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Maritime Exclusion Zones in Armed Conflicts

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I. INTRODUCTION

Since the early 1900s, belligerents have established maritime zones during armed conflict to control access to broad ocean areas and to shape battlespace management. Regardless of their label—exclusion zone, restricted area, operational zone, war zone—all zones have a common purpose—to control or prohibit access of foreign ships and aircraft into the zone.

As part of its war effort in Ukraine, Russia has established restricted areas that affect freedom of navigation of foreign-flag shipping in both the Black Sea and the Sea of Azov. The legality of such zones depends largely on the function of the zone and the enforcement measures applied by the belligerents to vessels and aircraft that enter the zone.

II. RUSSIAN EXCLUSION ZONES

On February 24, 2022, the Russian Federal Agency for Maritime and River Transport (Rosmorrechflot) announced that “due to a warning received from the Russian Defense Ministry’s Black Sea Fleet amid the beginning of antiterrorist operations . . . on February 24, navigation in the Sea of Azov was suspended until further notice.”¹ The following day, Russia declared a maritime zone to prohibit navigation in the northwest portion of the Black Sea north of 45° 21’ “due to counterterrorist operations carried out by the Russian Navy” and that any ship or vessel “in this area will be regarded as terrorist threats.”²

Russia’s decision to establish maritime exclusion/war zones (MEZs) in the Sea of Azov and the Black Sea is not a novel method of warfare. MEZs have been routinely employed during armed conflicts since the beginning of the twentieth century, most recently by the United Kingdom (UK) and Argentina during the Falklands/Malvinas War, by Iran and Iraq during the Tanker War, and by the United States during the First and Second Gulf

1. Fatima Bahtić, *Russian Navy’s Operations Restrict Shipping in Sea of Azov Amid Conflict with Ukraine*, NAVALTODAY.COM (Feb. 24, 2022), <https://www.navalto-day.com/2022/02/24/russian-navys-operations-restrict-shipping-in-sea-of-azov-amid-conflict-with-ukraine/>.

2. Message from Duty Officer, Navigation Warning Service, Dep’t of Navigation and Oceanography, Russia, <https://gcaptain.com/wp-content/uploads/2022/03/Russian-gm-dss-warning.jpg> (last visited Aug. 29, 2022).

Wars.³ Whether and to what extent these zones are consistent with the law of naval warfare depends on their function and the measures used by the belligerents to enforce them.⁴

III. THE FUNCTION OF MARITIME ZONES

MEZs have been used in the past to warn vessels and aircraft to avoid an area of naval operations, which reduces the possibility that neutral vessels will be mistakenly identified as a military objective and attacked.⁵ To the extent MEZs serve to warn neutral vessels and aircraft away from belligerent activities, thereby reducing their exposure to collateral damage and incidental injury, and to the extent they do not unreasonably interfere with legitimate neutral commerce or create a “free fire zone,” the United States believes they are lawful.⁶

In other words, a merchant ship, neutral or enemy, does not become a lawful target simply because it has entered the MEZ. Before attacking ships in the MEZ, belligerents must still ensure that they are legitimate military objectives.⁷ Thus, while a MEZ may help to sort neutral and enemy ships, the same rules of the law of armed conflict apply inside and outside the zone.

Moreover, the extent, location, and duration of a MEZ and the measures used to enforce the zone should not exceed what is required for military necessity.⁸ Neutral vessels and aircraft must also be guaranteed safe passage through the MEZ if the zone significantly impedes free and safe access to neutral ports, although they are subject to the belligerent’s right of visit and search as explained below.⁹

3. See MARITIME OPERATIONAL ZONES app. C (Dennis Mandsager et al. eds., 2013), <https://dnnlgwick.blob.core.windows.net/portals/0/NWCDepartments/Stockton%20Center%20International%20Law/2013-Zones-Manual.pdf?sr=b&si=DNNFileManagerPolicy&sig=sWrSUKeqZaEKhaVvWPx0bCSByt6FQnC6k3YHkszLx9I%3D>.

4. OFFICE OF THE GENERAL COUNSEL, U.S. DEPARTMENT OF DEFENSE, LAW OF WAR MANUAL § 13.9 (rev. ed. Dec. 2016) [hereinafter LAW OF WAR MANUAL].

5. U.S. NAVY, U.S. MARINE CORPS & U.S. COAST GUARD, NWP 1-14M/MCTP 11-10B/COMDTPUB P5800.7A, THE COMMANDER’S HANDBOOK ON THE LAW OF NAVAL OPERATIONS app. A (2017) [hereinafter COMMANDER’S HANDBOOK].

6. *Id.* § 7.9.

7. LAW OF WAR MANUAL, *supra* note 4, § 13.9.2.

8. *Id.* § 13.9.4.

9. COMMANDER’S HANDBOOK, *supra* note 5, ¶ 7.9.

War zones declared by Iran and Iraq during the Tanker War were, in effect, “free fire zones” where no distinction was made between military objectives and protected vessels, thereby violating the principle of distinction. Iraq indicated it would “attack all vessels” appearing in the zone and that all tankers, regardless of flag, docking at Kharg Island would be considered legitimate targets.¹⁰ Likewise, Iran declared that all its waters were a war zone and that it would “bear no responsibility for merchant ships” entering the Persian Gulf and failing to comply with the routing instructions. The declaration of these zones was impermissible given that it authorized attacks on neutral merchant ships that simply ventured into the zone.¹¹

Similarly, during the Falklands/Malvinas War, both Argentina and the U.K. declared legally questionable exclusion zones. Argentina threatened to attack any British vessel in its declared war zone, which extended to the entire South Atlantic.¹² The U.K. “total exclusion zone” (TEZ) was equally problematic. The U.K. declared any military or civilian ship or aircraft, regardless of flag found within the TEZ without the permission of the U.K. Ministry of Defense would “be regarded as operating in support of the illegal occupation” of the Falklands and would “be regarded as hostile” and liable to attack by British Forces.¹³

Despite its apparent overreach, however, the TEZ was located away from the main shipping lanes in the South Atlantic and was of relatively short duration. Arguably, the TEZ was designed to support British military operations in the Falklands by facilitating the identification of legitimate military targets rather than target all contacts in the zone. In this regard, the British declaration indicated that ships or aircraft within the zone were warned of possible attacks and there is no evidence that foreign-flag vessels within the TEZ were actually attacked by British forces.

Compare these zones with the Maritime Safety Zone (MSZ) established by U.S. forces in the eastern Mediterranean Sea in March 2003 (HYDROLANT 597/03). The MSZ warned all ships that U.S. forces were “conducting combat operations in international waters that pose a hazard to navigation” and advised all ships to “remain clear” of the designated operation area. The United States declaration further advised all vessels to “maintain a safe distance from U.S. forces,” noting that any vessel entering the MSZ and approaching U.S. forces or whose intentions were unclear were subject to

10. MARITIME OPERATIONAL ZONES, *supra* note 3.

11. *Id.*

12. *Id.*

13. *Id.*

visit and search, and that vessels approaching U.S. forces should maintain radio contact via Channel 16. Non-compliance with these instructions would authorize “appropriate measures in self-defense if warranted by the circumstances.”¹⁴

The MSZ served as a warning to commercial shipping to stand clear of the immediate area of operations to reduce the risk of exposure to an inadvertent attack but made clear it was not a free fire zone and that self-defense measures would only be employed by U.S. forces “if warranted by the circumstances.” Experience shows that most legitimate merchant ships will avoid a declared exclusion zone and comply with any established restrictions. Furthermore, merchant shipping typically observes warning areas, which are widely disseminated by industry groups and insurance entities, known as P&I (protection and indemnity) clubs. Therefore, the presence of an unknown contact may be probative in assessing its status and hostile intentions.

IV. MARITIME ENFORCEMENT MEASURES

Belligerents enforcing these maritime zones must comply with the law of naval warfare. This body of law restricts enforcement measures differently with respect to enemy merchant vessels and neutral merchant vessels.

A. Enemy Merchant Vessels

Belligerents may capture enemy merchant ships anywhere outside neutral waters for adjudication as prize. Enemy merchant ships operating within or outside the MEZ may not, however, be attacked or destroyed unless the vessel:

- (1) persistently refuses to heave to after being ordered to do so;
- (2) actively resists visit and search or capture;
- (3) sails under convoy of enemy warships;
- (4) is armed with weapons systems beyond that required for self-defense against criminal threats;

14. *Id.*

(5) is incorporated into, or assists in any way, the enemy's military intelligence system;

(6) acts in any capacity as an enemy naval or military auxiliary; or

(7) is integrated into the enemy's war-fighting/war-supporting/war-sustaining effort.¹⁵

In destroying enemy merchant vessels, belligerents must first place passengers, crew, and the ship's papers in a place of safety, unless an enemy merchant ship persistently refuses to stop when ordered to do so or actively resists visit and search or capture.¹⁶ This requirement does not apply, however, if under the circumstances at the time of the attack, the warship would be subject to imminent danger or would otherwise be precluded from accomplishing its mission.¹⁷

There have been no reports of Ukrainian merchant vessels being attacked at sea. However, Russia claims that two Russian-flagged merchant ships—the ore/oil carrier *SGV Flot* and the general cargo ship *Seraphim Sarovskiy*—were hit by Ukrainian missiles in the Sea of Azov on February 24, 2022.¹⁸ Although the attack has not been verified by independent sources, the Russian Federal Security Services alleged the missiles were fired from Mariupol in response to the Russian invasion. A fire broke out on board the *SGV Flot* and a member of the crew was injured. Both ships returned to ports in the Sea of Azov. Absent evidence that these merchant ships were engaged in intelligence collection, were employed as a naval auxiliary, or were integrated into Russia's war-fighting, war-supporting, or war-sustaining effort, the missile attack would be inconsistent with the law of naval warfare.

15. COMMANDER'S HANDBOOK, *supra* note 5, ¶ 8.6.2.2.

16. Procès-verbal Relating to the Rules of Submarine Warfare set Forth in Part IV of the Treaty of London of 22 April 1930 (Nov. 6, 1936), INTERNATIONAL COMMITTEE OF THE RED CROSS, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C103186F0C4291EEC12563CD00519832>.

17. COMMANDER'S HANDBOOK, *supra* note 5, ¶ 8.6.2.2.

18. *Russia Claims Two Commercial Ships Hit by Ukrainian Missiles*, INSURANCE MARINE NEWS (Feb. 28, 2022), <https://insurancemarinenews.com/insurance-marine-news/russia-claims-two-commercial-ships-hit-by-ukrainian-missiles/>.

B. Neutral Merchant Vessels

A neutral merchant ship that enters the MEZ is subject to the belligerent right of visit and search by Russian and Ukrainian warships to determine the enemy character of the ship or its cargo, but it may not be captured or attacked unless it engages in certain prohibited conduct. A neutral merchant ship may be captured if it:

- (1) avoids an attempt to establish identity;
- (2) resists visit and search;
- (3) carries contraband;
- (4) breaches or attempts to breach a blockade;
- (5) presents irregular or fraudulent papers; lacks necessary papers; or destroys, defaces, or conceals papers during a visit and search;
- (6) violates regulations established by a belligerent within the immediate area of naval operations;
- (7) carries personnel in the military or public service of one of the belligerents; or
- (8) communicates information in the interest of one of the belligerents.¹⁹

If a neutral merchant ship resists capture, belligerent warships may use force to compel compliance. Neutral merchant ships may also be attacked or captured if they take a direct part in the hostilities on the side of the enemy or if they act in any capacity as an enemy naval or military auxiliary.²⁰ Similarly, neutral merchant ships can be captured or attacked if they operate directly under the control, orders, charter, employment, or direction of the enemy or resist an attempt to establish their identity, including resisting visit and search.²¹

19. COMMANDER'S HANDBOOK, *supra* note 5, ¶ 7.10.

20. *Id.* ¶ 7.5.1.

21. *Id.* ¶ 7.5.2.

There have been numerous independent reports of neutral merchant ships being attacked in the Black Sea without warning. It is unlikely that these attacks originated from the Ukraine, but rather were most likely conducted by Russian warships of the Black Sea Fleet. The first reported attack occurred on February 24, 2022. The Turkish-owned, Marshall Islands-flagged, bulk carrier M/V *Yasa Jupiter* suffered significant damage to the bridge and deck area after it was hit by a missile fifty nautical miles south of Odessa while en route to Romanian waters.²² The incident prompted the Republic of the Marshall Islands Maritime Administrator to issue a ship security advisory warning vessels:

- To avoid any transit or operation within the exclusive economic zone of Ukraine or Russia within the Black Sea.
- That access to the Sea of Azov through the Kerch Strait is blocked by Russian forces.
- That all Ukrainian ports are closed and that ships may not enter or leave port.
- That access to northwest Black Sea, north of 45° 21' has been restricted by the Russian Navy and that transit in this area should be avoided.
- To ensure their automatic identification system (AIS) is always transmitting.
- To comply fully with instructions if hailed by military vessels.
- To not embark armed security personnel while operating in the Black Sea.²³

The following day, February 25, the Japanese-owned, Panamanian-flagged, bulk carrier M/V *Namura Queen*, which was en route to the port of Pivdennyi (Yuzhnyi) to load grain, was seriously damaged when it was struck

22. Maritime Administrator, Republic of the Marshall Islands, Ship Security Advisory No. 02-22 (Rev. 9), Geopolitical Conflict—Ukraine, Black Sea, Sea Of Azov (Aug. 10, 2022), <https://www.register-iri.com/wp-content/uploads/SSA-2022-02.pdf>.

23. *Id.*

by a missile at the port's outer anchorage.²⁴ A fire broke out on the ship and at least two crew members were injured. A second Panamanian-flagged bulk carrier, the M/V *Lord Nelson*, suffered minor damages after being hit by a missile while at anchor.²⁵ That same day, the Moldovan-flagged bunker tanker M/V *Millenium Spirit* was also hit by a missile while it was in international waters in the Black Sea, forcing the crew to abandon ship after the vessel caught fire.²⁶ Two crew members, including the master, were in critical condition.

Two additional attacks were reported on March 2, 2022. The Estonian-owned, Panamanian-flagged, general cargo ship M/V *Helt* was hit by a missile sixteen nautical miles southeast of Odessa.²⁷ Six crew members were rescued but the ship sank. Earlier that day, the Bangladesh-flagged bulk carrier M/V *Banglar Samriddhi* was hit by a missile in the port of Olvia south of Mykolaiv, killing one of its twenty-nine crew members.²⁸

There is no indication that any of these vessels were engaged in activities that would render them subject to capture or attack by either of the belligerents. Therefore, these indiscriminate attacks (purportedly by Russia) on neutral shipping do not comport with the law of naval warfare, in particular the principle of distinction.

V. CONTROL OF THE IMMEDIATE AREA OF NAVAL OPERATIONS

MEZs should not be confused with a belligerent's right to control the immediate area of naval operations, which is defined as the "area within which hostilities are taking place or belligerent forces are actually operating."²⁹ To ensure proper battlespace management and force protection objectives, a

24. Julia Payne, *Cargo Ship Namura Queen Hit by Rocket off Ukraine—Local Agent*, REUTERS (Feb. 25, 2022), <https://www.reuters.com/world/europe/cargo-ship-namura-queen-hit-by-rocket-off-ukraine-local-agent-2022-02-25/>.

25. *Russian Ship Fires on Sanzhiyka, Then Announces "Security Guarantees" for Passage of Ships*, UKRINFORM (Mar. 25, 2022), <https://www.ukrinform.net/rubric-ato/3439809-russian-ship-fires-on-sanzhiyka-then-announces-security-guarantees-for-passage-of-ships.html>.

26. Xavier Vavasseur, *Two Civilian Vessels Hit by Russian Missiles off Odessa—Ukraine MoD*, NAVALNEWS (Feb. 25, 2022), <https://www.navalnews.com/naval-news/2022/02/two-civilian-vessels-hit-by-russian-missiles-off-odessa-ukraine-mod/>.

27. *One Killed as Two Cargo Ships Hit by Explosions off Ukraine*, ALJAZEERA (Mar. 3, 2022), <https://www.aljazeera.com/news/2022/3/3/two-cargo-ships-hit-by-explosions-around-ukraine-one-killed>.

28. *Id.*

29. COMMANDER'S HANDBOOK, *supra* note 5, ¶ 7.8.

commander may restrict the activities of neutral vessels and aircraft within the immediate vicinity of naval units and, if required by military necessity, may prohibit their entry into the area altogether.

This includes control over the communications (except legitimate distress communications) of neutral merchant ships and civil aircraft if those communications might endanger or jeopardize the success of the operation. Merchant ships and civil aircraft that fail to conform to a commander's restrictions may be considered to have acquired enemy character and may be liable to attack or capture.³⁰ A commander may not, however, exercise this right to close off access to a neutral State or to close an international strait to neutral shipping, unless a route of similar convenience is available to neutral commerce.

It appears that the Russian Navy may have employed this authority in the northwestern Black Sea. On February 26, it was reported that Russian naval vessels had used VHF Channel 16 to notify all merchant vessels that it was conducting a "counterterrorist operation" and demanded all ships located in the Odessa and Danube areas to proceed immediately to the Bosphorus.³¹ It appears from the interactive map on the Marine Traffic website that neutral shipping has complied with the demand and cleared the area.³²

VI. CONCLUSION

The use of MEZs is not prohibited by the law of naval warfare. To the extent MEZs are used to warn neutral vessels and aircraft to reduce their exposure to collateral damage and incidental injury and are enforced consistent with the relevant principles of the law of armed conflict, they are a lawful method of naval warfare. Russia must, therefore, ensure that the extent, location, and duration, as well as the measures employed to enforce the zones, do not exceed what is required by military necessity. In any event, Russia may not treat a MEZ as a free fire zone and must apply the principle of distinction to ensure that any ship or aircraft engaged in the zone, regardless of flag, is a

30. LAW OF WAR MANUAL, *supra* note 4, § 13.8.2.

31. Tayfun Ozberk, *Russia-Ukraine Conflict: What Happened in the Black Sea So Far?*, NAVALNEWS (Feb. 27, 2022), <https://www.navalnews.com/naval-news/2022/02/russia-ukraine-conflict-what-happened-in-the-black-sea-so-far/#:~:text=On%20February%2026%2C%20a%20Turkish,proceed%20immediately%20to%20the%20Bosphorus>.

32. *See* Live Map, MARINE TRAFFIC, <https://www.marinetraffic.com/en/ais/home/centerx:36.1/centery:44.7/zoom:6> (last visited Aug. 29, 2022).

legitimate military objective. The declared MEZs may also not intentionally and unreasonably interfere with legitimate neutral commerce in the Black Sea.

On March 11, 2022, the International Maritime Organization (IMO) proposed that the parties to the conflict establish a “blue safe maritime corridor” to allow for the safe evacuation of neutral ships and their crews from the high-risk areas in the Black Sea and Sea of Azov.³³ Russia has agreed with the proposal and has informed the IMO that it will establish a humanitarian corridor on March 27 to ensure safe passage for merchant vessels from the Ukrainian ports of Chernomorsk, Kherson, Mykolaiv, Ochakov, Odessa, and Yuzhne.³⁴ The maritime traffic lane is eighty miles long and three miles wide, beginning at an assembly area just outside the Ukrainian territorial sea southeast of Odessa and continuing to the south to an exit area in international waters. Moscow has indicated that the corridor will remain open daily from 8 a.m. to 7 p.m. and has requested Ukrainian authorities “to provide for the safety and security of the merchant vessels and their crews transiting to the assembly area.”

The proposal appears to be consistent with Russia’s obligation to ensure neutral vessels are guaranteed safe passage through the established MEZ in the northwest Black Sea. However, there has been no response from the Ukrainian side on whether ships will be allowed to leave Ukrainian ports.

33. IMO, *IMO Council Decisions on Black Sea and Sea of Azov Situation* (Mar. 11, 2022), <https://www.imo.org/en/MediaCentre/PressBriefings/pages/ECSStatement.aspx>.

34. See IMO, Circular Letter No. 4543, *Communication from the Government of the Russian Federation* (Mar. 28 2022), [https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black%20Sea%20and%20Sea%20of%20Azov%20-%20Member%20States%20and%20Associate%20Members%20Communications/Circular%20Letter%20No.4543%20-%20Communication%20From%20The%20Government%20Of%20The%20Russian%20Federation%20\(Secretariat\).pdf](https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black%20Sea%20and%20Sea%20of%20Azov%20-%20Member%20States%20and%20Associate%20Members%20Communications/Circular%20Letter%20No.4543%20-%20Communication%20From%20The%20Government%20Of%20The%20Russian%20Federation%20(Secretariat).pdf).