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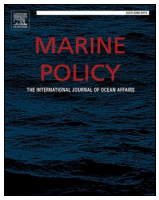

Coastal State jurisdiction over the EEZ and foreign military activities

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ABSTRACT

The article analyzes the issue of foreign military activities in the exclusive economic zone (EEZ) and the controversies in its legal regime, a rapidly evolving issue in the enforcement of the law of the seas that requires new contributions to current literature. First the article examines the main aspects surrounding this debate during the III Conference and the provisions and interpretative controversies relating to the 1982 United Nations Convention on the Law of the Sea, including the *sui generis* nature of the EEZ. Second, the article analyzes seven fundamental concepts and scenarios needed for a comprehensive understanding of the notion of military activities, naval activities in the EEZ and the delicate balance between the interests of the Foreign Flag State and the Coastal State. Thirdly, we present a brief analysis of the most recent case-law from different tribunals and how they have furthered the understanding of the notion of "military activities" both substantively and procedurally in terms of the dispute settlement mechanisms available in the 1982 Convention.

1. Introduction

The evolution of the law of the sea [1], has been conceptualized by Herbert and Shaw as a process in which State practice has led to an essentially customary legal regime, based upon international relations and customary practices accepted by the international community. This approach allows for a better understanding of the significant impact of naval powers such as the United Kingdom and the United States on its development and particularly in the subsequent codification of existing and emerging law. The revolutionary nature of the Third Conference, politically supported by decolonized States, resulted in the creation of new maritime spaces and a renewed emphasis on regional and international cooperation for the peaceful use of the oceans [2].

Over the last fifty years the sea has been the stage on which a multitude of disputes have played out, from delimitation disputes to controversies over offshore fishing and oil rights. In this scenario, the importance of a military presence at sea has remained undiminished for nations that, while recognizing the general prohibition of the use of force, must employ indirect strategies to counter the actions of other States [3].

Nowadays, maritime spaces constitute the key scenario for State powers with military resources to establish and extend their influence. New theaters of confrontation have arisen in the Arctic, Pacific, and Atlantic oceans [4]. For instance, the deployment of the United States at sea is consistent with its classic interpretation of the 1982 Convention: Being a non-Party-State that acts as guarantor of the international community in disputed zones [5]. Recently, North American military escalation by the United States in 2017 and a more confrontational approach to the China Sea issue after a failed multilateral solution illustrate our object of study.

This article analyzes the issue of foreign military activities in the exclusive economic zone (EEZ) and the controversies in its legal regime, a rapidly evolving issue in the enforcement of the law of the seas that requires new contributions to current literature. First the article examines the main aspects surrounding this debate during the III Conference and the provisions and interpretative controversies relating to the 1982 United Nations Convention on the Law of the Sea, including the *sui generis* nature of the EEZ. Second, the article analyzes seven fundamental concepts and scenarios needed for a comprehensive understanding of the notion of military activities, naval activities in the EEZ and the delicate balance between the interests of the Foreign Flag State and the Coastal State. Thirdly, we present a brief analysis of the most recent case-law from different tribunals and how they have furthered the understanding of the notion of "military activities" both substantively and procedurally in terms of the dispute settlement mechanisms available in the 1982 Convention.

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The essay, focuses on foreign military activities and delves into the authoritative interpretation and progressive development of UNCLOS provisions pertaining to Exclusive Economic Zones (EEZs), a topic distinct but still relevant to traditional law enforcement at sea. While the article's focus on legal interpretation and development may be relevant to a broader discussion on law of the sea enforcement, it is relevant to emphasize that its primary concern lies in the legal framework and its evolution, rather than the practical application of enforcement measures in a particular geographical setting.

2. Military activities in the III Conference and 1982 UNCLOS: A topic deliberately omitted

The 1982 Convention lacks substantive rules regarding of the scope or nature of military activities or on the application of IHL [6]. This lack of regulation should not be underestimated, since the repercussions of military operations at sea have modified the reach and actions of naval forces and their conventional use of war [7]. These changes in the nature of naval power include new operations such as "naval demonstrations", not having a warlike character, but intended as an exercise of power aimed at influencing a strategic political, economic and military environment [8].

Stephens considers that in the notion of naval operations it is possible to include the testing of weapons and strategies "without actual combat", although he warns that the wording of the 1982 Convention prevents any activity performed in disregard of the rules of innocent passage in the territorial sea, "thus adding a qualitative element" meaning the need to consider the possible existence of a degree of belligerence or coercion in order to determine its legality [9].

During the development of the III Conference (1973–1982), concerns were raised about the military uses of maritime spaces, international stability and the security of the States, which generated doubts about how the text of the treaty – and its implementation – could coexist with continuous military exercises aimed at maintaining the balance of force between superpowers [10]. This partially explains the complexity of the issue of military activities during the negotiation of the EEZ, exemplified in the drafting of the Convention and in the preparatory documents describing its negotiation.

The subject-matter of military uses and activities of maritime spaces in the debates on the creation of the EEZ, has been recalled by authors such as Orrego Vicuña as being one of the most difficult aspects addressed during the III Conference, even when it was only discussed informally, as "(…) It was implicitly present in the discussion of the substance of many provisions on the Exclusive Economic Zone" [11].

In the initial debate, only seventeen delegations participated, and those appertaining to developing countries proposed that the future text of the Convention should contain provisions to "(…) ensure the peaceful conduct of the States in both international and national zones, because the Convention would be incomplete if it met the objectives of justice, development and well-being but not those of peace and security" [12].

The foundation for this proposal was found in the systematic resistance of the United States and then the USSR to negotiating this issue. This was indicated by the Russian delegate Kozyrev and his North American counterpart Learson on the occasion of the 67th Plenary debate of the III Conference (1976) referring to the limiting scope of the concept of "peaceful purposes" within the Convention, a concept closely linked to military activities [13]. This situation has led to authors such as Rauch to maintain that military activities were among the aspects "deliberately omitted" during the development of the III Conference, because they encompassed extremely delicate matters [14].

3. Controversy over foreign military activities in the EEZ

To create the EEZ as a novel institution under the law of the sea it was necessary to overcome, as Arias-Schreiber described it, a "(…) traditional dichotomy between the territorial sea, the domain of the coastal State; and the high seas, the domain of no one, or of everyone, and of common use". This is a difference of special importance for the examination of the understanding of military activities and which can be synthesized within three possible theses about the nature of the EEZ: 1) as part of the high seas, with economic rights and their regulation to be related primarily to the coastal State, but maintaining traditional freedoms of other States on the high seas; 2) to become a *sui generis* zone, with rights and duties subject to a specific new regime; and 3) to create a *sui generis* space, subject to "national jurisdiction" due to the nature and scope of the rights recognized therein for the coastal state, without prejudice to the navigational freedoms of international communication [15].

These different proposals were present in the discussion of the final configuration of the EEZ during the III Conference, and as Proelss recalls, permeated the later discussions regarding military activities in the EEZ [16].

The resulting text created the EEZ as a strip of ocean water adjacent to the outside border of the territorial sea. This was a development that was no small matter, recognizing its strategic importance as regards resources and as a buffer zone in maritime confrontations and complex delimitation disputes [17]. Despite its unprecedented nature as a development during the conference, the EEZ reconciles the interests of the States regarding sovereignty and access to resources, as reflected in articles 55, 56, 58 and 59 [18].

The debate among those specializing in Law of the Sea cannot be described as "peaceful" when it comes to the nature of the EEZ. Orrego Vicuña points out that Castañeda and Helge Vindenes consider that Article 55 of the 1982 Convention creates an area having a special nature. Specifically, it comprises part of neither the territorial sea nor the high seas. Thus, it cannot be assimilated to any of these spaces for either military or economic purposes [19].

Under the conventional text of 1982 in article 55 the EEZ is defined as "(…) an area beyond and adjacent to the territorial sea" whose breadth, according to article 57 "shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured" [20]. Within the EEZ, the coastal State has rights to exploitation, exploration, conservation and administration of natural living and non-living resources. It also has jurisdiction regarding the establishment and use of artificial islands, the conduct and authorization of maritime scientific research, protection of the marine environment, and "other rights and duties provided for in this Convention" [21].

Regarding the "other rights and duties" referred to in Article 56 (1) (c) of the 1982 Convention, Orrego Vicuña maintains that these are rights and duties different from those stated in the two previous paragraphs "(…) since the general qualification of article 56 derives, in any case, from the reference to the relevant provisions of the Convention provided for in article 55… The very structure of article 56… would prevent an extensive interpretation of that nature." [22]

The previously mentioned reflections demonstrate how the EEZ is still the center of debates about the necessary balance between the protection of the coastal State, the proper use of resources [23], its potential as a food reserve [24] and the possible implementation of actions whose content has not been defined. in the Convention, as would be the case of military activities, which do not have widespread practice or peaceful interpretation.

The complement to article 56 is found in article 58, which is dedicated to the rights and duties of other States within the EEZ, thereby configuring the pillars of the balance of interests of Part V. The article recognizes, in favor of all States, the freedoms of navigation and overflight, in addition to other intentionally legitimate operations on, and uses of, the sea associated with these freedoms, provided that they are compatible with other provisions of the 1982 Convention and respecting the rights and duties of the Coastal State, its laws and regulations issued in accordance with it [25].

For Scovazzi, article 58 (2) constitutes a preservation of the rights of other States to carry out non-economic activities such as assistance and

rescue of people and ships, the repression of piracy, illicit trafficking of narcotics, and suppression of unauthorized emissions. However, the author warns that military exercises at sea are not mentioned explicitly and this ambiguity may be due to "understandings" that were not clearly expressed in the negotiation or later in the Conventional text [26].

Proelss affirms that the expression "internationally lawful" in Article 58 (1) implies agreement with general principles of international law and the 1982 Convention. He considers, however, that the admission of military activities under this clause is controversial. Although it would appear difficult to exclude the navigation of military vessels (and conduct of overflights) inside the EEZ, it is still disputed whether naval exercises, maneuvers and weapons tests can be considered "other internationally lawful uses of the sea related to these freedoms." In fact, theory faces the increase in practices that restrict freedom of navigation by coastal states for security reasons since September 11, 2001 [27]:

> "It seems doubtful, however, that the limited approach taken by the Convention on the issue of military activities can be regarded as the final word, taking into account the growing body of State practice requiring prior consent for the performance of naval military exercises. In light of this, it may simply be impossible today to come to a conclusive answer on whether military activities reaching beyond mere passage or overflight are covered by Art. 58 (1). If this reasoning is agreed with, naval military manoeuvres and the like ought to be considered as falling within the scope of Art. 59, taking into account that the sovereign rights and jurisdiction of the coastal State in no case provide a sufficient legal basis for the regulation of the respective activities" [28].

Faced with the generality of articles 56 and 58, the source for the resolution of conflicts emanating from the attribution of rights and the exercise of jurisdiction in the EEZ is established by article 59 of the 1982 Convention, which invites States to resolve disputes based on equity and the circumstances relevant to the case [29] "taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole" [30].

Proelss affirms that the general way in which the activities mentioned in articles 56 and 58 are defined, suggests the need for an appraisal "case by case" of article 59 and that this is especially relevant for military maneuvers carried out within an EEZ. In this, attention should be paid to the contrasting interests to be taken into account, the situation of the affected States and how the international community may be affected, considering, on the one hand, security issues of the coastal State and, on the other hand, the intentions of the foreign State that carries out the operations. This because "it would be difficult to defend the argument that foreign naval activities in the EEZ should always and automatically be held to be of lower standard compared to the security interests of the coastal State" [31].

Considering that the appearance of the EEZ modified the distribution of the seas, by transferring 38 % of the former high seas into this new space, the emergence of several contemporary controversies can be explained in South Asia, the Mediterranean Sea, the Gulf of Aden, the Baltic Sea, the Red Sea, the Persian Gulf, most of Oceania and part of the Indian Ocean, with unforeseen consequences by the delegations during the III Conference [32]. Despite the copiousness of the 1982 Convention and its annexes, regarding vessels, States still maintain disagreements regarding the practical scope of the freedoms of navigation and the interpretation of the possible behaviors of warships, public vessels dedicated to non-commercial services and all vessels capable of carrying out tasks that may eventually be considered military in nature.

The recognition of this debate arising from the appearance of the EEZ and its effect on military activity explains why some States – generally naval powers – maintain that the freedoms of the high seas are applicable to the EEZ through the doctrine of "residual rights" with the condition of taking "due regard" (as stated in Art.58.3) of the rights of the coastal State to explore, conserve, manage and exploit its natural resources [33]. On the contrary, coastal States – mainly developing states and those close to areas considered critical in geopolitical terms – claim to have implicit powers to regulate the military actions of other States within the EEZ. With the absence of applicable provisions, it only remains to exceptionally apply other conventional, customary sources, unilateral acts or developments of an international law still evolving.

To date, it is possible to highlight that warships or public (state-owned or those at service to the State under contract) ships in non-commercial service and their foreign flag auxiliaries must comply with the laws and regulations of the coastal States during the exercise of the right of innocent passage in the territorial sea [34]; The flag State is internationally responsible for the actions of these vessels, without prejudice to their immunity as Sovereign immune vessels, both in the territorial sea and on the high seas [35]; and the need to have "due regard" for the interests of other States [36].

The absence of a comprehensive clarification of the conventional regulation regarding the actions that these vessels may carry out in the EEZ and the high seas constitutes – as Hayashi points out – a "disturbing" issue in the general order established in the Convention [37]. Galani and Evans, however, warn that these provisions seem intended to consider only traditional threats to security, ones which originate in disputes between sovereign States [38].

For now, States maintain their intention to assert the jurisdiction of the flag State [39] but specialized doctrine has expectations about the possibility of a compromise being reached between the positions of the maritime powers and the coastal States – at least initially, although the adoption of strategies from bilateral, regional or multilateral codes of conduct is most likely – facing the inconvenience of this matter being clarified, in its entirety, by the international courts through the application of article 298 (1) (b) of the 1982 Convention [40].

4. Seven subtopics needed for a comprehensive understanding of the notion of military activities, their operation in the EEZ and the delicate balance between the interests of the Foreign Flag State and the Coastal State

4.1. The notion of navigation

We therefore propose to analyze seven categories or subtopics for the conceptualization of military activities in the EEZ. The first aspect is the notion of navigation and the balance in that regard between the performing State and the Coastal State, an issue related to articles 17–26, 36, 38, 52, 78, and 87 (2) of the UNCLOS [41] which deal with the scope of freedom of navigation of vessels according to the maritime space in question and thereby clarify the application in the territorial sea of the right of innocent passage which is a specific right for transit passage in international straits and archipelagic maritime routes (Right of archipelagic sea lanes passage), and freedom of navigation in the EEZ and the high seas, with their respective differences.

Under the hypothesis of accepting the use of the EEZ as a scenario for foreign military activities, it is necessary to consider how the right to such activities by the performing State is balanced by taking "due regard" of the rights of the coastal State and the observance of its provisions in accordance with the Convention, with the rights of the coastal State and its own due regards to others. On this point, Treves affirms that the Third Conference recognized the existence of the problem and could only invite States to achieve a consensual solution of a "procedural" nature;

> "As already noted, the negotiating text acknowledges the existence of the problem; but instead of solving it with a residuary rule, it provides that when in such cases a conflict arises between the interests of the coastal State and any other State …, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the

interests involved to the parties as well as to the international community as a whole" [42].

For us, the debate on the establishment of the EEZ and its *sui generis* character would rule out the doctrine of "residual rights" since the EEZ constitutes an autonomous zone with its own applicable regulation. This, in turn, admits a share of jurisdiction of the coastal State, in accordance with Part V of the Convention, which is not altered in any way by the freedoms of navigation and communication.

We agree with Treves, for whom the drafting of Part V was negotiated as a "specific" regime, balancing the rights and jurisdiction of the coastal State – on the one hand – and the rights and freedoms of other States – on the other. However, it is correct to affirm that the Convention attributes freedoms in the EEZ to all States such as navigation, overflight and laying of underwater cables and pipelines, in addition to the right to other internationally licit uses of the sea related to these freedoms, compatible with other norms of the Convention. Treves notes that:

> "The negotiators of this provision probably had uppermost in their minds military activities on the surface of the sea or in the water column, such as naval maneuvers, firing exercises, and the movement of submarines. It can have some applicability, however, to devices, installations, and structures emplaced on the seabed for military purposes.
>
> It may be contended that the emplacement of sensor arrays, at least in some circumstances, is included in the freedom to lay cables. n199 In any [*843] event, seabed devices used as navigational aids for military purposes certainly are "associated with the operation of ships." In addition, sensors used to trace other states' submarines can be considered as "associated with the operation of ships," provided the idea is accepted that the efficient use of warships and submarines implies recourse to the best available means of locating the position and tracing the movements of those of other states. In any case, sensors emplaced as navigational aids are difficult to distinguish from those used to locate other states' submarines." [43].

Indeed, the relationship between articles 58 and 87 of the 1982 Convention is crucial, and presents the tension between freedoms and restrictions in the EEZ, regardless of its *sui generis* character. The EEZ recognizes the existence of other rights in favor of the coastal State compared to the freedoms that are invoked by other States apart from than the coastal State, which is why we could understand it as a two-way street. Orrego Vicuña warns that these regulations have an impact on the rights and duties in the EEZ, in light of the freedoms and military uses of the sea:

> "The concept of freedom of navigation and overflight and of laying submarine cables and pipelines… certainly applies to military ships and aircraft. In addition, other internationally lawful uses of the sea are recognized… The freedoms that are recognized in the Exclusive Economic Zone are not, as has been said, all those that appear in article 87…" [44].
>
> This confirms that the rights and duties in the EEZ are not part of the high seas regime, but of a *sui generis* system that circumscribes the obligations of other States towards the laws of the coastal State.

So then the question is put: are legal actions by the coastal State possible, reasonable and justifiable within this scenario? The harmonization mechanism of article 56 grants preeminence to the coastal State laws, jurisdiction and regulations in case of concurrence of other competences and rights applicable in the EEZ. Although in this zone there is no provision that allows the coastal state to request a foreign warship to leave the EEZ [45] –if it affects rights under Part V– this rule ensures an equivalent function, without implying a violation of immunities. That is, the solution consists of communication through diplomatic channels [46].

Of course, the solution of recognizing the expansion of jurisdiction of Article 56 of the Convention is not more extensive than that derived from the interpretation of the conventional text. Treves presents a reflection that serves as guidance between the rights in tension – on the continental shelf, but applicable to the EEZ by referring to the 200 miles zone – stating that:

> "The duty of not interfering with activities conducted by the coastal state in the exercise of its sovereign rights over the continental shelf has been widened in scope to include noninterference with the new sovereign and jurisdictional rights of the coastal state within the 200-mile zone. Of course, the converse is also true. The coastal state must comply with a similar duty regarding other states' freedoms while it exercises its new powers within the 200-mile limit [47].

4.2. The issue of differentiating military activities

The second aspect that interests us refers to the means that materialize the notion of military activities and how to properly determine a particular action as a military activity. Customarily, military activities may be conducted by warships and military aircraft, as well as by government vessels and aircraft engaged in a non-commercial service or function. However, as Dupuy and Vignes warn, there are State regulatory enforcement activities that may not be understood as "military activities" even if they are carried out in application of domestic and international law. This contribution to the concept of "military activities" is modest and it can only be stated that generally the notion of military activities does not include police or law enforcement activities [48].

Thus, what is relevant would appear to be the acts being carried out to determine whether it is a military activity. These could include the use of weapons; the launching, landing of war vessels or aircraft; the installation of any military device, even for scientific purposes, among others. However, it is not possible to adopt a conclusive position since, based on Scovazzi's opinion:

> "A simple naval manoeuvre can be considered to be associated with the freedom of navigation, falling within Article 58 of the UNCLOS. It would be more difficult to sustain that an extended test of weapons, such as launching torpedos and firing artillery or the covert laying of arms within an exclusive economic zone, are to be included among the uses associated with the operation of ships, aircraft and submarine cables. Even if it is sometimes hard to make clearcut distinctions, there are cases where the interest in the operation and testing of arms prevails over the interest in navigation and overflight." [49].

4.3. The EEZ independence from other maritime zones as a singular regulated space

The third aspect is the specific reference to the EEZ as a regulated space and its independence from other maritime zones: When analyzing foreign military activities in the EEZ, the general principles of other zones are not easily transposable to the singularities of the EEZ. It can be affirmed that, although the freedom of navigation benefits all ships that fly a state flag and that their exercise in the EEZ includes warships or public vessels dedicated to non-commercial services, the 1982 Convention establishes two additional sources of interpretation in article 58. It implies the need to have "due regard" for the rights and duties of the coastal State and other norms of international law. This is complemented by article 59 regarding the attribution of rights, jurisdiction and resolution of disputes in the EEZ, since maintaining this provision in the Convention constitutes evidence of the possibility of contemplating other rights of the coastal State not limited to an economic nature.

At this point it is worth remembering that the case of military maneuvers carried out by foreign warships is sufficient to eliminate any character of innocent passage in the territorial sea - an aspect that invites

us to consider *prima facie* whether this action or activity may lack the character of peaceful – although the situation seems to vary when it comes to navigation in the exercise of transit passage through international straits – as may arise between the differences in the navigation of submarines or the overflight of military aircraft – which, in our opinion, implies not only questioning the peaceful nature of the action and invites us to emphasize and protect the security of the coastal State [50].

Regarding military maneuvers and activities in the EEZ, this solution would not be correctly transposable – from the regulation of the territorial sea, as well as the high seas – since conceptually a normative "renvoi" is not suggested or admitted in the current law of the seas [51]. This is because the EEZ being a *sui generis* space, even when it accepts the freedom of navigation, does so without implying a confusion with its coinciding *nomen juris* that the Convention recognizes to the "freedom of navigation" in the high sea. This also means, *per se*, however, that any military activity in the EEZ is to be regarded as an activity that affects the peaceful use of the seas. The aforementioned conclusion forces us to consider foreign military maneuvers in the EEZ as an issue that requires a "case by case" analysis, based upon the criteria provided in article 59.

4.4. Foreign facilities and structures in the EEZ

The fourth aspect to highlight is what pertains to the structures, installations and artificial islands, on which the Convention enables lawful restrictions on navigation but suffers from inaccuracies with respect to the subject under examination. This is because it allows this right to impose restrictions in favor of the coastal for the purposes provided for in article 56, that is, their economic purpose in accordance with the rights of sovereignty or those activities that may interfere with the exercise of the rights of the coastal State in the EEZ.

We note that the 1982 Convention does not prevent the construction of foreign facilities and structures in the EEZ, a criterion that is reinforced by the absence of a clear distinction or categorization of these in the text. However, the variety of terms used and the possibility of using new devices in the future forces us to admit the same caution and limits accepted in articles 58 and 301 of the Convention previously referred to, to the point that it is difficult even today to establish a difference between civil or military devices based on the design of certain scientific instruments [52].

4.5. Coastal State surveillance or intervention in foreign military activities in the EEZ

The fifth aspect refers to the alleged powers of surveillance – and eventual action or intervention – by the coastal States regarding military activities. Likewise, it is not possible to establish a definitive and uniform answer for this issue. It is, however, possible to consider its examination on a case-by-case basis, analyzing the rights of the hypothetically affected coastal State and the actions undertaken by the foreign warship in question, together with the political or legal context that both States invoke to try to argue their positions.

Indeed, the capacity for action of coastal States is not a minor issue since it implies the existence of powers over the sea adjacent to their coast, which translates into a capacity for action over circulation in each maritime space, without such power of intervention being limited to the spaces under sovereignty or being related only to the resources under its sovereignty [53].

The range of actions available to the coastal State is justified by international custom, the Convention, its annexes and other sources of international law. Its observance makes it clear that the principle of freedom of the seas is not absolute, thus distinguishing the high seas and the EEZ.

The above does not mean that the powers that the coastal State has are exhaustive in the Convention, but that the implicit emergence of some of its rights and duties is reasonable, and shared with respect to other States in the same EEZ through the formula of "other internationally lawful uses of the sea related to these freedoms". This was devised in article 58.1 and that, for authors such as Urrego-Vicuña, implies a "particular reference to the question of military activities underlying that expression …" [54].

Thus, the analysis of the provisions applicable to the EEZ and the scope of the rights and duties of the coastal State and the foreign flag State requires weighing the set of norms suitable for the examination of military activities. Our analysis seems to lean in favor of the rights, powers and jurisdiction of the coastal State, since it has a higher interest than other States in presence of foreign military activity. Even if in the EEZ the Coastal State is considered to be without the rights of sovereignty, it enjoys rights and duties for the preservation of the marine environment. It can place restrictions on navigation to ensure the security around facilities, islands and artificial structures. It possesses the possibility of controlling or eventually denying marine scientific research. The "other internationally lawful uses of the sea" of other States seem reduced in the same area, since they do not exercise special powers and are limited to the laying of underwater cables and pipelines or the exercise of jurisdiction for vessels flying their own flag.

4.6. Political motivations for foreign military activities in the EEZ

A sixth element to consider, that could be further studied in future research, is the political motivations of States in undertaking military activities. This means recognizing the motives behind military actions, such as maintaining a presence in geopolitical spaces or justifying their opposition to the formation of an international custom. Specifically, one of these interests focuses on the EEZ as a scenario for action that presents doubts and "grey" in governments due to its *sui generis* nature.

4.7. Declarations protesting or accepting foreign military activities in the EEZ

Finally, as a seventh consideration, is the means and practice for opposing or accepting foreign military activities in the EEZ, since those coastal States that have interests in such matters should formulate declarations or protests regarding events that have occurred in their EEZ in a way that demonstrates an absence of consent based on the persistent objector doctrine [55] which they may invoke in case of codification and progressive development of the international law of military activities by foreign ships in the EEZ. When categorizing the positions, declarations and opinions of several groups of States regarding foreign military activities in the EEZ, two very differential positions arise;

A first position favourable to military activities in the EEZ includes the opinion of those States who maintain that military activities in the EEZ would fall within the notion of "other internationally lawful uses" and that the freedoms of the sea related to article 58 (1) of the 1982 Convention would enable the carrying out these actions in the EEZ.

Another set of arguments usually included in this position are those that include these activities as an integral part of the freedoms of navigation and overflight authorized by international law (that is, without strictly limiting themselves to the provisions of the 1982 Convention as the sole source, allowing for the inclusion of a wide range of military activities, including naval maneuvers, weapons tests, hydrographic surveys, etc.). Since these are principles recognized as applying to other foreign states inside the EEZ since they do not affect the rights of sovereignty - admitting the thesis of residual rights, thus enabling the application of Article 87 – then, in the event of a dispute in this regard, they recognize that Article 59 of the same Convention would apply.

This first group of States asserts that the rights and duties of coastal States must be taken "in due regard" only to the extent that amounts to the adoption of domestic rules, laws and regulations established in accordance with Part V 1982 Convention –in particular, article 58 (3)– and other norms of international law that are not incompatible with it. Likewise, this first group of States consider that military operations were traditionally recognized and accepted prior to the Third Conference,

which is why all of the above is consistent with the principles of freedom of the high seas, in which article 87 (1) of the Convention 1982 contains a non-exhaustive formula that would definitively authorize military activities.

Finally, as has been pointed out, the States with a position favorable to the authorization of military use affirm that the expression "peaceful" does not constitute a denial of armed presence in foreign EEZs. Consequently, the requirement to subscribe to peaceful purposes or uses does not constitute an impediment to military activities in the EEZ, a reason that authorizes the examination and evaluation of their implementation, presuming their legality.

A second position, limiting or opposing foreign military activities in the EEZ affirms, for its part, that the 1982 Convention prevents the carrying out of military activities by foreign States in the EEZ without the consent of the coastal state. Among the prohibited actions are the use of weapons and explosives, military scientific research, prospecting and collection of military data, intelligence tasks, and – according to those States having a more prohibitive interpretation – non-peaceful activities that are contrary to the rights, interests or security of the coastal State. This is a final issue that would even be susceptible to being qualified unilaterally by the coastal State itself.

The foundations underlying the position of this group can be summarized in a questioning of freedoms in the EEZ, which do not include military activities, and which must also take due account of the rights of the coastal State. This is why its authorization is necessary. Likewise, they demand the adaptation of the conduct of the States to peaceful purposes, which are not excluded in the EEZ. They affirm that they find a justification in the absence of an express prohibition - in the sense of preventing foreign military activities in the EEZ and exercising the respective jurisdiction – at the head of the coastal States. For all these reasons, this group of coastal States considers unilateral action possible – by an affected coastal member – taking into account the implicit nature of this right to oppose, although this power has not been expressly attributed in the 1982 Convention.

5. Case-law and State practice

A brief analysis of the case-law contributes to the understanding of the notion of "military activities" both substantively and procedurally. Regarding the dispute settlement mechanisms available in the 1982 Convention, States resort to different formulas of declarations that can hardly be classified as reservations by application of article 309. However, there are some general declarations authorized in article 310 and others by articles 297 and 298, which establish limits and exceptions to the dispute settlement system. In this second group are contained the declarations that we are interested in analyzing, specifically their contribution to the notion "military activities.". In this group, scope and nature is not undisputed, as noted by authors as Oxman and Viñuales, regarding the inherent risks of unilateral declarations and their effect on the dispute settlement mechanisms included in Part XV, Section 2 of the 1982 Convention [56].

The optional exception of Article 298(1)(b) has generated discussions that doctrine considered unlikely to be subject to a direct interpretation by a dispute settlement body. This is a situation that has evolved over time [57].

Next, we will briefly analyze the most relevant cases concerning the concept of military activities, both from a substantive standpoint and from a procedural perspective, coming under Article 298(1)(b).

The Permanent Court of International Justice presents one of the first historical contributions for our topic in the *Wimbledon* case, as the affair focuses on a particular treaty-interpretation issue regarding liberties at sea (the regulation of passage in the Kiel channel in the treaty of Versailles) as well as the rights of civil vessels and warships to navigate in international waters and internal waterways. The dissident opinions of Anzilotti and Huber, are also relevant, as they accommodate the complexity of interstate relations and the complex distinction between situations of peace and war – as well as neutrality and belligerence – as a way of legitimizing extraordinary measures to obstruct innocent passage of foreign vessels [58].

In the case of *Nationality Decrees in Tunis and Morocco*, the dispute reflects the scope of limits to sovereign actions and restriction in the face of international obligations. Although the case does not delve into the definition of "military activities" in a direct way, it contributes to the understanding of sovereign actions from a qualitative perspective, as they must comply with the obligations contracted between States. They cannot be implemented without restrictions, similar to the notion of "due regard" to the interest of other States and other international obligations when conducting actions in the EEZ [59].

The *Access to, or anchorage in, the Port of Danzig, of Polish war vessels* case develops precursory notions on the right of passage and the debate on prior notification, without the need to obtain consent from coastal States. This case established elements of differentiation between public and private ships, regarding the access and use of services in canals, basins, docks and other port infrastructure, according to the Treaty of Versailles. It dealt with the impossibility, under said regime, of transferring these rights to warships and other military vessels, as these only had free and safe access to the sea, a right that was codified in the 1982 Convention. In this case, judge Rostworowski's dissent demonstrates the complexity of determining the threat to the security of the Coastal State, in the case, of the Free City of Danzig. Finally, the solution reached in the final agreements by the parties, celebrated in 1932 and 1933, exemplifies many of the principles consigned in the current article 59 of the 1982 Convention [60].

The *Corfu Channel Case*, decided by the International Court of Justice (ICJ), marked a turning point in international law by balancing the competing interests of freedom of navigation and the sovereign rights of coastal states. In the case, centered on an incident involving British warships that struck floating mines in Albanian waters, the ICJ's ruling highlighted the coastal state's duty to ensure the safety of navigation in its territorial sea, including the obligation to warn of hazards such as mines. This was even more so in consideration of the Strait of Corfu's strategic importance as a vital international waterway. Notably, the Court's criticism of Albania for failing to notify the risks in its territorial sea foreshadowed the broader concept of "military activities" under Article 298(1)(b) of the United Nations Convention on the Law of the Sea (UNCLOS), which has been applied in more recent disputes as an exception to jurisdiction based on the optional exceptions allowed by the convention to its procedures [61].

A further question arises under the *Corfu Channel* case: Did the British Navy's mine-sweeping operations within Albanian territorial waters constitute a "military activity," irrespective of the infringement on Albanian sovereignty? Given that these actions were undertaken by British government personnel in a peacetime context, it can be argued that they inherently possess a military character. This becomes evident when we consider the reciprocal nature of such activities: if the placement of defensive mines in territorial waters is a sovereign act for a coastal state, then their removal must also be considered a sovereign act in the context of military activities [62].

Among the judges who disagreed with the majority opinion in the *Corfu Channel* case, Judge Álvarez argued that the British Navy's passage through Albanian territorial waters was an act of force designed to intimidate Albania. This, he contended, not only violated Albania's sovereignty but also amounted to a threat or use of force. On the other hand, Judges Badawi Pacha and Krylov concurred in criticizing Albania for its failure to exercise "due diligence" in guarding its coastal waters. Judge Krylov further questioned whether the British ships' passage could be considered innocent, given the lack of clear international legal norms and inconsistent state practice in such matters at the time.

The *Right of Passage over Indian Territory* case made a significant distinction between the passage of civilians and commercial goods, and the passage of military personnel and equipment. It examined the conditions under which a right of passage could be exercised while

respecting the territorial integrity and sovereignty of the transit state. The case suggested that allowing the passage of armed forces and military equipment could be seen as interfering in the internal affairs of the transit state, India. The ICJ's consideration of the need for prior authorization and the absence of inherent rights for the passage of military personnel and equipment provides valuable insights for defining "military activities" in international law [63].

The case of *Military and Paramilitary Activities in and against Nicaragua* occurred after the adoption of the 1982 Convention. Although the ICJ did not specifically clarify the concept of "military activity," it included the obstruction of access to or departure from ports and the laying of explosive mines by the US as part of the military and paramilitary activities that compromised Nicaragua's sovereignty. The Court's considerations show a link between the challenged actions and the principle of non-intervention in internal affairs, political independence, and the prohibition on the threat or use of force against the territorial integrity of another State [64].

The Court determined that the following actions constituted military or paramilitary activities in violation of international law: operations targeting naval installations, including the provision of training, command, and logistical support to subversive activities designed to coerce a State in the exercise of its sovereign rights, such as the supply of armaments, financial resources, and training. In essence, the Court ruled that such conduct is unlawful not merely due to its outcome, but also because the means employed, as well as the assistance and facilitation provided, that constitute a direct infringement upon the sovereignty of the affected State [65].

In the *Armed Activities on the Territory of the Congo* case, the Applicant contended that the Respondent had engaged in "military and paramilitary activities" in violation of international law. These activities were alleged to include territorial occupation and the provision of comprehensive support to irregular armed groups operating within the Applicant's territory. The Applicant relied upon the well-established principles of the prohibition on the use of force, the principle of sovereignty, and the prohibition on intervention in the internal affairs of other States to substantiate its claim. The Court, in its judgment, found that the Respondent's armed forces had engaged in acts of looting, pillaging, and exploitation of the Applicant's natural resources, which constituted violations of international law. Nonetheless, the Court appeared hesitant to classify these acts as "military activities." The separate opinion of Judge Simma highlighted the need for further analysis regarding the "armed attacks" carried out by irregular groups supported by the Respondent and the possibility of classifying them as "military activities" [66].

A set of particular arbitrations has also contributed to the debate of the notion of military activities, including the *Arctic Sunrise* [67]; *South China Sea* [68]; *Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait* [69]; and *Detention of Ukrainian Naval Vessels and Servicemen* [70] arbitrations. The four arbitrations at issue have presented a recurring discussion of the optional exceptions to compulsory dispute settlement procedures under Article 298(1)(b) of the Convention, specifically those pertaining to "military activities." The *Arctic Sunrise* case provided an initial, but limited, exploration of this issue, wherein the tribunal cautioned that unilateral declarations cannot serve to expand the scope of the Article's exceptions beyond the activities expressly contemplated therein.

In the South China Sea arbitration, the Tribunal found no specific time limit for invoking the application of Article 298(1)(b), concluding that a declaration made in accordance with this provision would suffice. If a State omits to invoke this exception, an international tribunal may still consider its applicability to the case, unless the State itself expressly renounces the characterization of the conduct as a "military activity," thereby rendering an examination of the exception unnecessary. Moreover, the Tribunal held that military activities that exacerbate a dispute would not necessarily preclude the application of compulsory dispute settlement procedures, as there is a distinction between "disputes relating to military activities" and "military activities" themselves.

In the South China Sea arbitration, the case involved issues related to the extent of the EEZ, which has some bearing on our study, especially regarding China's arguments about historical uses of disputed spaces for fishing purposes and the access of other States to this area. However, the text of the 1982 Convention discarded any possibility of a claim in this regard. In fact, the arbitral tribunal declared in its award that certain Chinese activities were within the Philippines' EEZ and that, consequently, its rights had been affected [71].

Likewise, the situation was aggravated by the construction of structures and artificial islands by China in disputed spaces, causing irreparable damage to the marine environment.

China, attempted to strengthen its position by reclaiming reefs and constructing artificial islands to be used as sites for lighthouses, aircraft runways, and military bases. The Arbitral Tribunal rejected China's arguments and proceeded with its work by declaring itself competent on October 29, 2015 in its award on jurisdiction and admissibility [72]. However, the Arbitral Tribunal accepted that certain limitations and exceptions to its jurisdiction were linked to significant aspects of the merits of the dispute.

Indeed, military activities were part of the necessary debates to analyze the jurisdiction and admissibility of the claims before the Arbitral Tribunal, that continued when considering the merits of the dispute, in its award of July 12, 2016. On this point, the Philippines alleged - in the hearings - that China had neither invoked nor characterized its activities as "military" and that this was not a minor matter, since "[t]he decision by a State to characterize its own actions as military activities is not one that is taken lightly. The political, legal and other consequences may extend well beyond Article 298, or indeed the Law of the Sea Convention as a whole…" [73].

The ongoing arbitrations between Ukraine and the Russian Federation concerning the Black Sea, Sea of Azov, and Kerch Strait present an opportunity to further develop the case-law surrounding the application of Article 298(1)(b) of the 1982 Convention. Both parties are likely to engage in detailed arguments aimed at clarifying the scope and meaning of "military activities" in order to justify or contest the tribunal's jurisdiction.

In the first arbitration, the Arbitral Tribunal issued its admissibility award and held that for conduct to be classified as a "military activity," the involvement of military vessels or aircraft was not necessary, as such activities could be carried out using government vehicles. The Tribunal further noted the absence of a widespread practice regarding the types of activities that could be classified as "military" and their scope. It observed that the detention of fishing vessels did not necessarily constitute a military activity and that artificial structures or platforms did not necessarily serve a military function. In the second case, the Arbitral Tribunal is still deliberating on the admissibility award.

The *Fragata ARA Libertad* and *Arctic Sunrise* cases, which involved applications for provisional measures before the International Tribunal for the Law of the Sea, have provided valuable insights into the interpretation and application of Article 298(1)(b) of the United Nations Convention on the Law of the Sea. In particular, these cases have highlighted the importance of the optional declarations made by the parties in support of their respective positions and the role of Article 298 (1)(b) in the context of Russia's declaration for the optional exception. The *Arctic Sunrise* case is noteworthy for the analysis provided by Judges Wolfrum and Kelly, who have contributed significantly to the development of the case-law surrounding this provision.

Finally, the *Detention of three Ukrainian naval vessels* case represents the most comprehensive exploration so far of the concept of "military activities" under Article 298(1)(b) of the United Nations Convention on the Law of the Sea. Notwithstanding the limitations imposed by Article 290(5), the Tribunal's decision together with the diverse perspectives expressed in the individual opinions, including the dissenting opinion of Judge Kolodkin, has significantly enriched the case-law on this issue. The Tribunal's order on provisional measures, even if limited in scope,

provides valuable guidance on the application of the regime of innocent passage for warships through international straits and, in the view of Judge Türk, is likely to be considered authoritative in the future [74]. In this order, The Tribunal avoided a determination of whether an armed conflict existed between the two states. Instead, it presumptively concluded that they were engaged in peaceful interactions. While the Tribunal upheld the relevance of sovereign immunity of warships and the peacetime right to freedom of navigation, it narrowed the scope of the military activities exception, as the Tribunal categorized the dispute over innocent passage as a navigational matter rather than one involving military activities, given that innocent passage is a right afforded to all vessels [75].

6. Final remarks

Our analysis concludes that the Third United Nations Conference on the Law of the Sea was far more than a mere negotiation aimed at establishing an order governing the rights, duties, and uses of the seas that has produced undebated results. Indeed, continuing and emerging State practice, unilateral acts, declarations made upon, or subsequent to, ratification of the Convention, as well as the recent case-law of international tribunals and scholarly commentary, demonstrate the paramount ongoing importance of these issues on the international agenda [76].

First, we initially conclude that the Exclusive Economic Zone (EEZ) is a *sui generis* regime, a product of international negotiation, that is distinctly different from both the territorial sea and the high seas. Article 58(2) itself limits the assimilation of these concepts. Moreover, the EEZ represents a delicate balance between the rights and duties of coastal States. This stance, while not definitive, leans towards a jurisdiction that would preclude or limit the authorization of foreign military activities, relying on Part V of the Convention, coupled with the impossibility of adopting the doctrine of "residual rights" over the high seas within the EEZ.

Moreover, the arguments advocating for the application of Article 87 as an exhaustive list of activities in the high seas applicable to the EEZ should be rejected. This is because the high seas and the exclusive economic zone (EEZ) are distinct maritime spaces. While the principle of freedom of navigation may be similarly termed in both the EEZ and the high seas, in our view, this does not entail identical and exact navigation rights. Such an interpretation is inconsistent with the text agreed upon during the Third United Nations Conference on the Law of the Sea.

While the Convention codified pre-existing customary international law regarding the use and access of the seas, it also progressively developed the regime contained in Part IV, and particularly in Part V concerning the exclusive economic zone (EEZ), through the emphasis on consensual solutions. Consequently, it can be asserted that the 1982 Convention modified the regime applicable to military activities, departing from the past understanding of customary international law.

Such arguments require the taking into consideration of the views of those who, relying on Article 58(1) of the 1982 Convention, assert that warships and military aircraft may engage in military activities based on "other internationally lawful uses of the sea" within a coastal State's exclusive economic zone (EEZ). While it is correct to state that the Convention does not prohibit warships or other governmental ships on non-commercial service from engaging in "other lawful uses" this does not constitute a broad and unrestricted authorization, nor can such uses be broader within the EEZ than those applicable on the high seas.

In this respect, as regards military activities within the freedoms of navigation and overflight, we consider that these actions should be understood in terms of their function of mobility. In other words, rather than focusing on the mere act of movement, the analysis of military activities should focus on their actual outcome or intent.

If doubts persist regarding a specific situation and the potential authorization based on "other internationally lawful uses," the solution proposed by Orrego Vicuña is feasible: conducting a "compatibility" assessment—grounded in Article 56 of the Convention and consistent with the entirety of Part V—and, if such an assessment is positive, applying a relevant provision from the high seas regime [77].

It is understandable that the navigation of submerged foreign submarines within the EEZ, as well as navigation and overflight employing active defense systems such as radar, rescue operations involving vessels and aircraft (to ensure human survival), and the conduct of maritime military operations justified by the right of self-defense, among others, are permissible in the EEZ. It could be argued that these types of cases do not pertain to the application of the Convention, but the wording of Article 58 does not appear to be so limited, however, rather granting an implicit authorization for their use.

A second conclusion regards the erroneous direct association of military activities with the freedoms of navigation and overflight. Indeed, not every military activity can be categorized as an exercise of these freedoms—or vice versa. Such an association would be inconsistent with a good faith interpretation of the international obligations arising from the Convention. In case of doubt regarding a particular situation, the solution is straightforward: to attempt to separate the purpose of the "activity" in order to determine whether the principle of freedom masks a prohibited action or whether it is a lawful incident associated with the freedom of navigation.

The third conclusion concerns the meaning of "due regard" within the EEZ. As our analysis demonstrates, the coastal State does not possess the same territorial jurisdiction in this unique space, nor do other States enjoy the same freedoms as on the high seas. Thus, it is necessary to acknowledge that the concept of "due regard" must be reciprocal, and substantial, in accordance with the negotiating consensus of the Third United Nations Conference on the Law of the Sea, and with the balance of legitimate interests as set out in Part V, particularly Articles 58 and 59 of the Convention.

A fourth relevant conclusion is that actions undertaken by warships or government ships engaged in non-commercial service do not always constitute military activities. The protection, control, administration, and management of economic resources may be subject to pursuit, arrest, and similar behaviors which can be classified as "law enforcement measures" in compliance with the coastal State's laws. This includes activities such as monitoring in the protection zones around artificial islands, combating piracy, suppressing unlawful acts, drug trafficking, unauthorized broadcasting, or any activity that requires compliance with local regulations.

Fifth and finally, our analysis has shown that the architecture of the international system and the particularities of the Third UN Conference on the Law of the Sea influenced the 1982 Convention and its dispute settlement system, especially regarding the difficult interpretation of "military activities". States' unilateral actions challenge the Convention's provisions, underscoring the need for the international community to address this issue to prevent disputes and maintain international peace and security.

The concept of "military activities" is complex and politically sensitive, even lacking a universally applicable definition within the 1982 Convention. Nevertheless, it is clear that such activities should not undermine the principle of the peaceful uses of the seas.

A practical solution could involve the development of guidelines or codes of conduct to clarify the concept of military activities in EEZs, ensuring the balance of interest of the States that perform the military activities and the coastal state's rights. This approach would not require amending the Convention but would promote its good-faith observance.

Alternatively, a request for an advisory opinion from the International Tribunal for the Law of the Sea could provide clarity on the concept of military activities or related issues. Leaving this issue unresolved risks escalating disputes and threatening international peace and security.

Author statement

We declare that this manuscript is original, no generative IA was needed nor used for the process and the contribution is not currently being considered for publication elsewhere. We declare as author that there are no current conflicts of interest regarding the topic, editors or journal. The revised version submitted on December 3rd, has been reviewed by a native English speaking law scholar.

CRediT authorship contribution statement

Godio Leopoldo M.A: Writing – review & editing, Writing – original draft. **Walter Arévalo-Ramírez:** Writing – review & editing, Writing – original draft.

Declaration of interest statement

We have nothing to declare.

Data availability

No data was used for the research described in the article.

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[54] For Anderson "There is an extensive State practice made up of legislation authorising law enforcement agencies to board, inspect, detain, divert to port and arrest vessels at sea. These powers are a projection seaward of police powers on land. They may be exercised, both within areas of maritime jurisdiction and on the high seas as the right of hot pursuit, by coastguards, fishery control officers and navies". cf. Anderson, David H., "Some Aspect of the Use of Force", in Nerina Boschiero [et al] (eds.), International Courts and the Development of International Law. Essays in Honour of Tullio Treves, Berlin, Springer, 2013, pp. 234-235.
[55] Orrego Vicuña, Francisco, La zona económica exclusiva: régimen y naturaleza jurídica in El Derecho Internacional, Santiago de Chile, Editorial Jurídica de Chile, 1991, p. 38.
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[57] Oxman, Bernard H., "The Third United Nations Conference on the Law of the Sea: The Ninth Session (1980)", American Journal of International Law, Vol. 75, Issue 2, 1981, p. 232. Also see: Viñuales, Jorge E., "Seven Ways of Escaping a Rule. Of Exceptions and Their Avatars in International Law", in Lorand Bartels & Federica Paddeu (eds.), Exceptions in International Law, Oxford, Oxford University Press, 2020, pp. 71-72 y 87.
[58] In Dupuy and Vignes, "Il faut admettre qu'un organe de règlement des différends pourra arriver à dégager une interprétation différente. C'est de ce point de vie qu'il est important de noter, en confirmation de ce que nous venons de soutenir, que cette éventualité est assez improbable. Les Etats peuvent en effet écarter par une déclaration la soumission à des moyens obligatoires de règlement de tout différend relatif à des activités militaires, y compris les activités militaires des navires et aéronefs d'Etat utilisés pour un service non commercial…". cf. Dupuy, René J. & Vignes, Daniel (eds.), Traité du nouveau droit de la mer, Bruxelles, Bruylant, 1985, p. 748.
[59] Case of the S.S. "Wimbledon", P.C.I.J., Judgment of 17 August 1923 (Serie A, No. 1).
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[62] Corfu Channel Case, Judgment of April 4th, 1949: I.C.J. Reports 1949, p. 4.
[63] Ibid.
[64] Case concerning Right of Passage over Indian Territory (Merits) Judgment of 12 April 1960: I.C.J. Reports 1960, p. 6.
[65] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment. I.C.J. Reports 1986, p. 14.
[66] Íbid.
[67] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 168.
[68] The Arctic Sunrise Arbitration (Netherlands v. Russia), Award on Jurisdiction, 26 November 2014, RIAA, Vol. XXXII pp. 183-204.
[69] The South China Sea Arbitration between the Republic of the Philippines and the People's Republic of China, Award of 12 July 2016, RIAA, Vol. XXXIII, pp. 153-617.
[70] Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. The Russian Federation), Award concerning the Preliminary Objections of the Russian Federation, 21 February 2020 (PCA Case No. 2017-06).
[71] Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. the Russian Federation), Procedural Order No. 1, 22 November 2019 (PCA Case No. 2019-28).
[72] The South China Sea Arbitration between the Republic of the Philippines and the People's Republic of China, Award of 12 July 2016, RIAA, Vol. XXXIII, pp. 471-477, para 1203.
[73] The South China Sea Arbitration between the Republic of the Philippines and the People's Republic of China, Award on Jurisdiction and Admissibility of 29 October 2015, RIAA, Vol. XXXIII, pp. 142-143, para. 392-393.
[74] The South China Sea Arbitration between the Republic of the Philippines and the People's Republic of China, Award of 12 July 2016, RIAA, Vol. XXXIII, p. 549, para. 1012.
[75] Helmut Türk, "Some Developments and Issues after the Adoption of UNCLOS", Korean J. Int. Comp. Law 9 (2021) 43.
[76] James Kraska, "Did ITLOS just kill the military activities exemption in Article 298?", Ejil-Talk 27 (2019).
[77] Quiroga, Tamara G. & Godio, Leopoldo M.A., "La doctrina como fuente de derecho auxiliar y su utilización in el Tribunal Internacional del Derecho del Mar", in N. Gladys Sabia de Barberis [et al], Aspectos actuales de las fuentes del derecho internacional, Buenos Aires, Consejo Argentino para las Relaciones Internacionales, 2022, pp. 123-153. This work concluded that there is a clear use of international law doctrine by the judges of the International Tribunal for the Law of the Sea, a significant aspect when dealing with such important issues in a specialized tribunal, given the demands and preparation of its members, who are well-versed in these matters and do not possess a mere generalist legal education, especially since in its first composition they were the negotiators and state officials during the Third Conference and later authors, directors, or in charge of the main publications on the subject, whose points of view "(…) usually remain in the background of the actual decisions adopted. Ibídem, pp. 151-153.