey and marine scientific research are two different activities, although the purpose of the two in maintaining the safety of navigation overlap, in the manner, tools, and means is similar, but the two cannot simply be identified as one kind of behavior, of course, does not exclude that there may be both marine scientific research and hydrographic survey activities. However, either activity should comply with the provisions of the Convention and respect the jurisdiction of the coastal state over it.

Military Activity

The vagueness of the Convention's regulations on military activities has allowed the United States to take advantage of this loophole and conduct military survey activities in the EEZ without authorization. In fact, the regulation of military activities in the EEZ falls into the gap of the Convention and is an undetermined matter of the Convention. The main military activities explicitly mentioned in the Guidelines for Navigation and Overflight in the EEZ issued in 2005 are: force or threat of force; provocative acts; intelligence gathering for the purpose of using force against coastal states; establishment of sea bases; and military exercises. However, with the development of marine science and technology, it is impossible to exhaust the connotation of military activities through enumeration, and the connotation of military activities remains difficult to define. At present, there is still a big controversy among domestic and foreign scholars about the scope of military activities.

Foreign scholars have proposed dividing maritime military activities into seven categories: surface and water navigation and overflights, including routine cruises, maritime exercises, and maritime weapons diplomacy; maritime military activities that serve as strategic deterrence; surveillance of potential adversaries and anti-submarine warfare using equipment such as sonar; installation of navigation and communication facilities; deployment of conventional weapons such as mines; military research; and logistical support, including maintenance of naval bases. Some scholars have also suggested that military activities in the EEZ are traditional freedom of navigation and overflight, the purpose of which is to deter armed actions by other countries and avoid

threats to maritime trade or other maritime activities, and the interests to be safeguarded are global security and stability, and the coastal state, on the other hand, is to maintain its own security and control the surrounding waters. Judge José Luis Jesús of the International Tribunal for the Law of the Sea has suggested that the acts of non-harmless passage enumerated in the Convention can in fact be seen as an enumeration of activities of a military nature. Chinese scholars suggest that in addition to naval warfare, maritime military activities include naval exercises, weapons testing, installation of military structures and devices, declaration of security zones, etc. China's "Marine Dictionary" stipulates that: Ship operations, troop movements, aircraft landings and take-offs, operation of military equipment, intelligence gathering, weapons exercises, ordnance experiments, and military survey activities are all part of the usual maritime military activities.

Through the analysis of the above-mentioned scholars' views, the author believes that military activities refer to activities with obvious organizational characteristics, mainly by armed forces; it is usually divided into general military activities and military activities of an aggressive nature, and can also be divided into military activities in times of war and military activities in times of non-war. Military activities in times of war, such as armed aggression, division of national sovereignty, etc., which generally take place between opposing armed forces, peacetime military activities, on the other hand, are manifested in military operations such as regime subversion, military exercises, and humanitarian relief. It can be seen that an important criterion for the classification of military activities is the level of deterrence of the activity. For example, activities such as basic hydrographic surveys can be detected simply by passing through the waters under the jurisdiction of the coastal state, using simple radar devices, with a low level of deterrence. However, large-scale maritime military activities represented by military exercises may pose a threat to the security of the coastal state, with a high degree of deterrence, and require the use of destructive military weapons, which may also be lethal to the coastal state. Therefore, combining the degree of deterrence of military activities at sea to coastal states as well as the military devices used and the scale of activities, the author believes that military activities can be classified according to levels: the first category, routine navigation or overflight activities consistent with the freedom of navigation and overflight as stipulated in the Convention, such as routine cruises, troop movements, protection of homeland security, etc. This type of military activity is almost non-dangerous, legal, and reasonable, and accepted by all countries. The second category is the reconnaissance type of military activities represented by military surveying activities. The purpose of such activities is to obtain military information from coastal states and prepare for war victory, such as intelligence gathering, deployment of maritime forces, and other acts, which to a certain extent will have a deterrent effect on coastal states. The third type is activities with a very high level of deterrence, such as military exercises, maritime weapons experiments, nuclear submarines, and unmanned submarine operations. The purpose of such military activities is often non-peaceful, causing serious disruptions and threats to the territorial and sovereign security of coastal states, and having a decisive role in warfare.

Therefore, according to the analysis and definition of the nature of military activities by domestic and foreign scholars, the characteristics of maritime military activities can be summarized: First, military activities at sea are planned and systematic, based on a combination of factors such as military intentions or political objectives, and have an organizational nature; second, maritime military activities are bound to use armed forces, and both wartime and non-war military activities need the support of armed forces, where the armed forces refer to the general term of various armed organizations owned by the state and political groups, although the connotation

and extension of the armed forces of different countries are different, and generally are mainly military forces, supplemented by other formal and informal armed organizations, so it can be summarized as having the characteristics of armed; third, maritime military activities have obvious military strategic purposes. Whether in peacetime or wartime, various military activities have a strong military-strategic purpose, either to expand maritime rights and interests, or defend territorial integrity, or expand development space, or safeguard national interests, or threaten by force, or to maintain world peace. In the case of U.S. freedom of navigation operations around the world, they are conducted for the military-strategic purpose of asserting what it considers to be “legitimate” maritime interests.

Determination of the Nature of Military Survey Activities in the EEZ

So far, the provisions of military surveying activities are not yet clear in the Convention, and experts and scholars at home and abroad have been arguing about it, and it is difficult to reach a consensus, and there are only two controversial issues: first, the relationship between military surveying and military activities; second, the relationship between military surveying and marine scientific research. From the above, it can be seen that both military activities and their subordinate military surveying activities are different from marine scientific research, but from the purpose of the relevant marine behavior, marine scientific research, hydrographic activities, military activities, and military surveying activities are similar in some aspects, so it is necessary to further analyze its legal nature, to determine that military surveying activities are illegal, and China has jurisdiction.

Are Military Survey Activities Part of Marine Scientific Research

As we know from the above, the definition of marine scientific research varies among scholars in different countries. Some foreign scholars believe that marine scientific research is inseparable from the study of marine physics and marine chemistry in the process of scientific research, while military surveying is the collection of marine data for military purposes, usually in territorial waters, archipelagic waters, straits used for international navigation, EEZs, high seas, and continental shelves. It is also argued that military surveys include measurements of ocean chemistry, ocean physics, marine biology, and acoustics. Therefore, it is argued that the two are mutually exclusive and those military survey activities can be carried out in the EEZ of the coastal state. Chinese scholars, on the other hand, point out that the two are completely different, as military survey vessels are ships that are classified as warships, unlike commercial or civilian survey vessels that are used for marine scientific research and non-military purposes.

Although Part XIII of the Convention specifically provides for a marine scientific research regime. However, there is no precise and clear definition, classification, or description of “marine scientific research”, “military survey”, “marine investigation”, “data collection”, etc. The precise and clear definition, classification, or description of “marine scientific research”, “military survey”, “marine investigation”, “data collection”, etc., and the overlap between military survey and scientific research in terms of tools or equipment used to collect data make it difficult for coastal states to distinguish the ultimate purpose of those activities in their EEZs. It would be unfair and dangerous for coastal states to consider military surveying as part of marine scientific research, but not to be able to regulate it, as do powerful maritime states. And Article 246(2)(3) of the Convention defines “marine scientific research”. However, the purpose of military survey can be seen very intuitively, that is, data

collection activities for military purposes, and therefore military survey is to serve the military, and not to explore the knowledge of the marine environment and improve human understanding of the ocean; therefore, military survey does not belong to marine scientific research.

Whether Military Survey Activities Are Hydrographic Survey Activities

From the definition of hydrographic survey defined above, it is clear that hydrographic survey refers to the measurement of parameters such as water level and depth to create maps about the topography of the seabed to maintain navigational safety rather than to obtain data beneficial to operations. Thus, the hydrographic survey is not equivalent to the military survey; the former is to serve the safety of navigation, map the seabed, and understand the topography of the seabed, while the latter is to obtain marine data in advance for the benefit of national operations, and the two also appear side by side in the arrangement of lines in the Convention, which can also be shown to be different according to the semantic analysis. Guan Jianqiang (2009, p. 55), a renowned Chinese professor of international law, suggests, "In fact, the nature and purpose of military surveying and hydrographic surveying are completely different". The Convention of the International Hydrographic Organization, which entered into force in 1970, also stipulates that the purpose of surveying is to secure the convenience and safety of world navigation using improved nautical charts and documents. Therefore, although the relationship between military survey and hydrographic survey is not clearly defined in the Convention, the non-inclusive relationship between the two is also based on the law.

Whether Military Survey Activities Are Military Activities

Military surveying is an activity carried out to obtain data for national operations and is essentially an aggressive activity with non-peaceful purposes. Military survey activities are both "military" and "survey". "Military" means that it is difficult to consider it as peaceful, and it is a kind of spy to threaten the coastal state. "Surveying" means that the data of the EEZ of the coastal state are in the hands of other states, with the purpose of surveillance, which on the one hand is to help the maritime powers to familiarize themselves with the operational environment of the sea, and on the other hand is to monitor the maritime activities of the coastal state, so military surveying activities also clearly violate the principle of "exclusively for peaceful purposes". Therefore, military surveying activities also clearly violate the principle of "exclusively for peaceful purposes". So literally military measurement is the same as military activity. And according to the above overview of the characteristics of military activities, it is clear that military activities are organized, armed, and purposeful, and it is perfectly consistent to substitute the characteristics of military activities into military measurement activities: First, military survey activities are necessarily a planned activity, and the elements of the military survey system work together to form a complete survey system, and without planning and organization, the military survey will not be successfully completed; second, because the Convention does not clearly stipulate whether it is legal to conduct military survey activities in the EEZ of coastal states, each country stands on its own position, which is bound to generate disputes. Furthermore, since the Convention does not clearly stipulate the legality of military surveying activities in the EEZ of coastal states, countries will argue from their own standpoints and disputes and conflicts will arise, and if necessary, they will use armed forces to protect their own interests, including hidden armed forces, such as military survey ships under the banner of "hydrographic survey", as well as unmanned underwater

vehicles or other warships, which are armed in nature; finally, military surveying activities themselves are different from most military activities, and their purpose is not to deter and threaten. The purpose of deterrence and threat is not obvious, on the one hand, to obtain the coastal state's maritime military deployment, marine topography, etc., for its armament or possible future naval warfare, and on the other hand, simply to challenge the coastal state's bottom line and tolerance, and to challenge the coastal state's "excessive maritime claims" by military means.

Therefore, military survey activities are different from marine scientific research and hydrographic survey activities. They are military activities and are essentially intelligence-gathering activities for military strategic purposes, which can be extremely harmful to China's maritime security and thus pose a threat to China's national security, so to maintain the stability and security of China's coast, the illegality of military survey activities in the EEZ must be explained and clarified.

Determination of Illegality of Foreign Military Survey Activities in the EEZ

Foreign Military Survey Activities in the EEZ Are Not a Legitimate Freedom of Navigation

The right to freedom of navigation is the most fundamental in the Convention and is a freedom of the sea that has been advocated since the time of Grotius, and its importance is recognized worldwide. Article 87 of the Convention stipulates the principle of freedom of navigation on the high seas, of which Article 87(2) stipulates that the right to freedom of navigation shall be exercised with due regard to the interests of other states, and Article 88 stipulates that "the high seas shall be used only for peaceful purposes". Article 58 of the Convention provides for the freedom of navigation and overflight of other states in the EEZ as provided for in Article 87 of the Convention. It can be seen that the principle of freedom of the high seas overlaps to some extent with the principle of freedom of navigation in the EEZ. Therefore, the two conditions that must be met for legitimate freedom of navigation should be to have due regard for the legitimate rights of other states and to be used only for peaceful purposes.

Bernard H. Oxman of the University of Miami School of Law has outlined the limitations attached to these legal obligations: (1) that other states not use or threaten to use force against coastal states; (2) due regard for the rights of other states to use the seas; and (3) compliance with relevant obligations available in other international treaties. The Guide to Navigation and Overflight in the EEZ proposes that states concerned should refrain from conducting military activities or military exercises in the EEZ of coastal states, except in areas adjacent to the high seas.

First, foreign military surveying activities in the EEZ do not fall within the scope of freedom of navigation in the EEZ. Freedom of navigation is the freedom of navigation and overflight enjoyed by ships and aircraft of any country and is an affirmation of the fundamental right of navigation. Although the Convention stipulates the scope of freedom enjoyed in different maritime areas, the Convention does not affirm the freedom of military surveying activities in the EEZ, and thus the United States cannot use the residual rights of the EEZ to interpret it in favor of its own country. To realize the freedom of military survey activities in the EEZ and to advocate the high seas of the EEZ, the U.S. introduced the concept of "international waters", denial of the special area nature of the EEZ. However, this concept has no basis in international law and is only the wishful thinking of the United States, and its claim to exercise the same rights as the high seas in the EEZ is also taking the Convention out of

context. The United States has arbitrarily expanded the boundaries of the right to freedom of navigation based on “international waters”, and this unilateral act violates the legitimate rights and interests of coastal states, which is contrary to the spirit of the Convention on freedom of navigation.

Second, foreign military surveying activities in the EEZ are not consistent with the “peaceful purposes of the use of the sea”. Throughout the Convention, there are as many as 18 references to peaceful purposes, and it can be seen in the Convention that “peaceful purposes” are used for peaceful purposes, while military surveying is clearly for the ultimate purpose of obtaining information for military operations, and although it cannot be fully concluded from this that military surveying is non-peaceful, it cannot be automatically concluded that military surveying is for peaceful purposes either peaceful purposes. In recent years, U.S. military survey activities in China's EEZ have become increasingly frequent, not only with military survey vessels simply flying the flag of “hydrographic surveys”, but also with geological exploration vessels, hydroacoustic sounding vessels, and a variety of other intelligence-gathering military vessels, and with Andrew J. Carswell, senior representative of the U.S. and Canadian armed forces to the International Committee of the Red Cross, who believes that the use of force by the armed forces in a conflict is not a hostile act either. However, its claim that the use of force is not a hostile act is not convincing. China has never objected to other countries' scientific research and hydrographic survey activities in its EEZ by the law, but it is obvious that such activities of the United States, which threaten its sovereign security and serve its military strategy, have deviated from the purpose of “peace”.

Finally, foreign military survey activities in the EEZ violate the obligation of due regard. The principle of “due regard” is expressly provided for in Articles 56(2) and 58(3) of the Convention, in addition to Article 87(2), and Article 2(2) of the 1958 Convention on the High Seas, so it can be seen that the principle of “due regard” is recognized by various states and is applied quite widely in practice. The principle of “due regard” is recognized by various states and is applied in practice to a wide extent; its essence is to limit the abuse of power by some countries. According to *Black's Law Dictionary*, the “doctrine against abuse of rights” is the principle that a person is liable for damages when the exercise of a right causes harm in the absence of a significant legitimate interest worthy of judicial protection, in violation of moral principles, good faith, or fairness, or for a purpose other than the legitimate purpose for which the right is intended. The *Black's Law Dictionary* explains that “due regard” has the same meaning as “the doctrine of prohibition of abuse of rights”, and that the essence of “due regard” is the prevention and limitation of abuse of rights in each country. The essence of “due regard” is to prevent and limit the abuse of rights by countries. Therefore, the U.S. military conduct in China's EEZ without permission is an abuse of rights, i.e., a violation of the obligation of “due regard” under the Convention.

Foreign Military Survey Activities in the EEZ Are Not a Legitimate Maritime Use

Article 58(1) of the Convention provides for “other internationally lawful uses of the seas and oceans in connection with those freedoms”, which is an important basis for the United States to claim that military surveying activities are conducted in the EEZ of coastal States. To prove that military survey activities are not legitimate uses of the sea, it is necessary to clarify the “internationally lawful uses”. According to the Convention, the activities that qualify as other internationally lawful uses must be related to the freedom of navigation and overflight under Article 87 for the two to be considered relevant. American scholar Pedrozo (2010) argues that the Convention only prohibits the “use or threat of use of force” and that Article 19(2) of the Convention explicitly

lists a range of military activities. This means that the Convention is distinguishing between military activities and the “use or threat of force” and that non-aggressive military activities are therefore consistent with the UN Charter and the UN Convention on the Law of the Sea.

In addition, the Law of the People's Republic of China on the Administration of the Use of Marine Areas shows that the main scope of legitimate uses of the sea includes the exploitation of marine biological resources, marine mineral resources, marine chemical resources, marine space resources, and other resources, and does not include military surveying activities to obtain information. Moreover, most Chinese scholars believe that military activities at sea are against peace according to the provisions of the Convention on “Peaceful Purposes”, and military survey activities at sea are part of military activities, whose purpose is difficult to identify and even more difficult to be considered as no threat to coastal states. Therefore, foreign military surveying activities in the EEZ are not within the scope of legitimate maritime uses, and the United States has no right to conduct military surveying activities in China's EEZ without permission.

However, the legitimacy of all military activities cannot be simply ruled out; a specific analysis should be made on a case-by-case basis. With the development of satellite reconnaissance, medium- and long-range missiles, and other military technologies, the maritime military scientific and technological strength of maritime powers is also increasing, and the demand for military activities such as intelligence collection and military surveying is also increasing. The use of advanced measuring instruments can even obtain information and intelligence on the territorial sea and even the internal waters of coastal states within the EEZ, making the 12-nautical-mile territorial sea unable to meet the needs of sovereignty and territorial security of coastal states. If there are no restrictions on U.S. military surveying activities in China's EEZ and it is allowed to conduct military surveys at will under the banner of freedom of navigation, then China's sovereign security is bound to be threatened.

Jurisdictional Determination of Foreign Military Survey Activities in the EEZ

China does not prohibit the lawful navigation of U.S. warships in China's EEZ, but China has jurisdiction over activities entering its EEZ based on its sovereign right to the EEZ granted by the Convention, and any activities of U.S. warships in China's EEZ must comply with China's legal provisions. This is the right of each coastal state under the Convention and the obligation that other states should fulfill in the EEZ of the coastal state. China has jurisdiction over foreign vessels in the EEZ, but warships or official government vessels are not subject to its jurisdiction because of their immunity, but this does not affect the exercise of China's sovereign rights over the EEZ.

Development of Foreign Military Survey Ships and Perception of Their Attributes

In the early days of the maritime industry, each country believed that an efficient and rigorous military service would be able to accomplish the task of protecting the safety of navigation. Because of the close connection with national security, the navy has imposed strict checks on the exchange of survey results among all countries. Although survey ships have a wealth of functions, such as an important role in marine environmental protection, marine resource development, and utilization, the priority is still to serve military strategy. Military survey ships have strong comprehensive operation capability and intensive high-end technology, and their design

concept, equipment configuration, and completion process are mainly aimed at maritime military activities or warfare and the development needs of maritime high-end weapons. With the strategy of strengthening the country by the sea, the demand for the use of the sea is increasing, and offshore resource development, scientific research, and related military activities can no longer meet the development needs of the country, so the traditional survey ships naturally need to be transformed and upgraded. At the same time as the rapid development of maritime military science and technology, the operational capacity of measuring equipment is also increasing, and a measuring ship can even carry several research equipment, such as seabed topographic mapping, bathymetry, and current velocity, marine meteorological monitoring, marine scientific research, and other research activities, greatly improving the efficiency of various marine utilization activities.

The Convention does not clearly explain the manifestation of military survey ships, and in practice, military survey ships often disguise as ordinary hydrographic survey ships or fishing boats to enter the EEZ of other countries to collect marine data and do not show obvious armed characteristics. For example, the U.S. "Flawless" and "Victory" are unarmed anti-submarine detection vessels or hydroacoustic listening vessels. In practice, there are many controversies about the manifestation and legal attributes of the military survey, and the definition of its legal attributes determines the exercise of its jurisdiction, so it is necessary to clarify the legal attributes of military survey ships.

The exercise of the jurisdiction of the coastal state is often limited by the immunity of the flag state. Whether a military survey vessel has immunity directly affects the measures taken by the coastal state against foreign military survey vessels in the EEZ. Article 29 of the Convention states that

A warship means a ship belonging to the armed forces of a state, having external indications identifying the nationality of the warship, commanded by an officer duly commissioned by the Government of that state and placed on the appropriate active roster or similar roster, and manned by a crew subject to the discipline of the regular armed forces.

According to the definition of warships in the Convention, four characteristics of warships can be summarized: First, they are armed; second, they have external markings that easily identify their nationality; third, the commander of the ship is an officer in active service; and fourth, the crew of the ship is in active military service. The U.S. military survey ship represented by the "Flawless" is a maritime military auxiliary ship, the data collected are mainly about the topography of the sea floor, water sounds, ocean currents, and other intelligence, no weapons, and equipment on the surface, the appearance is also far from the warship, and the crew is mostly civilian personnel. Although the characteristics of military survey ships are very different from those of warships, the United States still insists that its military survey ships have immunity, which leads China to adopt measures such as tracking and surveillance for ships conducting military survey activities in the EEZ. Meanwhile, the emergence of unmanned vessels has made the identification of the attributes of unmanned vessels used for military surveying activities more difficult.

Jurisdiction of the Coastal State Over Foreign Military Surveying Activities in the EEZ

First, the jurisdiction of the coastal state over hydrographic surveying activities in the EEZ. According to the definition of hydrographic survey and marine scientific research, the two overlap in maintaining the safety of navigation, and there are similarities in the methods, tools, and means, and there will also be overlaps and similarities between hydrographic survey and military survey, and it cannot be excluded that there may be

activities that belong to both marine scientific research and hydrographic survey. When the U.S. engages in hydrographic survey activities in China, it mainly uses hydrographic survey ships, whose purpose is to conduct bathymetry and coastal topographic survey, to obtain information on the bottom geomorphology, bottom conditions, navigation obstacles, etc. Its purpose is to provide data for compiling nautical charts to ensure the safety of ship navigation. Through the Convention of the International Hydrographic Organization, it can be seen that the purpose of hydrographic surveys is to coordinate the hydrographic units of each country and develop the science and technology of hydrographic surveys. Although the Convention stipulates the freedom of hydrographic surveying activities of other countries in the EEZ of coastal states, the Law of the People's Republic of China on the EEZ and Continental Shelf stipulates the adoption of an approval system for hydrographic surveying in China's EEZ, while complying with China's laws and regulations. Therefore, whether based on the Convention or our domestic law, China has jurisdiction over hydrographic surveying activities in the EEZ, and U.S. survey vessels have no right to conduct hydrographic surveying activities in China's EEZ without our approval.

Second, the jurisdiction of the coastal state over marine scientific research activities in the EEZ. Marine scientific research mainly uses marine survey vessels, which mainly accomplish the measurement of seawater temperature, salinity, humidity, waves, temperature, wind direction, and other marine environment, as well as the measurement of seafloor gravity, magnetic force, and other marine physical parameters, and also monitor the marine environment. And according to the provisions of Articles 246 and 248 of the Convention on the rights and obligations of the coastal state and other states to conduct marine scientific research in the EEZ of the coastal state, it is clear that when other states conduct marine scientific research in the EEZ of the coastal state, they must share the relevant information they obtain with the coastal state, and the coastal state has the right to information granted by the Convention, and the coastal state also enjoys "limited right of consent". These two rights then determine the natural jurisdiction of the coastal state over marine scientific research in its EEZ. Both the Law of the People's Republic of China on the EEZ and Continental Shelf and the Regulations on the Administration of Foreign-Related Marine Scientific Research provide that China adopts an approval system and enjoys jurisdiction over marine scientific research in the EEZ, which indicates that U.S. survey vessels have no right to conduct marine scientific research activities in China's EEZ without the approval of the relevant Chinese authorities.

Finally, the jurisdiction of the coastal state over foreign military activities in the EEZ. The jurisdiction of the EEZ belongs to the extension of the sovereign rights of the coastal state. Article 56 of the Convention stipulates the rights enjoyed by the coastal state in the EEZ, including the rights to natural resources, artificial island construction, marine scientific research, and marine environmental protection. As for how the remaining rights such as military activities are reasonably distributed between coastal states and other states, the Convention does not give clear explanations and regulations. However, it is known through the provisions of the Convention that the jurisdiction enjoyed by the coastal state in the EEZ can be realized using domestic legislation. Therefore, the Convention does not violate the provisions of the Convention even if there is no explicit provision on foreign military activities and the coastal state's realization of jurisdiction by domestic legislation. Moreover, the rights of the coastal state are also emphasized in Article 2 of the Guidelines on Navigation and Overflight in the EEZ, which provides for the freedom of the coastal state to impose any temporary restrictions on navigation and

overflight in the EEZ. It follows that the exercise of jurisdiction by the coastal state in the EEZ is lawful and reasonable.

China's regulations on foreign military activities in the EEZ are mainly reflected in domestic laws such as the Law of the People's Republic of China on the EEZ and Continental Shelf and the Law of the People's Republic of China on Maritime Police. Chinese scholars emphasize that the obligations of other states in the coastal state include the obligation to use the sea peacefully, the obligation to refrain from the use or threat of force, the obligation to inform in advance, the obligation not to hinder the search and rescue activities of the coastal state, the obligation not to harm the resources of the coastal state, the obligation to protect the environment, the obligation not to conduct military activities in temporarily closed waters and waters with intensive fishing activities, and the obligation to limit military exercises to the coastal state's EEZ if the high seas are directly adjacent to it. If the high seas are directly adjacent to the EEZ of the coastal state, the obligation to limit military exercises to the high seas. Other Chinese scholars believe that although Article 56 of the Convention provides relatively comprehensive provisions on the numerous rights enjoyed by coastal states in the EEZ, the enumeration method can hardly cover all cases, and in such cases, the political, economic, military, and marine environment security of the coastal state need to be guaranteed by the Convention, which leads to the extension of the coastal state's jurisdiction to protect China from unauthorized entry into the EEZ for military surveying and reconnaissance and other illegal acts of foreign countries to be prevented and to protect the security of its coastal areas. But it must also not overreach its jurisdiction and restrict the legitimate freedom of navigation of other states. In addition, many countries have also established jurisdiction over foreign military activities, such as Australia's maritime identification system and Brazil's declaration in Montego Bay that it will not allow military activities in its EEZ. Foreign scholars have also pointed out that the coastal state has the right to decide whether to expand the "connecting space" according to the need to protect its security. According to the provisions of Chinese domestic law and the views of other scholars, it is known that China's jurisdiction over foreign military activities in the EEZ has a clear legal basis and is not extinguished by the immunity of military survey vessels, nor is it changed by disputes over foreign military survey activities.

Conclusion

Since 2000, the U.S. has been unceasingly making military declarations in the form of military survey activities in China's EEZ, posing a great threat to the security of its coastal areas. In response to the U.S. insistence on "freedom of navigation" in the EEZ and its opposition to China's "excessive maritime claims", China should take action on both domestic and international levels. On the domestic level, insist on the detection of military surveying activities in the surrounding waters and push for the improvement of its maritime legislation to strengthen its military and naval defense construction. On the international level, promote the review and improvement of the Convention, strengthen dialogue and cooperation with the United States on the basis of safeguarding common maritime rights and interests, lead the construction of a blue ocean partnership, maintain the international maritime order, uphold the authority of the Convention, and promote the establishment of a maritime community of destiny based on the surrounding community of destiny.

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