Maritime interception and the law of naval operations

A study of legal bases and legal regimes in maritime interception operations, in particular conducted outside the sovereign waters of a State and in the context of international peace and security

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Publication date
2016

Document Version
Final published version

CHAPTER 4

The right for warships to intervene on foreign flagged vessels on the high seas

Iure gentium quibusvis ad quosvis liberam esse navigationem.[205]
-Hugo de Groot

4. Introduction

Intervention by warships on foreign flagged vessels can include the stopping, boarding and possible confiscation of goods and detainment of persons. The legal bases and regimes for such an intervention by warships on foreign flagged vessels must not be sought solely within the context of the international law of the sea. The international law of the sea does, however, provide the fundamental legal framework and ground principles with regard to jurisdiction over vessels at sea. It is the logical point of departure for understanding the law applicable to maritime interception operations.

4.1. Fundamental principles of the international law of the sea

It is well known that the fundaments of the legal order of the seas as we understand them today, which are codified in the UN Convention on the Law of the Sea (UNCLOS) and considered as customary international law, go back to the seventeenth century debate between the concepts of *Mare Liberum* versus *Mare Clausum.*[206] The *Mare Liberum* approach to

[205] "That by the law of nations navigation is free for everybody to whomsoever". Title of the first chapter of Hugo de Groot's *Mare Liberum*.
[206] A.C.G.M. Effyinger (ed.), *Compendium volkenrechtsgeschiedenis* (1991), 82-87. After the boarding of the Portuguese vessel *Santa Catharina* by the Dutch Admiral Jacob van Heemskerk in 1603, Hugo de Groot was asked to legally justify boarding and seizure of the vessel. Accordingly, he wrote a dissertation on prize law. His view on the freedom of the seas, which was Chapter 12 of this dissertation, was edited to an independent publication which was published in 1609. The *Mare Liberum sive*

the legal order of the oceans, underlines the importance of the freedom of the high seas. This idea, by which States cannot have exclusive right of ownership over the seas as the seas and its resources are a common good for common use to all, was predominantly instigated by the Dutch lawyer Hugo de Groot (1583-1645).[207] His view ultimately gained the upper hand and has since served as the basis for the legal order of the oceans. In his time, the high seas were all the seas, except those that were regarded as internal waters.[208] Obviously today, although De Groot's idea is still the point of departure, the high seas have gradually lost terrain to other maritime zones over which States possess sovereignty or exercise sovereign rights. The freedom of the high seas is now codified in Article 2 of the Convention of the High Seas (HSC) and in Article 87 UNCLOS.[209] The effect of the existence of the freedom of the high seas is the notion that States do not possess sovereignty beyond their own territory. What follows, is that in the contemporary law of the sea States only may exercise jurisdiction over foreign flagged vessels within their territory and in areas where they may exercise functional jurisdiction for particular purposes, and absent of a legal basis they may not board a foreign flagged vessel in areas where high seas freedoms exist.

Next to the principle that no State can own and exercise jurisdiction over the high seas, the other fundamental principle in the international law

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de iure quod batavis competit ad indicana commercial dissertatio was first published anonymously, but soon afterwards it became known that it was Hugo de Groot who had written it. Jeroen Vervliet,'General Introduction', in Hugo Grotius, *Mare Liberum 1609-2009* (Brill, Leiden Boston 2009), IX. *Mare Clausum* refers to a publication of John Selden in 1635 in reaction to De Groot's work in which he argues that the sea is not common to all under every circumstance.

[207] The *Mare Liberum sive de iure quod batavis competit ad indicana commercial dissertatio* was published in 1609. It was first published anonymously, but soon afterwards it became known that it was Hugo de Groot who had written it. Jeroen Vervliet,'General Introduction', in Hugo Grotius, *Mare Liberum 1609-2009* (Brill, Leiden Boston 2009), IX.

[208] Rothwell and Stephens, 145.

[209] Art. 87 UNCLOS reads:

> 1) The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:
> (a) freedom of navigation;
> (b) freedom of overflight;
> (c) freedom to lay submarine cables and pipelines, subject to Part VI;
> (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
> (e) freedom of fishing, subject to the conditions laid down in section 2;
> (f) freedom of scientific research, subject to Parts VI and XIII.
> 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

of the sea is the so called 'flag-principle'.[210] Where the first principle focuses on the use of the sea, this principle focuses on the users. It submits that all States are entitled to exercise jurisdiction over vessels and take measures to safeguard the freedom of navigation against vessels that are registered in that State and flying its flag. In other words, although no State can exercise jurisdiction on the high seas, States do have jurisdiction over vessels that are flying their flag. Moreover, the responsibility of jurisdiction over vessels on the high seas falls exclusively, as codified in Article 92 UNCLOS, to the flag State. This principle has, as Gavouneli mentions; is the cornerstone on which the public order of the high seas is erected.[211]

Although not a principle of international law that is exclusively particular to the law of the sea, a third principle of importance in the context of MIO is the non-intervention principle. Apart from the view that non-interference by States on foreign flagged vessels follows from the flag principle, it is also supported by the non-intervention principle in general international law, in which States need to refrain from actions that are essentially within the domestic jurisdiction of a State. The non-intervention principle, therefore, sets an extra hurdle against rushing into affairs on board foreign vessels that belong to another State. This principle applied in the maritime context underlines that interference by States over foreign flagged vessels should be seen as an exception to the rule.

In sum, in the context of maritime interception operations, these three principles result into two fundamental legal points of departure. First, flag States have exclusive jurisdiction over their vessels on the high seas and other States may, therefore, not interfere with those vessels. Second, if a State decides to interfere with foreign flagged vessels by means of its warships, it will need a proper legal basis to do so. The key article in which these fundamentals are codified is Article 92 UNCLOS, which will receive some more detailed attention in the next paragraph.

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[210] Somewhat confusing in the military context may be that the flag principle has in fact two meanings. First is the meaning in the maritime context, as is mentioned here. Second is the principle that wherever soldiers will go, their national laws will follow them. This principle is usually supported by the Napoleonic maxim: *La ou est le drapeau, là est la France.* When, for instance, military are deployed as vessel protection detachments (VPD) on foreign merchant vessels, both meanings of the flag-principle apply; one to the vessel and one to the military.

[211] M. Gavouneli, *Functional jurisdiction in the Law of the Sea.* Publication on Ocean Development, vol. 62 (2007), 162.

4.1.1. Article 92 UNCLOS

UNCLOS has codified the flag-principle in Article 92 UNCLOS.[212] The core sentence in Article 92 for the purpose of this chapter is: "shall be subject to its exclusive jurisdiction on the high seas". This sentence contains four elements that need brief attention.

The first element of importance in this phrase is *jurisdiction*. As Malcolm Shaw states, jurisdiction is a vital and central feature of state sovereignty which 'concerns the power of the State to affect people, property and circumstances and reflects the basic principle of state sovereignty, equality of States and non-interference of domestic affairs'.[213] There are three aspects to jurisdiction which the flag State can enforce over its flagged vessels. First is the power to issue laws applicable to a vessel (prescriptive jurisdiction). Second is the power to enforce these laws (enforcement jurisdiction) aboard the vessel. To illustrate, this means that when a person of a different nationality is on board the vessel, and despite the active personality principle of a State over such person, the flag State will still have jurisdiction to take enforcement measures against such person. Third is the ability of the flag State to bring matters before a domestic court of law (adjudicative jurisdiction).[214] Under Article 92 UNCLOS a flag State has jurisdiction on all three aspects of jurisdiction when its flagged vessel sails on the high seas.[215]

The second element is that this jurisdiction is *exclusive* to the flag State when vessels sail on the high seas. It entails that the flag State is the only State which can enforce jurisdiction over the vessel and everyone on board the vessel. Such was also underlined in the *S.S. Lotus* case brought before the Permanent International Court of Justice (PICJ) in 1927, where the PICJ stated that:

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[212] Art. 92 UNCLOS reads as follows:

> 1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.
> 2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

[213] M. Shaw, *International Law* (2000), 452.

[214] See J.E.D. Voetelink, *Strafrechtmacht over Nederlandse militairen in het buitenland* (2012), 15.

[215] In the case of the Netherlands, the Netherlands Criminal Code states in article 3 that the Netherlands Criminal Code is applicable to all persons that are on board a vessel that flies the Netherlands flag. Article 4 of the Netherlands Criminal Procedural Code discusses the competence of the Netherlands courts over a criminal act on board a Netherlands flagged vessel.

> 'It is certainly true that – apart from certain special cases which are defined by international law - vessels on the high seas are subject to no authority except that of the State whose flag they fly'.[216]

As will be noted below more elaborately, it is generally accepted that this exclusiveness has its limits, for example in favour of suppressing universal crimes such as piracy at sea.

The third element is that exclusive jurisdiction only applies on the *high seas*. The high seas are a maritime zone in the oceans which has its particular legal regime. Article 86 UNCLOS provides that the high seas are: all parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. As such, in this area, as Churchill and Lowe mention: From the rule that no State can subject areas of the high seas to its sovereignty, or indeed its jurisdiction, it follows that no State has the right to prevent ships of other States from using the high seas for any 'lawful purpose''[217]. Although strictly speaking the EEZ is not part of the high seas, Article 58 UNCLOS extends the freedom of the high seas onto the EEZ, under the condition that States shall have due regard to the rights and duties of the coastal State. Sub 2 of Article 58 states that Articles 88 to 115 apply the EEZ, which includes the freedom of navigation,[218] the rules relating piracy[219] and the rules relating to the peacetime right of visit.[220] This explains that in naval operations the high seas for practical purposes are usually interpreted as the seas adjacent to the territorial sea and called 'international waters'.[221]

The fourth and last element to note is *its*, which refers to the flag State of the vessel. Article 91 UNCLOS further elaborates on how nation-

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[216] *SS Lotus* case, PICJ, Series A, No. 10, 7 September 1927, 25. The Turkish vessel *Bozkourt* and the French flagged mail boat *SS Lotus* collided on 2 August 1926 on the high seas. Eight persons on board the *Bozkourt* died because of the collision. The Turkish Government prosecuted the French first officer Demons of the *Lotus* for his share in the incident. The question whether Turkey could have jurisdiction over Demons was put before the PICJ. The Court ruled that there was no rule in international law that prohibited Turkey from prosecuting the French lieutenant.

[217] R.R. Churchill, A.V. Lowe, *The law of the sea* (Manchester University Press, 3rd ed, 1999), 205.

[218] Art. 87 UNCLOS.

[219] Artt. 100-107 and 110 UNCLOS.

[220] Art. 110 UNCLOS.

[221] One such example is the NATO-naval operations that were conducted in operation Unified Protector with regard to Libya. The term high seas that was used in SC-Res. 1973, but was interpreted by NATO to mean the seas adjacent to the Libyan territorial sea

ality of vessels can be granted by States. Basically, Article 91 contains two conditions for nationality: registration under domestic rules and a genuine link between the flag State and the vessel. How and under what conditions a State grants a vessel its nationality is subject to the domestic laws of States. With regard to the genuine link criterion, in 1999 the ITLOS issued its judgment in the *MV Saiga* (no.2) case in which the Court had to determine whether the *Saiga* had the nationality of Saint Vincent and the Grenadines at the time of its arrest by Guinea.[222] The Court decided on the point of the genuine link that the genuine link criterion 'is to secure more effective implementation of the duties of the flag State and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States'.[223] Therefore, if there is no genuine link, it does not mean that a vessel has lost its nationality, providing other States the possibility to enforce their jurisdiction over the vessel. The importance of the ability to link a vessel to a State is thus that it creates some level of legal order over vessels in an area that is beyond the jurisdiction of any State, as the link creates a responsibility for the flag State over its vessels. When a vessel flies under a certain flag, the flag State has duties that are summed up in Article 94 UNCLOS. Most importantly in this context is that the flag State must assume jurisdiction under its domestic law over each ship flying its flag and its master, officers and crew.[224]

4.2. Limited exceptions to non-interference

Even though the point of departure for the legal framework of the international law applied to maritime interception operations starts from the notion of non-interference, interference has, however, never been something that was prohibited in its totality. It has always been accepted that States can have reasons to interfere with certain activities on the high seas. Such reasons can fall within the context of international peace and security, to ensure the *bon usage* of the ocean and to maintain the public order and security interest of States.[225] These reasons have a legal impact in the

[222] ITLOS, The M/V "Saiga" (No. 2) case (Saint Vincent and Grenadines v. Guinea), Judgment 1 July 1999. See Chapter 10 on this case.
[223] M/V Saiga, para 83.
[224] Article 94, under 2 sub b UNCLOS.
[225] Papastavridis, 27-40.

sense that it developed legal possibilities by which States can, for instance, interfere with neutral shipping during armed conflict, act against cases of piracy, allow a seaward expansion of functional jurisdiction of coastal States[226] and enter into international agreements. All have an impact on the exclusive jurisdiction over a vessel on the high seas, and as such this has never been completely absolute. During armed conflict certain activities by warships, such as the belligerent right of visit, or capturing vessel that attempt to breach a blockade are well-accepted rules and mark a certain level of clarity of the manner in which way the absoluteness is challenged by other international law frameworks.[227] In peacetime circumstances, the scope of interference of foreign flagged merchant vessels by warships in the past has been open to debate. It surfaces primarily on the issue of whether or not States have a general policing right on the high seas. In 1955 the question of whether State have a general authority of policing the sea was scrutinized by the International Law Committee (ILC) in the context of whether there is a general right of verification of flags by warships. Ultimately, this discussion ended in favour of the position that the ILC accepted flag verification only in special 'police measures' like piracy and slave trade. It rejected, however, a *general* right for a warship to verify the flag of a vessel.[228] This point of view was then for the first time codified in Article 22 of the 1958 Convention on the High Seas[229] and taken over in Article 110 UNCLOS. From this is derived

[226] The 'creeping jurisdiction'-debate of seaward jurisdictional power projection has now reached the EEZ. A development which has obviously been a concern for states with an expeditionary naval force. James Kraska's study elaborates on the coastal state efforts at diminishing freedom of navigation in the EEZ, and thereby the advantage of maritime powers of expeditionary operations, by, as he opines; 'casting doubt on the political and legal legitimacy of military activities in the EEZ. See J. Kraska, *Maritime power and the law of the sea* (Oxford University Press, 2011), Chapter 5, at 221. See also, J.M. van Dyke,'The disappearing right to navigational freedom in the exclusive economic zone', in *Marine Policy*, 29 (2004), 107-121.

[227] The law of naval warfare will more elaborately be addressed in Part 3.

[228] *Yearbook of the International Law Commission* (1955), vol. 1, p. 32.

[229] Article 22 CHS reads:

> 1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for
> suspecting:
> (*a*) That the ship is engaged in piracy; or
> (*b*) That the ship is engaged in the slave trade; or
> (*c*) That though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.
> 2. In the cases provided for in subparagraphs (*a*), (*b*) and (*c*) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have

that, as McDougal and Burke state; "no general right in warships to verify the flag of vessels ought to be provided apart from that recognized in connection with the Article on the right of visit."[230] The conclusion that can be drawn as a starting point in the international law of the sea, therefore, is that no general policing rights, other than the very limited possibilities in 110 and 111 UNCLOS, exist for warships in peacetime circumstances.[231] These mentioned two exceptions flow from law of the sea. Part 2 will underline that presently, from a broader international law perspective, more exceptions to the exclusive jurisdiction of the flag State exist.

4.2.1. Principles of the law of the sea versus maritime security

Security concerns now have become a reason for more focus and interference with shipping and the freedom of navigation. Whereas UNCLOS does much to enhance maritime security[232], interestingly, the fundamental notions of international law of the sea and the current trend of trying to enhance maritime security do not start from the same points of view. On the one hand, the flag state principle and the principle of non-interference lead to the fact that interference by warships on foreign flagged vessel must be regarded as an exception to the rule, which are very limited in nature. On the other hand, maritime security and the manner in which the enhancement of maritime security is envisaged to be put in practice takes the opposite approach. It starts from the view that possibilities should exist, preferably supported by law, in which other vessels can be controlled, searched and taken action against. Emphasizing on the need for more maritime security, therefore, puts a strain on the basic principles of the international law of the sea. In a broader sense, basically, the discussion here is the classic dilemma of gaining more security by losing more freedom with

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been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.
3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

[230] M.S. McDougal, W.T. Burke, *The public order of the oceans. A contemporary International law of the Sea* (Yale University Press, 1962), 890.

[231] These articles deal with the peacetime rights of visit and hot pursuit.

[232] Rothwell and Klein mention for instance the positive impact of clarity on the outer limits of maritime zones, the economic certainty that UNCLOS creates in the EEZ, the general promotion of the peaceful use of the oceans and dispute settlement. D.R. Rothwell, N. Klein, '*Maritime security and the law of the sea', in N. Klein, J. Mossop, D.R. Rothwell (eds.), Maritime security. International law and policy perspectives from Australia and New Zealand* (2009), 22-37, 27-29.

the ultimate aim of protecting those same freedoms. The mentioned tension between the legal principles of non-interference, exclusive jurisdiction and freedom of the high seas versus enhancing maritime security, puts pressure on the principles in a number of ways.

First, in conceptual thinking it appears that the right of visit as an exceptional right is moving in the direction of the thought that the right of visit must not be seen as an exception but rather must be seen as a possibility to enable boarding foreign vessels. This way of thinking strictly does not change anything in the legal sense, but it does change the underlying mindset from exceptions to possibilities. To put this differently: the thinking is shifting from "you cannot board *unless* there is a legal basis", to "you *can* board as long as there is a legal instrument to back you up". Again, it does not step away from the legal situation as it is, but it allows in terms of (political) mindset, perhaps to step quicker or maybe easier towards hollowing these principles.

Second, this shifted thinking is found in the question that deals with how to protect against threats to maritime security. As said, enhancing maritime security departs from the idea that the seas need to be policed in order to successfully protect against threats. As such, in the political and strategic arena phrases like 'policing the seas'[233] and 'securing of the commons[234]' have become fashionable wording in modern naval strategy, outside situations of armed conflict. Because current strategic maritime thinking starts with the aim of trying to control what happens in the seas by means of a higher level of awareness, it is contradictory to the 'Grotian'-principles of the international law of the sea. It insists, from a strategic-political perspective, that the legal notion of very limited policing tasks for States on the high seas must be left behind. The consequence of this area of tension is that States will use naval forces to police at sea, making use of the room or space that, arguably, exists *under* the threshold of what is legally prohibited. In that sense, warships are tasked to actively gather general intelligence on the high seas and make use of 'friendly ap-

[233] E.g. D. Hammicks, 'Navies Endeavour to police the Mediterranean Sea', in *Jane's Navy International*, (July/August 2007), 28-36.
[234] B. Smith-Windsor,'Securing the commons: Towards NATO new Maritime Strategy', *Research paper, NATO Defence College*, no. 49 (September 2009).

proaches'[235] in which crews of warships simply come in contact and chat with the maritime community. Ultimately, this aims to enable timely reaction against any threat against maritime security.[236] Crews come along side or even step aboard other vessels, simply to exchange information with each other. In practise, these "friendly approaches" to enhance maritime security are becoming a standard part of the *modus operandi* of warships. Warships commanders are tasked to 'police' certain maritime areas by communicating with fellow seafarer, conducting friendly approaches, keeping their eyes and radars open to anything that might ultimately be of use to thwart an actual clear and present threat. A large part of the naval operations against piracy is conducted by coming alongside local coastal fisheries vessels to inquire and gather information that may lead to a better situational awareness of the area. On a more sophisticated level Operation *Active Endeavour* has evolved from a platform based operation to a network based operation that tries to tie in all kinds of information in order to close the network of possible terrorist use of the sea. From huge amounts of data anomalies are filtered that may lead to illegal activities. The Combined Maritime Forces (CMF), an about thirty nations-naval partnership, has as part of its task to conduct maritime security operations. Part of these operations is the assist and approach visits in order to maximize general awareness at sea.[237] Policing the high seas adds to maritime security awareness (MSA), which is, therefore, an important part of current naval operations. Conceptually, however, this *modus operandi* does not sit well with the notion that foreign vessels should not be interfered with. This active politico-strategical policy of seeking out vessels at sea in the manner as described above may be under the threshold of intervention with foreign flagged vessels. It has, however, made some authors question whether exclusive flag State jurisdiction and in particular keeping the primary responsibility over vessel with the flag State a legal concept that possibly should today be on its return.[238] Geiss and Tams, for instance,

[235] This term is also institutionalized in the maritime dimension. See e.g. EUNAVFOR operation *Atalanta* (http://eunavfor.eu/mission/) and Combined Maritime Forces (CMF) webpage: http://combinedmaritimeforces.com/2013/07/04/maritime-security-operations-with-france-djibouti-yemen-and-saudi-arabia/

[236] S.C. Boraz, 'Maritime domain awareness. Myth and realities', in *NWCR*, vol. 62 no. 3 (Summer 2009), 137-146.

[237] http://combinedmaritimeforces.com/ctf-150-maritime-security/.

[238] R. Geiss, C.J. Tams, 'Non-Flag States as Guardians of the Maritime Order: Creeping Jurisdiction of a Different Kind?', in, H. Ringbom (ed.) *Jurisdiction over ships* (2015), 19-49; Brown (2015), 70-71.

opine that stepping away from this concept, allows for 'a wider circle of States to enforce international legal rules'.[239]

Third, as will be the main focus of study in Part 2, with the collective security system, international agreements and arguments to use self-defence as a direct legal ground to board vessels, more and more exceptions to the exclusive jurisdiction of flag States over their vessels have been put forward, next to the traditional ones that are derived from the law of the sea. And also the objectives, through an increasing scope of issues brought under maritime security, for boarding foreign flagged vessels have broadened, such as the want of some States find legal ways in order to board vessels that are suspected of carrying WMD. Even before maritime security became a centralized issue in the maritime domain, different authors already commented on the tension between the growing legal possibilities to interfere with the freedom of navigation.[240] Whereas these commentators primarily commented on maritime zones in which the high seas is losing terrain in relation to other maritime zones, other legal grounds to board foreign flagged vessels, is nibbling at the rights of States with regard to the vessels at sea. These other legal frameworks may also have an eroding effect on the principle of non-interference by warships of foreign flagged vessels on the high seas, especially where -lawful- procedures between States are agreed that waive the exclusive jurisdiction of the flag State. This development is not wholly without criticism[241], and usually comes to the fore as part of more strategic debates on the influence of States and their sea power on the ocean.[242] Whereas some put the tension between the fundamental principles and politico-military strategy of States under the magnifying glass, again others, such as Weinberg and Veridame, underline that '[Yet], it would be hasty to conclude that these

[239] Geiss & Tams (2015), 25.

[240] E.g. J.M. von Dyke 'The disappearing right to navigational freedom in the exclusive economic zone', in *Marine Policy*, 29 (2004), 107-121; 'A "New" Exception to the Freedom of the High Seas: The Authority of the U.N. Council', in T.D. Gill and W.P. Heere (eds.), *Reflections on the Principles and Practice of International Law: Essays in Honour of Leo J. Bouchez* (Dordrecht, Nijhoff 2000), 205-211. And more recently; J. Kraska, *Maritime powers and the law of the sea* (Oxford University Press, 2011).

[241] Y-H. Song, The U.S. Led Proliferation Security Initiative and UNCLOS: Legality, implementation, and an assessment', in *ODIL*, vol. 38 (2007), 101-145.

[242] For example in the tensions between the US-Chinese relationship on the influence of the respective states on the use certain areas of the ocean. See e.g. T. Yoshihara,'Chinese views of the U.S.-led maritime order', in J. Krause, S. Bruns, *Routledge Handbook on naval strategy and security* (2016), 351-363.

settled principles of the law of the sea will soon give way to the strategic necessities of powerful States and collective security.'[243]

[243] V. Becker-Weinberg, G. Veridame,'Proliferation of weapons of mass destruction and shipping interdiction', in M. Weller (ed.), *The Oxford Handbook on the use of force in international law* (2015), 1017-1033, at 1033.