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Freedom of overflight: a study of coastal State jurisdiction in international airspace

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Propositions relating to the dissertation

FREEDOM OF OVERFLIGHT:

A Study of Coastal State Jurisdiction in International Airspace

by Merinda Stewart

1. Freedom of overflight does not mean freedom from regulation, as is evident from Article 12 of the Convention on International Civil Aviation (1944). However, the exercise of jurisdiction by coastal States is restricted to the facilitation of the exercise of the freedom of overflight and achieving a balance with other maritime freedoms.
2. The ambiguity between a natural feature and a man-made maritime construction is an essential distinction in both the law of the sea and international air law.
3. So far, air defence identification zones have no foundation in international law.
4. Prohibiting an aircraft from international airspace on the basis of the nationality of the aircraft is indisputably a violation of freedom of overflight, as codified in the United Nations Convention on the Law of the Sea (1982) and recognised under customary international law.
5. The additional procedures that are placed on aircraft in air defence identification zones in international airspace differ from the regulations that apply to the operation of aircraft under international civil aviation law in one principal manner: the regulations that apply, those Standards and Recommended Practices in the annexes to the Convention on International Civil Aviation (1944) pursuant to Article 12, are for the purpose of facilitating the freedom of overflight.
6. The responsibility of the coastal State in international airspace within its flight information region is strictly limited to decisions for the purposes of safety and efficiency.
7. Sea-level rise and the response of States to it, including land reclamation and fortification, is an issue that affects the territorial sea baseline and therefore the delimitation between national and international airspace. However, it is as of yet rarely considered in terms of its impact on overflight.

8. Freedom of overflight is a dynamic concept, but when it comes to the extension of coastal State jurisdiction, careful consideration is required in assessing the balance and reconciliation of the rights of all users of the airspace.
9. The balance of rights in international airspace will become increasingly relevant if, as expected, maritime constructions outside territorial seas for the purpose of airports and rocket launches become more prevalent.
10. The isolation of writing a PhD is good preparation for lockdown during a global pandemic.