
The impact on the Law of the Sea Convention on the roles and activities of the RAN in meeting Australian Government requirements

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The primary role of the Australian Defence Force (ADF) is to maintain the territorial sovereignty of Australia. In the case of the ADF's maritime forces, principally the Royal Australian Navy (RAN), this involves maintaining sovereign rights in the waters surrounding the Australian continent and offshore estate. In the last decade, the single biggest factor impacting maritime jurisdiction has been the entry into force in November 1994 of the United Nations Convention on the Law of the Sea 1982 (LOSC) and the establishments of Exclusive Economic Zones (EEZs). In Australia's case, the addition of an EEZ has meant that the maritime area of responsibility has grown into 16 million square kilometres of ocean that shares jurisdictional boundaries with seven other coastal states.¹ This has had a direct impact upon the RAN's peacetime policing of the maritime approaches, but it also affects the RAN in other ways. Specifically, the interpretation of the LOSC by other coastal states impacts on the way in which the RAN conducts its strategic tasks in support of Australia's regional strategic interests. All of these factors are important inputs into Australia's maritime strategy, and thus the activities of the RAN.

This paper explores the impact that the LOSC has had on the roles and activities of the RAN in meeting the requirements of the Australian Government. Firstly, the paper briefly looks at the key regimes and zones introduced in LOSC and their general impact on maritime operations. Next, current Australian Government requirements for the ADF are explored, specifically, how these requirements are translated by RAN doctrine into an interrelated triangle of roles: constabulary, diplomatic and military. Then, using a methodology that aligns each role with certain LOSC zones, the paper explores how LOSC interpretations are impacting upon each of these roles, in both Australian waters and foreign waters. Finally, the impact upon maritime strategy of the LOSC and broad implications for freedom of navigation is assessed.

The overarching premise in the paper is that it has not just been LOSC regulations, per se, that have impacted RAN activities in both Australian waters and in the waters of Australia's Adjacent Maritime Region (AAMR).² But the *interpretation* of LOSC by coastal states for their own strategic purposes, and the interaction with Australian national interests, that have shaped RAN roles and activities at sea.

The general impact of the Law of the Sea on maritime operations

The LOSC is a unique regime made up of a number of sub-regimes that have the effect of forming multiple zones of jurisdiction in the ocean.³ These zones were created in an attempt to balance the rights of coastal states to the resources and jurisdiction of the sea, against the interests of other states for equitable access to those resources and protection of navigational freedoms.⁴

This balancing act has impacted upon maritime forces, including navies, in several general ways. First, increased jurisdiction has resulted in increased activity by the coastal state's own

maritime forces to enforce sovereign rights for resources and maintain territorial security. These are termed constabulary operations. Second, the increased jurisdiction of other states has had the effect of reducing the area of the high seas and therefore imposed greater qualifications the freedom of navigation of maritime forces.⁵ Of significant interest to navies is where states make excessive claims to waters, or where they seek to impose additional rights within zones with the intention to constrain other states' military operations.

Finally, the overlapping of LOSC jurisdictions, particularly of EEZs, has been a source of new conflicts when combined with existing territorial disputes. In some cases, this has resulted in the build-up of military forces to support the assertion of claims.⁶ In the AAMR, the simmering dispute involving competing sovereignty and LOSC claims in the Spratly Islands is a striking example of this tension.⁷ Overall, the oceans are a tapestry of complex maritime jurisdiction that require careful navigation by states and their navies when pursuing national interests in their own waters and in the region.

The maritime requirements of the Australian Government and RAN roles

The fundamental responsibility of the Australian Government is the security of Australia, and thus the primary requirement upon the ADF is the maintenance of territorial sovereignty, principally from armed attack. However, the government recognises that national security is not simply a matter of *military operations* to defend the maritime approaches to the continent, and has set other strategic tasks for the ADF to meet the national interests. In a maritime sense, ensuring territorial sovereignty also involves peacetime, low level *constabulary operations* to manage maritime borders and protect sea resources. Additionally, these strategic tasks include fostering security and stability in the region by projecting influence through cooperation, coalitions and *diplomatic operations*.⁸ As McLennan succinctly expresses:

Navies, as states' traditional instruments of maritime strategy, always have fulfilled a much wider function than just shipping protection or fighting wars. Navies exist in order to use the sea to further their nations interests—for the passage of trade and people, and the exploitation of resources, to further national wealth, and for the projection of influence to ensure an external environment [supportive] to the creation of that national wealth.⁹

The RAN has translated this strategic guidance into a triangle that illustrates the span of maritime operations (roles)—constabulary, diplomatic and military—and the attendant tasks or activities within each role (Figure 1). What is immediately evident is the very broad range of activities that the RAN is required to be proficient in supporting national interests.

Having explored 'the roles and activities of the RAN in meeting Australian Government requirements', the focus will now shift to how the LOSC is impacting upon those roles. A simple methodology will be used that examines each role of the RAN against three separate LOSC regimes and interpretation issues. First, the impact of LOSC on RAN constabulary roles will be examined by looking at RAN tasks in Australian waters. Then the impact of LOSC on naval diplomacy will be reviewed through issues in foreign coastal waters, notably where there are attempts to restrict freedom of navigation by imposing requirements or limiting passage options in archipelagos. Finally, the impact of LOSC on military operations will be examined in light of restrictions that some coastal states are trying to place upon military activities in the EEZ.¹⁰

Constabulary roles in Australian waters

In August 1994 Australia established its EEZ and so accepted rights and responsibilities for approximately 16 million square kilometres of ocean—more than twice the area of the Australian



Figure 1: Span of Maritime Operations¹¹

continent.¹² The 1998 *Australia's Ocean Policy* then articulated the governments regime for management of the rights and responsibilities in this marine environment. Two of the policy's broad goals are to exercise and protect Australia's rights and jurisdiction over maritime areas and resources; and to meet Australia's international obligations under the LOSC and other international treaties.¹³ Furthermore, *Australia's Ocean Policy* reflects higher strategic requirements when it reiterates that it is the task of the ADF to safeguard Australia's marine jurisdictions, to control the maritime approaches and to exercise and protect Australia's sovereignty and sovereign rights.¹⁴ These statements echo directly the provisions under the LOSC for coastal states to enforce laws and regulations in their waters, and thus also places explicit responsibilities upon the RAN for that enforcement by constabulary operations.¹⁵

Naval constabulary operations, or policing operations, are defined as:

The use of military forces to *uphold a national or international law*, in a manner in which minimum violence is only used in enforcement as a last resort and there is some *evidence of a breach or intent to defy*. The level and type of violence that is permitted will frequently be *specified in the law, mandate or regime that is being enforced*. [emphasis added]¹⁶

The highlighted text in this definition serves to emphasise that the *raison d'etre* of the Navy in constabulary operations is to enforce laws, such as LOSC.

Referring to the triangle that represents the span of maritime operations (Figure 1), there are several tasks that are encompassed within the constabulary role. For the purposes of this paper, the ones of particular concern with respect to the LOSC and RAN operations in Australian waters are: *Environmental and Resource Management and Protection*, and *Maritime Barrier Operations*. The first task encompasses activities such as fisheries and environmental protection in the EEZ. While the latter task encompasses border protection responsibilities such as customs and quarantine operations, and the prevention of illegal immigration in the contiguous zone (CZ) and territorial sea (TS).

Within LOSC the conservation of living resources in the EEZ, and the protection and preservation of the marine environment, are well established as a coastal state responsibility.¹⁷ Similarly, the rights of the coastal state to prevent border incursions into the TS and CZ are well defined in LOSC. Specifically, by providing the fact that illegal immigration and drug smuggling are prejudicial to the good order and security of the coastal state, the state is given rights under international law to take necessary steps in the TS and CZ to prevent the passage of vessels carrying out these illegal activities.¹⁸

For decades the RAN has led Australia's efforts in surveillance and enforcement of Australia's sovereign rights in the EEZ (for fisheries and environmental protection), and in the TS and CZ (for border protection). However, in the last decade the strategic economic value of living resources and the marine environment has increased, and so too has national and government focus on 'green' issues. Likewise, recent political imperatives to counter illegal immigration and smuggling have driven increased national surveillance and enforcement operations. Correspondingly, the tempo of the RAN in meeting these roles has increased. The fleet has been deployed from the tropical waters near Indonesia, to the icy seas of the Southern Ocean in operations to enforce Australia's responsibilities under the provisions of LOSC.

In summary, the LOSC was the catalyst for an oceans policy that articulated the government's regime for the management of the rights and responsibilities in Australia's marine environment. A strategic portion of these constabulary responsibilities are undertaken by the RAN in the EEZ, TS and CZ, notably for environmental and resource management and protection, and border operations. Finally, a national understanding of the strategic implications that have flowed out from the LOSC, rather than the LOSC per se, has driven the tempo of RAN constabulary operations.

Naval diplomacy and the coastal waters of foreign states

Warships are important symbols of a state's national power, and have the mobility, flexibility, reach and persistence to convey messages and influence events overseas in support of a nation's foreign policy.¹⁹ Looking at the span of maritime operations (Figure 1), the naval diplomacy task of interest for LOSC analysis in this paper is *presence*. Presence is 'the exercise of naval diplomacy in a general way involving deployments, port visits, exercising and routine operating in areas of interest and to deter'.²⁰ Intuitively then, the way in which LOSC is interpreted and implemented by foreign states will have an impact on the way in which the RAN can operate in foreign water.

In the AAMR, the LOSC has become a diplomatic weapon deployed by states seeking to bolster their national security and sovereign rights.²¹ In particular, several coastal states have interpreted the LOSC to impose greater restrictions on freedom of navigation on foreign warships than the Australian Government is willing to accede. The types of passage regimes that are causing tension are *innocent passage* in the territorial sea, *archipelagic sealanes passage* (ASLP) and *transit passage* through international straits.

The first area of tension is the right of *innocent passage* in territorial seas, and in particular, whether such passage is subject to a requirement of either prior notification or prior authorisation by the coastal state. This is a form of *thickened jurisdiction*.²² LOSC clearly delineates the meaning of innocent passage and prohibited activities during that type of passage.²³ In territorial waters the coastal state has the strongest sovereign powers and may prevent non-innocent passage, establish restrictions on innocent passage, or temporarily suspend innocent passage to protect its 'national security'.²⁴ It is this issue of security that causes strategic concern. Several AAMR states view warship innocent passage as a threat to sovereignty and have used the LOSC to justify a requirement for warships to notify their passage.²⁵

The argument for notification rests upon the combination of customary international law with the LOSC. Customary practice by some states has included notifying warship innocent passage, and since the LOSC states that innocent passage 'shall take place in conformity with this Convention and with *other rules of international law*' (emphasis added) several coastal states argue that notification is therefore legally justified.²⁶ By contrast, states opposed, including Australia, assert that such notification has the effect of impairing the right of innocent passage in contravention to LOSC Article 24. 'Indeed, the list of *non-innocent passage* contained in [Article] 19(2) clearly indicates that the activities in (a)–(f) are concerned primarily with warships, and would be superfluous if such a right of *innocent passage* did not exist'.²⁷

The next area of tension concerns passage in archipelagic waters. The Asia–Pacific region has the seven of the 14 states of the world claiming archipelagic status, and thus the LOSC regimes of ASLP and transit passage are particularly important concepts in the AAMR.²⁸ The 1982 LOSC created a new regime where an archipelagic state can draw baselines around its islands to enclose the waters. Previously such enclosure would have created *internal waters* with the attendant rights of innocent passage. However, the 1982 LOSC balanced the need for shipping access through these large tracts of water by creating the regime of *archipelagic waters* where the sovereignty of the state applies, *except* in certain passages (either archipelagic sea lanes or international straits). Outside of the routes, ships only have right of innocent passage. However, within the sea lanes innocent passage is non-suspendable, the ship can transit in the normal mode and there is a right of overflight. For navies, the fact that warships can transit 'in the normal mode' is significant as it permits manoeuvres, flying operations and submarine submerged transit.²⁹ However, of issue in archipelagic waters are the subtle differences between the regimes for ASLP and transit passage through international straits. In simple terms, ASLP is a more restrictive regime that confines passage and overflight to a particular route and axis designated by the archipelagic state.

The existence of passage differences in archipelagos has prompted Indonesia and the Philippines to argue that passage through three strategic straits in their archipelagic waters are not transit passage but ASLP.³⁰ This has the specific effect of geographically constraining the routes on which ships can transit. Indonesia has also advised that it will only designate three North–South passages through its archipelago that qualify for ASLP—the Sunda, Lombok and Omboi/Wetar Straits. Any other passages through the archipelago would therefore be within archipelagic waters, and thus innocent passage, and able to be suspended.

Australia has protested Indonesia's claim as it impacts upon Australia's strategic requirements for non-suspendable East–West trade routes through the archipelago.³¹ Australia continually demonstrates its rights for these East–West passages by having the RAN transit on routes normally used for navigation, within the archipelago, in the normal mode. Similar to Indonesia, the Philippines

has claimed all waters within its archipelago as historic waters and thus internal waters that require permission for entry—a concept that is enshrined in the Philippines Constitution. Australia also protests this claim by having RAN warships transit in the normal mode through the archipelago.

In summary, Australia considers that requirements for notification and restrictions on passage in archipelagos are excessive interpretations of the LOSC and discriminatory to warships. In conducting innocent passage without notification and normal mode passage within regional archipelagos, the RAN is directly exercising Australian national influence.

Military operations in foreign EEZs and the high seas

In the last decade, one of the more significant issues that has impacted upon the operation of navies has been the reduction of the traditional high seas caused by the creation of EEZs and Archipelagic states. In the final side of the triangle that is the span of maritime operations (Figure 1), this paper will now examine the impact of LOSC upon the operations of the RAN in foreign state's EEZ. The two main issues are, firstly, restrictions upon military activities by coastal states, and secondly, the tension over surveys and marine scientific research (MSR) in EEZs, both of which are causing issues in the AAMR.

LOSC establishes the EEZ as a zone of shared rights and responsibilities, where the rights and jurisdiction of the coastal state over living and non-living resources are balanced with the freedom of navigation and lawful use by other states. Importantly, other states must conduct their activities in the EEZ with *due regard* to the laws and rights of the coastal state, and vice versa.³² However, a regional trend to thicken jurisdiction in the EEZ is causing issues for naval operations in two ways. Firstly, coastal states have been tightening regulations with respect to environmental controls and MSR out of concern for resource protection. Secondly, coastal states have been seeking to regulate activities that are not regarded by the international community as being within their jurisdiction, as a way of reinforcing national security. Namely, by prohibiting other state's military activities in their EEZ.³³ The term *military activities* is not defined by LOSC, but it is generally understood to include normal ship operations, task force manoeuvring, launch and recovery of aircraft, operating military devices, intelligence collection, weapons exercises, ordnance testing and military surveys.³⁴

The AAMR states of Malaysia, India and Bangladesh contend that military activities are not peaceful, and have prohibited the conduct of military activities in their EEZs without their consent.³⁵ This prohibition has been justified using the LOSC and UN Charter to assert that military activities constitute a threat of force against the coastal state, and are therefore not peaceful.³⁶ In contrast, Australia and other states consider that the EEZ regime in UNCLOS *does not* permit the coastal state to limit military activities in its EEZ. Australia maintains that high seas freedoms exist in the EEZ and this therefore permits the conduct of military activities, with some limitations.³⁷ The test is whether the military activities impact upon the sovereign rights of the coastal state, on a case-by-case basis. For instance, if a weapon firing would endanger the coastal states fishing resources, it would not be conducted.

On the issue of research and surveying, LOSC does not permit other states to conduct MSR without the permission of the coastal state. However, the LOSC is not specific on the conduct of hydrographic survey and military surveys that collect marine data that does not impact upon coastal state resources or that is not for scientific purposes. The United States and United Kingdom maintain that these types of military surveys, along with intelligence collection, are covered under high seas freedoms, and therefore outside the jurisdiction of coastal states.³⁸ In the AAMR China, the

Philippines, Cambodia and North Korea protest this.³⁹ At this stage, the RAN does not engage in hydrographic or military surveys in other states' EEZ, primarily due to limited capabilities. However, the strategic reactions in the AAMR to these LOSC interpretations are being monitored.

In summary, interpretation of the LOSC by coastal states in the AAMR has, in some cases, increased restrictions in the oceans, particularly for military activities. Australia's stance has been to demonstrate its objection to thickening jurisdiction by having the RAN continue to exercise the freedom to conduct military activities in foreign states' EEZs, while monitoring the strategic trends in the AAMR. Finally, Australia promotes its strategic interest in this regard through regional exercises with coastal states in order to assuage security and resource concerns. By demonstrating that the RAN is a competent, professional military organisation that is concerned with other states' environmental and security issues, the RAN is furthering cooperation and understanding, and hence Australia's national interests.

Maritime strategic implications for the RAN

In reviewing the roles and activities of the RAN against LOSC zones, what has become evident is that the interpretation and implementation of the LOSC has had an identifiable effect upon the operations of the RAN. This has been most evident in constabulary operations where the LOSC has brought increased rights and responsibilities that have been translated into tasks for the RAN. However, what is also evident is that the policies, security concerns, and jurisdictional concerns of other coastal states, as well as Australia, impact the roles of the RAN. The significance is that this must be incorporated into Australia's maritime strategy for the RAN.⁴⁰

Finally, as the global security environment continues to become more uncertain, the importance of the oceans to connect a nation with its allies and its major interests is also an increasing strategic concern.⁴¹ The mobility of the RAN is an important input into Australia's maritime strategy, and it is becoming even more important as restrictions on freedom of navigation tighten. In the words of Captain Galdorisi, USN:

An essential element of such mobility is assurance that sea and air lanes of communication will remain open as a matter of international legal right—not at the sufferance of coastal and island nations along the route or in the area of operations.⁴²

Conclusion

This paper has explored the impact that LOSC has had on the roles and activities of the RAN in meeting the requirements of the Australian Government. The overarching premise that has been followed is that it has not just been the LOSC regulations, *per se*, that have influenced these roles, but the way in which LOSC has been interpreted and applied by coastal states, including Australia.

In Australia, national understanding about LOSC and the marine environment has been growing. There is greater strategic awareness of not only Australia's rights to resources, but also responsibilities to manage and protect resources, the environment and Australian borders. Consequently, the tempo of constabulary roles conducted by the RAN has been growing. In the wider ocean, freedom of navigation is under pressure from coastal states who are using LOSC to justify imposing additional restrictions and requirements, particularly upon warships. The RAN is being used to constantly demonstrate the resolve of the Australian Government to maintain freedom of navigation in territorial waters, archipelagic waters and the EEZs of coastal states.

Overall the LOSC establishes zones of shared rights and responsibilities throughout the oceans that require cooperation to work smoothly. So long as states battle with concerns about national security, resource exploitation, environmental protection and sovereign rights, the LOSC will be manipulated, interpreted and disputed by states on both sides of the equation. The navies of these states will remain important strategic assets as both sides compete to influence outcomes on the ocean, and the roles and activities of navies, including the RAN, will continue to be set by the strategic agenda.

Endnotes

1. Bruce McLennan, 'Maritime Border Protection and the Royal Australian Navy: Threat or Opportunity?' in Martin Tsamenyi and Chris Rahman, eds., *Protecting Australia's Maritime Borders: The MV Tampa and Beyond*, Wollongong Papers on Maritime Policy No. 13, Centre for Maritime Policy, University of Wollongong, Wollongong, 2002, p. 128.
2. The Australian Adjacent Maritime Region (AAMR) comprises the high seas and the maritime zones associated with the following states: Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Cook Islands, Democratic People's Republic of Korea, Fiji, French territories in the region, India, Indonesia, Japan, Kiribati, Malaysia, Maldives, Marshall Islands, Federated States of Micronesia, Myanmar, Nauru, New Zealand, Niue, Pakistan, Palau, Papua New Guinea, the Philippines, Republic of Korea, Russian Federation, Samoa, Singapore, Solomon Islands, South Africa, Sri Lanka, Thailand, Timor Leste, Tonga, Tuvalu, UK overseas territories in the region, US territories in the region, Vanuatu, Vietnam. Martin Tsamenyi and Kwame Mfodwo, *Analysis of Contemporary and Emerging Navigational Issues in the Law of the Sea*, Working Paper No. 8, Royal Australian Navy Sea Power Centre and Centre for Maritime Policy, Canberra, November 2001, p. 3.
3. The sub-regimes or zones in the LOSC are: Part II – Territorial Sea and Contiguous Zone, Part III – Straits used for International Navigation, Part IV – Archipelagic States, Part V – Exclusive Economic Zone, Part VI – Continental Shelf, Part VII – High Seas, Part VIII – Regime of Islands, Part IX – Enclosed or Semi-Enclosed Seas, and Part XI – The Area.
4. Ivan Shearer, 'The United Nations Convention on the Law of the Sea: Strategic and Military Implications for Australia', *Journal of the Royal United Services Institute Australia*, Vol. 16, No. 1, November 1995, p. 51.
5. Specifically, the most significant modification caused by the LOSC was the reduction of the traditional high seas caused by the creation of EEZs, the establishment of Archipelagic states, and the expansion of territorial seas.
6. Ji Guoxing, 'Oceans Governance and Regional Security Cooperation' in David Wilson and Dick Sherwood, eds., *Oceans Governance and Maritime Strategy*, Allen and Unwin, Sydney, 2000, p. 81.
7. In the case of the Spratly Islands, China, Vietnam, Brunei, Malaysia, Taiwan and the Philippines are all in dispute over both sovereignty of the islands, and the LOSC claims that spring from them. Desmond Ball, 'Regional Maritime Security' in Wilson and Sherwood, eds., *Oceans Governance and Maritime Strategy*, p. 63.
8. *Defence 2000 – Our Future Defence Force* specifies four strategic tasks for the ADF: defending Australia, contributing to the security of our immediate neighbourhood, supporting wider interests, and peacetime national tasks. Commonwealth of Australia, *Defence 2000 – Our Future Defence Force*, Commonwealth of Australia, Canberra, 2000, pp. 46–53.
9. McLennan, 'Maritime Border Protection and the Royal Australian Navy: Threat or Opportunity?', p. 133.
10. For the purpose of this paper, 'Australian waters' is a collective term used to refer to Australia's internal waters, territorial seas, contiguous zones and EEZs. 'Coastal waters' is a collective term used to refer to the territorial seas, contiguous zone, archipelagic waters and straits used for international navigation.
11. The triangle that illustrates the span of maritime operations was developed by the RAN from the concepts of the contemporary strategic thinker, Ken Booth from his book *Navies and Foreign Policy*. The RAN has expanded the tasks over two iterations, and the current version is included here. Commonwealth of Australia, *The Navy Contribution to Australian Maritime Operations*, RAN Doctrine 2, Department of Defence, Canberra, 2005, pp. 8–9.
12. Commonwealth of Australia, *Australia's Oceans Policy*, Marine Group, Environment Australia, Canberra, 1998, p. 6. Interestingly, while Australia had signed the LOSC in 1984, and declared an EEZ on 01 August 1994, it did not ratify LOSC until 05 October 1994. The LOSC finally came into force for Australia and other original state parties on 16 November 1994.
13. Andrew Forbes, *Protecting the National Interest: Naval Constabulary Operations in Australia's Exclusive Economic Zone*, Working Paper No. 11, Sea Power Centre Australia, Canberra, April 2002, p. 33.
14. Commonwealth of Australia, *Australia's Oceans Policy – Specific Sectoral Measures*, Vol. 2, Marine Group, Environment Australia, Canberra, 1998, S5.1.
15. LOSC Article 73 deals with the sovereign rights of the coastal state to enforce laws and regulations that are adopted

in conformity with LOSC. LOSC Article 220 deals with the coastal state's enforcement rights in protection and preservation of the marine environment.

16. Commonwealth of Australia, *Australian Maritime Doctrine*, RAN Doctrine 1, Department of Defence, Canberra, 2000, p. 144.
17. LOSC Article 55 recognises that the EEZ is an area where the coastal state has rights and jurisdiction, and other states also have rights and freedoms. Article 56(1)(a) gives the coastal state sovereign rights to explore and exploit the EEZ, while Article 56(1)(b)(iii) provides jurisdiction to the coastal state for protection and preservation of the marine environment in the EEZ. LOSC Articles 61 and 62 further deal with conservation and utilisation of the living resources in the EEZ.
18. LOSC Article 17 gives ships the right of innocent passage through the TS. However, LOSC Article 19(2)(g) states that the passage of a vessel is prejudicial to the good order or security of the coastal state if it unloads any person contrary to the immigration laws of the coastal state or any commodity contrary to the customs laws of the coastal state. The coastal state is permitted to adopt these laws through the provisions of Article 21. Furthermore, Article 25 allows the coastal state to take necessary steps in its TS to prevent passage that is not innocent. With respect to the CZ, Article 33 provides the coastal state with control to prevent customs and immigration laws infringement.
19. Geoffrey Till, *Maritime Strategy and the Nuclear Age*, 2nd Edition, MacMillan Press, London, 1982, pp. 209–212.
20. *Australian Maritime Doctrine*, RANDOC 1, p. 160.
21. Ivan Shearer, 'Current Law of the Sea Issues,' p. 62.
22. *Thickened jurisdiction* is where coastal states more stringently regulate a wider range of activities within a zone over which the coastal state legitimately exercises jurisdiction, or by extending regulations to activities which are usually regarded as not within the jurisdiction of the coastal state. Sam Bateman, 'EEZs Pose Security Problems', *Asia Pacific Defence Reporter*, September 2004, p. 40.
Creeping jurisdiction refers to the extension of national or international rules and regulations, and rights and duties over the sea, in straits and coastal zones, on and under the seabed, and in the vast stretches of the high seas. The effect can be to push limits of a zone further out. Ken Booth, *Force and Diplomacy at Sea*, Allen and Unwin, London, 1985, p. 38 quoted in J.S. Scott, 'An Essay on Australia's Maritime Strategy and its Links with the Law of the Sea,' *Journal of the Australian Naval Institute*, November 1994/January 1995, p. 46.
23. LOSC Article 19 defines innocent passage and those activities that could be considered prejudicial to the peace, good order or security of the coastal state. For warships the applicable restrictions are: threat or use of force, weapons practice, intelligence collection, aircraft operations and survey activities. LOSC Article 18 also states that passage shall be continuous and expeditious.
24. LOSC Article 25(1) permits the coastal state to take necessary steps in the territorial sea to prevent passage that is not innocent. LOSC Article 21 states that the coastal state may adopt laws and regulations relating to innocent passage with respect to a number of factors, including safety of navigation, and conservation of living resources and the environment, amongst other things. Furthermore, the article states that foreign ships conducting innocent passage must comply with these laws and regulations. LOSC Article 25 deals with the suspension on innocent passage.
25. AAMR coastal states that require prior notification for warship passage in the territorial seas are India and Taiwan. States that require prior authorisation are Bangladesh, Cambodia, China, Myanmar, the Philippines, Sri Lanka and Vietnam. Glenn Kerr and Barry Snushall, eds., *Future Environmental Policy Trends to 2020: Impact on Ship Design and Operations*, Papers in Australian Maritime Affairs No. 13, Sea Power Centre – Australia, Commonwealth of Australia, Canberra, 2005, p. 115.
26. LOSC Article 19. Tsamenyi and Mfodwo, *Analysis of Contemporary and Emerging Navigational Issues in the Law of the Sea*, p. 21.
27. LOSC Article 19(2) activities (a)–(f) are threat or use of force, weapons practice, intelligence collection, propaganda, launching/recovery of aircraft and launching/recovery of military devices. *ibid*.
28. The following states in the AAMR claim archipelagic status: Indonesia, the Philippines, Kiribati, Papua New Guinea, Solomon Islands, Tuvalu and Vanuatu, and Tonga is a potential claimant. Glenn Kerr and Barry Snushall, *Future Environmental Policy Trends to 2020: Impact on Ship Design and Operations*, Papers in Australian Maritime Affairs No. 13, Sea Power Centre – Australia, Commonwealth of Australia, Canberra, 2005, p. 119.

29. *ibid.*, p. 120.
30. The international straits claimed to be archipelagic sea lanes by Indonesia are the Sunda Strait and Lombok Strait, and the Surigao Strait by the Philippines. Sam Bateman, 'Navigational Rights and Regional Security,' *Asia Pacific Defence Reporter*, Vol. 23, No. 1, January 1997, p. 18.
31. *ibid.*
32. LOSC Article 56 details the rights, jurisdiction and duties of the coastal state in the EEZ. Specifically, the coastal state has sovereign rights for exploration, exploitation, conservation and management of the natural resources in the EEZ. The coastal state also has rights to establish infrastructure, conduct marine scientific research and protect the environment. LOSC Article 58 gives other states freedoms of navigation and overflight, and laying of submarine cables and pipelines. User states must have *due regard* to the rights and duties of the coastal state, and comply with laws and regulations made by the coastal state where they are compatible with LOSC.
33. Bateman, 'EEZs Pose Security Problems,' p. 40.
34. Definition from J. Ashley Roach and Robert W. Smith, *US Responses to Excessive Maritime Claims*, 2nd edition, 1996, p. 427.
35. Bateman, 'EEZs Pose Security Problems,' p. 40.
36. The specific articles that are used to justify prohibition of military activities in the EEZ are LOSC Articles 300 and 301, and UN Charter articles 1(1), 1(2) and 2(4). Notably, LOSC Article 301 dictates that States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any state.
37. LOSC Article 58(1) states that in the EEZ other states enjoy the freedoms of the high seas (Article 87) for navigation, overflight, scientific research and other lawful uses of the sea such as the operation of ships and aircraft. The limitations upon these activities are that states should refrain from unlawful threat, have due regard for the coastal state's rights and duties, due regard for others using the EEZ, and observe obligations under other treaties and rules.
38. Bateman, 'EEZs Pose Security Problems', p. 41.
39. Jon Van Dyke, 'Military Ships and Planes operating in the Exclusive Economic Zone of Another Country,' *Marine Policy*, Vol. 28, No. 1, January 2004, p. 31.
40. Sam Bateman, 'Oceans Governance – the Global Challenge for the new Century,' in Wilson and Sherwood, *Oceans Governance and Maritime Strategy*, p. 211.
41. George Galdorisi, *The United States and the Law of the Sea: Changing Interests and New Imperatives*, p. 7.
42. *ibid.*

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