1981

Military Installations, Structures, and Devices of the Continental Shelf: A Response

Rex Zedalis

MILITARY INSTALLATIONS, STRUCTURES, AND DEVICES ON THE CONTINENTAL SHELF: A RESPONSE

In an article appearing in a recent issue of the *Journal*, Professor Tullio Treves reviewed the existing and proposed legal regimes affecting the emplacement of military installations, structures, and devices on the seabed.[1] While most of his analysis appears essentially correct, I disagree with his position with respect to a foreign state's emplacement of such objects on another state's continental shelf.[2] As I understand it, his view is that "as far as today's international law is concerned," a "basic rule of freedom concerning the emplacement of military installations and other devices on the continental shelf" obtains,[3] and that as far as the law proposed for tomorrow (under the second revision of the Informal Composite Negotiating Text, or ICNT/Rev.2) is concerned, the "acceptability of using the [continental shelf] for the emplacement of detection and communication devices is confirmed."[4]

In developing his case regarding today's international law, Treves contends that any effort by a coastal state to claim that its sovereign rights in resource-oriented activities serve as a legal obstacle to a foreign state's emplacement of military objects on its continental shelf can be countered either by the assertion that the objects do not interfere with such activities, or by invocation of Articles 4 and 5, paragraph 1, of the 1958 Geneva Convention on the Continental Shelf,[5] which provide that the coastal state's sovereign rights "shall not interfere" with navigation and the laying of cables and pipelines by foreign states.[6] Since he expresses some reservation about whether the counterclaim of noninterference will succeed,[7] it would seem that, even though he does not say so explicitly, his conclusion on the current state of the law suggests at least the implication that certain military objects—and in particular sonic detection devices—can be included within the concepts of navigation and the laying of cables and pipelines, and can therefore rely "on the rule that navigation and the laying of cables and pipelines by

[1] Treves, *Military Installations, Structures, and Devices on the Seabed*, 74 AJIL 808 (1980).

[2] When the term "continental shelf" is used in this Note in the context of the Geneva Conventions of 1958, it refers to that portion of the seabed which is a natural prolongation of the coastal state's land mass and is accepted under traditional law of the sea as an area over which the coastal state may exercise sovereign rights for a limited number of purposes. Unless otherwise indicated, when the term "continental shelf" is used in this Note in the context of the Informal Composite Negotiating Text/Revision 2 (ICNT/Rev.2), it refers to that portion of the seabed termed the exclusive economic zone and the shelf beyond. The provisions of the ICNT/Rev.2 discussed in this Note were not changed in substance in the Draft Convention on the Law of the Sea (Informal Text) of August 1980.

[3] Treves, *supra* note 1, at 839.

[4] *Id.* at 846.

[5] 15 UST 471, TIAS No. 5578, 499 UNTS 311. The provisions are quoted in notes 12 and 13 *infra*.

[6] Treves, *supra* note 1, at 837.

[7] *Ibid.*

any state prevail over the economic uses of the continental shelf by the coastal state."[8] Given a quick reading, the argument seems very attractive. But, when considered thoroughly, it appears flawed in two critical respects.

First, the argument relies on a reading of the concepts of navigation and the laying of cables and pipelines which is much much broader than that intended by the delegates to the Geneva Conference. As will be recalled by those familiar with Article 2 of the Convention on the High Seas,[9] all states are entitled to exercise on the high seas the freedoms of navigation, fishing, and laying of cables and pipelines, as well as other freedoms recognized by the general principles of international law. The language in Articles 4 and 5(1) of the Convention on the Continental Shelf concerning navigation and the laying of cables and pipelines assures foreign states that they retain an interest in such activities, notwithstanding the fact that the same Convention also vests every coastal state with sovereign rights to explore its shelf and exploit its natural resources. Absent from Articles 4 and 5, however, is the language in Article 2 of the Convention on the High Seas relating to the other freedoms recognized by the general principles of international law. When this is taken in conjunction with the appreciation that in dealing with activities of a military nature (other than what is commonly understood as navigation, *i.e.*, the movement of ocean-going vessels), the delegates to the Geneva Conference considered such activities within the context of their being other freedoms recognized by the general principles of international law,[10] it would appear that the references in Articles 4 and 5, paragraph 1,

[8] *Ibid.*

[9] 13 UST 2312, TIAS No. 5200, 450 UNTS 82. Article 2 states:

> The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by other rules of international law. It comprises, *inter alia* . . .:
>
> (1) Freedom of navigation;
> (2) Freedom of fishing;
> (3) Freedom to lay submarine cables and pipelines;
> (4) Freedom to fly over the high seas.
>
> These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

[10] As it now appears, Article 2 of the Convention on the High Seas reads as quoted *ibid.* Notice that it prefaces the enumeration of freedoms with the words "*inter alia*" and follows it with reference to these freedoms and "others which are recognized by the general principles of international law." The version of Article 2 considered by the delegates to the Geneva Conference was Article 27 of the International Law Commission's 1956 draft proposal, Report of the Int'l Law Commission to the General Assembly, 11 UN GAOR, Supp. (No. 9) 12, UN Doc. A/3159 (1956), *reprinted in* [1956] 2 Y.B. INT'L L. COMM'N 253, 265, UN Doc. A/CN.4/SER.A/1956/Add.1 (1957). Article 27 stated:

> The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, *inter alia*:
>
> (1) Freedom of navigation;
> (2) Freedom of fishing;
> (3) Freedom to lay submarine cables and pipelines;
> (4) Freedom to fly over the high seas.

to navigation and the laying of cables and pipelines mean only *navigation* and the laying of *cables* and *pipelines*.[11] Military activities or military objects not within the common usage of these terms are not to be considered within the purview of Articles 4 and 5.

Second, the argument is also based on what appears to be an erroneous understanding of the nature of the relationship between the rights of foreign states to navigate and lay cables and pipelines across another state's continental shelf, and the shelf state's rights in resource-oriented activities. Now, admittedly, the rights of foreign states to navigate and lay cables and pipelines across another state's continental shelf are well protected by the Geneva Conventions. Nevertheless, one cannot conclude from this that the

---

Attention should be drawn to the fact that Article 27, too, contained the "*inter alia*" language but did not follow the enumeration of freedoms with a reference to "others which are recognized by the general principles of international law." The addition of the language not appearing in the ILC's draft Article 27 came on the adoption by a vote of 30 to 18, with 9 abstentions, of a proposal put forward by the United Kingdom and Ireland; UN Doc. A/CONF. 13/C.2/L.68, *reprinted in* 4 UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, OFFICIAL RECORDS 134 [hereinafter cited as UNCLOS I, OFF. REC.], UN Doc. A/CONF.13/40 (1958).

Before the proposal of the United Kingdom and Ireland was adopted, the delegates to the Geneva Conference considered two major plans concerning military activities on the high seas. The first, often referred to as the Three Power Proposal, UN Doc. A/CONF.13/C.2/L.32, *reprinted in id.* at 124, was designed to restrict military maneuvers and target practice exercises. Submitted by Albania, Bulgaria, and the Soviet Union, it was decisively rejected by a vote of 43 to 13, with 9 abstentions; *id.* at 54, para. 5. The second, often referred to as the Four Power Proposal, UN Doc. A/CONF.13/C.2/L.30, *reprinted in id.* at 124, was designed to restrict nuclear test detonations. Submitted by Czechoslovakia, Poland, Yugoslavia, and the Soviet Union, the proposal was never subjected to a vote since an Indian proposal, UN Doc. A/CONF.13/C.2/L.71/Rev.1, *reprinted in id.* at 134, to refer the entire question to the General Assembly was adopted 51 to 1, with 14 abstentions; *id.* at 52, para. 5. Both proposals were considered in the context of the ILC's draft Article 27, predecessor to Article 2 of the Convention on the High Seas. Any fair assessment of the debates concerning the two proposals will suggest they were considered not as affecting activities within the concepts of navigation and the laying of submarine cables and pipelines, but rather as affecting activities within the other freedoms recognized by the general principles of international law. *See, e.g., id.* at 3–54. More specifically, when the delegates favoring the Four Power Proposal spoke against nuclear test detonations, they did so by contending that the detonations interfered unreasonably with other uses of the high seas (Mr. Bierzanek (Poland), *id.* at 5, 7, para. 12; Mr. Tunkin (Soviet Union), *id.* at 9, para. 11; Mr. Ohye (Japan), *id.* at 11, para. 2; Mr. Ghilmegeanu (Romania), *id.* at 14, 16, para. 22; Mr. Zourek (Czechoslovakia), *id.* at 23, 24, para. 11), not by suggesting that they were not within the language of the ILC's draft Article 27. Since the detonations surely could not have been considered within the concepts of navigation and the laying of submarine cables and pipelines, it must therefore be concluded that they were viewed as falling within the words "*inter alia*," Article 27's reference to the other freedoms recognized by the general principles of international law. *See* Mr. Lamani (Albania), *id.* at 37, 39, para. 41; and Mr. Bartos, *id.* at 43, 44, para. 5, for similar arguments with respect to military maneuvers and weapons practice ranges on the high seas.

[11] Comment 4 of the ILC's commentary on draft Article 27, *reprinted in* 4 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 547–48 (1965), suggests that "submarine cables" is to be confined to cables for communication and power only. It states: "The term 'submarine cables' applies not only to telegraph and telephone cables, but also to high voltage power cables." Apparently, the ILC jurists had only industrial and commercial activities in mind, and did not consider military activities or objects to be covered as well:

Conventions mean to give these rights precedence in instances where their exercise may actually render nugatory the coastal state's grant of sovereign rights in resource-oriented activities. Nothing would seem to make this point more clearly than the language of Articles 4 and 5(1) of the Convention on the Continental Shelf. Article 4 provides that while a coastal state may not generally impede the laying or maintenance of cables or pipelines, it may undertake "reasonable measures" to explore and exploit its shelf (presumably, even though such measures may impede the freedoms recognized as being vested in foreign states),[12] and Article 5, paragraph 1 provides that a coastal state's resource-oriented activities must simply avoid "unjustifiable interference" with navigation and fishing.[13] While many factors, including the nature of the competing activities (*e.g.*, economic v. military), must be taken into consideration in order to determine whether a measure is "reasonable" under Article 4, or creates an "unjustifiable interference" under Article 5, paragraph 1, it is clear that neither article supports the reading that navigation and the laying of cables and pipelines "prevail" over the coastal state's sovereign rights to explore its shelf and exploit its natural resources.[14]

From their terms, it would appear that Articles 4 and 5(1) provide a standard for evaluating the lawfulness of a coastal state's interference with military objects emplaced on its continental shelf by a foreign state, but say nothing of the lawfulness of the foreign state's actual emplacement efforts. In my judgment, the fact that the Convention on the Continental Shelf vests every coastal state with sovereign rights in resource-oriented activities suggests that the appropriate standard here is whether the objects interfere with the coastal state's rights. This judgment seems to be corroborated by the fact that when the delegates to the Geneva Conference rejected the Indian proposal to prohibit any state from emplacing military installations on its own or another state's shelf, Mr. Munch of the Federal Republic of Germany made it clear that foreign states could pursue such efforts only if "they did not interfere with the exploration and exploitation of natural resources."[15] Thus, if Treves means to suggest by his earlier noted reservation that all military objects most likely do interfere with the coastal state's

[12] Article 4 states: "Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipe lines on the continental shelf."

[13] Article 5, paragraph 1 states:

> The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

[14] Supporting the proposition that Articles 4 and 5(1) do not establish navigation and the laying of submarine cables and pipelines as the preeminent freedoms, and that the coastal state may pursue actions affecting them, M. McDOUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS 705–10 (1962). *See also* UN Doc. A/CONF.13/C.4 (1958), 4 UNCLOS I, OFF. REC. 79, where Mrs. Whiteman (U.S.) observes that the laying of cables and pipelines does not prevail over the coastal state's sovereign rights in resource-oriented activities.

[15] 6 UNCLOS I, OFF. REC. 81, 83, para. 28, UN Doc. A/CONF.13/42 (1958).

resource-oriented activities (a suggestion that I think can be supported factually in many instances), I must say that I find it somewhat puzzling that he can contend that today's international law establishes a basic rule of freedom concerning the emplacement of any sort of military object. To interfere is to be prohibited.

The specificity of the ICNT/Rev.2 and its enhancement of the coastal state's power over the continental shelf require that the case for tomorrow's law be made a bit differently. In doing so, Treves advances the following contentions. Military objects used for detecting submarines are not subject to the exclusive rights of construction, authorization, regulation, and use granted by Article 60, paragraph 1(*c*) to coastal states since, while such objects may be considered "devices," they are too small to be considered "structures."[16] Further, while it may be "contended" in some cases that these detection devices come within the language of Article 58 protecting the freedom of foreign states to lay cables, such devices "can be considered" within the language of that same provision protecting the freedom of foreign states to pursue internationally lawful uses of the sea related to navigation such as those "associated with the operation of ships."[17] And finally, in situations where the emplacement of such devices "cannot be considered the exercise of a freedom specifically attributed [by Article 58] to all [including foreign] states," emplacement is nevertheless lawful under Article 59 because: (1) foreign states may seek their "interests," provided the pursuit does not cause a "conflict" with the "interests" of other states; and (2), while destruction or removal of such devices by a coastal state would cause a conflict with the interests of a foreign state, "it cannot be presumed . . . that [mere] emplacement . . . conflicts with the interest of the coastal state."[18] As with his contentions regarding the Geneva Conventions, each of these seems questionable or flawed in some respect.

First, as to the questionable. In view of the fact that Treves is unable to cite any convincing authority for his intimation that objects that may be considered "devices" (*e.g.*, sonic detection instruments) are too small to be considered "structures," I am not quite sure why one cannot argue that the ICNT's change in the terminology of the Geneva Convention on the Continental Shelf has nothing to do with the objects' size, but rather with whether the objects have operative characteristics or functional attributes. In other words, it might be reasonable to maintain that the term "devices" refers to objects that operate in certain mechanical or chemical ways (*e.g.*, underwater pumping machines) or have attributes permitting their use for the performance of certain tasks (*e.g.*, seabed mapping markers), and then to suggest that the substitution of the term "structures" for "devices" results in the coverage of *all* objects, even those lacking operative characteristics or functional attributes, that have been physically shaped or affected by the intervention of man. This construction would seem to be somewhat sup-

[16] Treves, *supra* note 1, at 841.
[17] *Id.* at 842–43.
[18] *Id.* at 843–45.

ported by the fact that when the ICNT/Rev.2 elsewhere refers to "structures," it frequently does so by prefacing the term with the hyphenated word "man-made."[19] Moreover, this broader reading seems more consistent than that suggested by Treves with the basic trend towards widening the coastal state's authority over resource- and economic-oriented activities. If exploratational and exploitative objects must be of a certain size before they may be considered subject to the coastal state's authority, it would seem that much of that authority could be diluted to a point below that now possessed, simply by making use of smaller objects. And finally, this broader reading averts the problem of having to determine how big an object must be before it may be considered a "structure." Admittedly, determining whether an object has been physically shaped or affected by the intervention of man may also pose difficulties, but they would seem to be much more susceptible to resolution than those posed by the question whether an object's size qualifies it as a "structure" or a "device."

Second, to contend that sonic detection devices are included within the concepts of navigation and the laying of cables and pipelines, or are covered by the phrase "associated with the operation of ships," ignores the differences between the language of Article 58 and that of Article 87, paragraph 1, and requires that "associated with the operation of ships" be given a reading much broader than seems warranted. With respect to the former, a quick glance will reveal that paragraph 1 of Article 87, which enumerates the freedoms all states are entitled to exercise on the high seas, contains a much more extensive listing of freedoms[20] than does the earlier mentioned Article 2 of the Convention on the High Seas. The inclusion of the words "*inter alia*" before the lengthy recitation would appear to mean that, even though not listed, other freedoms recognized by the general principles of international law continue to exist,[21] and that, as a consequence, the concepts of navigation and the laying of cables and pipelines are to be construed narrowly. These inferences are extraordinarily important because they would appear to preclude one from reading Article 58 as entitling foreign states to undertake military activities or emplace military objects on that portion of another state's continental shelf known as the exclusive economic zone, unless such

[19] Art. 1, para. 5.

[20] Article 87, paragraph 1 of the ICNT/Rev.2 provides:

> 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 . . . ;
> (d) Freedom to construct artificial islands and other installations permitted under international law . . . ;
> (e) Freedom of fishing . . . ;
> (f) Freedom of scientific research. . . .

[21] *Cf.* Oxman, *The Third United Nations Conference on the Law of the Sea: The 1977 New York Session*, 72 AJIL 57, 69 (1978).

activities or objects fit squarely within its narrowly construed references to navigation and the laying of cables and pipelines. Indeed, given the fact that navigation and the laying of cables and pipelines mean only navigation and the laying of cables and pipelines (just as in Articles 4 and 5(1) of the Convention on the Continental Shelf), and that the reference in Article 87(1) to the words "*inter alia*" is designed to indicate that on the high seas all states may continue to conduct military activities considered recognized by the general principles of international law, what other significance could one possibly attribute to the absence of the words "*inter alia*" before the freedoms enumerated in Article 58?

As for the contention involving the phrase "associated with the operation of ships," the fact that sonic detection devices help the emplacing state make more "efficient use of [its own] warships and submarines," including anti-submarine submarines, by giving it "recourse to the best available means of locating the position and tracing the movements of" the submarines of the coastal state,[22] does not mean that such devices are thereby covered. Weapons, too, would make the emplacing state's ships more efficient by eliminating or threatening to eliminate those of an opponent. Yet I doubt that anyone would seriously contend that the emplacement of weapons is authorized by the phrase "associated with the operation of ships." Such remote, indirect, and tenuous associations would not seem to be addressed by this language.

Third and finally, even though Article 59 can be read as supporting the conduct of activities not otherwise expressly authorized by the reference in Article 58 to navigation, the laying of cables and pipelines, and other internationally lawful uses related to these activities, one insuperable obstacle to the lawfulness of foreign states' efforts to emplace sonic detection devices on another state's continental shelf remains. As will be recalled from the discussion of the Geneva Conventions, the grant of sovereign rights in resource-oriented activities to coastal states means that foreign states' undertakings interfering with these rights are prohibited. Furthermore, it was also noted that if Treves's reservation about the cogency of a foreign state's counterclaim of noninterference was designed to suggest that all military objects interfere with the coastal state's rights, then mere emplacement of sonic detection devices on another state's continental shelf would seem to be prohibited by today's international law. By reaffirming the coastal state's rights in resource-oriented activities, Articles 56, paragraph 1, and 77, paragraph 1, of the ICNT/Rev.2 are proposing that tomorrow's international law continue the same sort of proscriptive regime. Under the circumstances, it would hardly seem to matter that the general language of Article 59 can be read as supporting the conduct of activities—including efforts to emplace sonic detection devices—not otherwise explicitly permitted by Article 58. Admittedly, a foreign state's efforts to emplace sonic detection devices may be considered the pursuit of one of the "interests" recognized by Article 59, and such efforts may not be presumed to create

[22] Treves, *supra* note 1, at 843.

a "conflict" with the interests of the coastal state; but since the objects interfere with the coastal state's sovereign rights in resource-oriented activities, their emplacement would seem to be proscribed.

In conclusion, let me just say that there can be little doubt that international stability would be best served by reading the Geneva Conventions and the ICNT as articulating proscriptive regimes. At present the United States is relying heavily on the deterrent capability of its nuclear missile-launching submarines, while it attempts to redress the strategic asymmetry resulting from the vulnerability of its land-based missile force to a Soviet first strike. Though it is improbable that any Soviet effort to emplace sonic detection devices on the continental shelf of the United States would place a majority of the U.S. submarines in jeopardy, those most familiar with strategic planning acknowledge that even the smallest gain in this area could well have monumental consequences for world peace.[23] In view of this danger, it would seem advisable to approach any suggestion that current or proposed international law permits foreign states to emplace military objects on another state's continental shelf with the greatest of circumspection.

REX J. ZEDALIS*

Tullio Treves replies:

Mr. Zedalis's thoughtful comments on my article, *Installations, Structures, and Devices on the Seabed,* require some observations and clarifications.

As regards the traditional law of the sea, a first point raised in Zedalis's comments concerns the relationship between the high seas freedoms of navigation and of laying cables and pipelines and the coastal state's rights in the continental shelf. These freedoms are set forth in long-standing customary law rules. The coastal state's rights in the continental shelf provide an exception to these rules and, as such, must be interpreted restrictively. Articles 4 and 5, paragraph 1, of the Geneva Continental Shelf Convention do not just assure foreign states "that they retain an interest" in navigation and in the laying of cables. The language of the two provisions, though aimed at achieving a balance, indicates that the interests protected are those of laying cables and pipelines and of navigation because laying cables and pipelines and navigation are the activities that may not be impeded and that must not be unjustifiably interfered with. This reading seems confirmed by the ICJ's observation in the *North Sea Continental Shelf* case that the matters considered in Articles 4 and 5(1) "relate to or are consequential upon principles or rules of general maritime law, very considerably ante-dating the Convention" and that they "were mentioned in the Convention . . . simply *to ensure that they were not prejudiced by the exercise*

[23] *See* HOUSE COMM. ON INT'L RELATIONS, 95th CONG., 2D SESS., EVALUATION OF FISCAL YEAR 1979 ARMS CONTROL IMPACT STATEMENTS: TOWARD MORE INFORMED CONGRESSIONAL PARTICIPATION IN NATIONAL SECURITY POLICYMAKING 119 (Comm. Print 1979).

* Cutting Fellow, 1980–1981, Columbia University; Assistant Professor, University of Tulsa College of Law.

of continental shelf rights as provided for in the Convention" ([1969] *ICJ Reports* 3, para. 65 [emphasis added]). With this in mind, it seems justified to say that "navigation and the laying of cables and pipelines by any state prevail over the economic uses of the continental shelf by the coastal state." As to whether military objects fall within the purview of Articles 4 and 5(1) of the Geneva Continental Shelf Convention, it can be conceded, as it was, that this may be claimed with difficulty and, indeed, is possible only in marginal cases.

Second, on the "basic rule of freedom." If the "appropriate standard" for deciding whether military objects can be emplaced on another state's continental shelf is, as Zedalis contends, "whether the objects interfere with the coastal state's rights," the basic (residual) rule must be that of freedom and not that of prohibition: there would be no reason for prohibiting activities that interfere with the coastal state's rights if it weren't true that, unless they interfere, they are permissible. The situation would be different if it could be proved that military objects *always* interfere with the resource-oriented activities of the coastal state. Though interference is the most likely case, it is not always so. Zedalis seems to agree when he says that the suggestion that such interference is most likely "can be supported factually in many [thus not in all!] instances."

As for the new law of the sea under the UNCLOS Informal Composite Negotiating Text (Rev.2), the conclusions reached in my paper on the emplacement of military objects on the bed of another state's economic zone can be summarized as follows: (1) military installations and structures that may interfere with the coastal state's rights cannot be emplaced; (2) if they cannot interfere with these rights and if they can be considered as falling within the scope of Article 58, paragraph 1 (other internationally lawful uses of the seas related to the freedoms of navigation and overflight and of laying cables and pipelines "such as those associated with the operation of ships, aircraft and submarine cables and pipelines"), they may be emplaced; (3) if they cannot interfere with the coastal state's rights but are not included in the scope of Article 58, paragraph 1, they come within the purview of Article 59 (cases where the Convention does not attribute rights or jurisdiction to the coastal state or to other states); (4) objects that do not qualify as "installations" or "structures" under Article 60, paragraph 1 fall within Article 59; unless (5) they may be considered included in the scope of Article 58, paragraph 1, in which case they may be emplaced.

According to Zedalis, the first of these conclusions would be sufficient to cover every case and no military object could be emplaced. To support this contention he makes three points: (1) military objects always interfere with the coastal state's rights; (2) the emplacement of such objects can never be considered as included in the freedoms mentioned in Article 58(1); (3) Article 60(1), with the expression "installations and structures," covers every kind of military object.

As indicated in considering the Geneva Conventions, the first point cannot be accepted because interference with the coastal state's rights, though likely, has to be proved case by case, and under various hypotheses it

may not exist. Consequently, recourse to Article 59 cannot be ruled out. The idea that paragraph 1 of Article 60 does not ensure the coastal state complete control over military objects on the bed of its economic zone is also supported by the fact that Brazil and Uruguay advanced security reasons to support their argument for an amendment to Article 60 that would have given the coastal state the exclusive right to regulate the construction, operation, and use not only of artificial islands, but also of installations and structures, whatever their purpose.[1]

As regards the second point, while there may be disagreement over which kinds of military object can be considered as "related to" the freedoms mentioned in Article 58, it cannot be ruled out that some of these objects, and in particular those used as navigational aids, belong to this category. Whether acoustic devices used for sensing foreign submarines are included is less sure. In my paper I simply indicated a line of argument that might be followed to uphold this position.

Finally, on Zedalis's third point. The idea that "devices" refers to "objects that operate in certain mechanical or chemical ways . . . or have attributes permitting their use for the performance of certain tasks" seems acceptable. However, it does not seem possible to follow Zedalis when he excludes the existence of military objects that are neither "installations" nor "structures." While it may be conceded that the criterion of size may not always be satisfactory, it seems difficult to agree that "installations" and "structures" cover all objects. The fact that the two words, at least in the context, are very close in meaning and that the previous formula, "installations and devices," could cover all objects, appears to indicate that there are objects that are neither installations nor structures. Acoustic devices seem to belong to this category because they lack (and when they lack) the character of something "built" or "constructed," which appears to be common to installations and structures.

The conclusions reached in my article try to take realistically into account the trend, apparent in the conference in the field of military activities, to counterbalance the general tendency to strengthen the coastal state's position with compromise solutions on details, which often emerge more in omissions than in explicit provisions. To rely on Zedalis's position, however generous its purposes, may reserve unwelcome surprises, especially as far as the attitude of the major powers is concerned.

[1] Conf. Doc. C/2/Informal Meeting/11 (April 27, 1978). *Cf.* the intervention in Plenary on April 2, 1980 of the Brazilian representative, 13 UNCLOS III, OFF. REC. 19, para. 127.