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Military Activities on the High Seas: What Are the Impacts of the U.N. Convention on the Law of the Sea?

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ACCORDING TO ARTICLE 88 OF THE UNITED NATIONS CONVENTION on the Law of the Sea (LOS Convention), the high seas shall be reserved for peaceful purposes. Similar provisions are contained in Article 141, concerning the use of the deep seabed, and in Articles 240(a) and 246, paragraph 3, regulating marine scientific research. Additionally, Article 301 provides that States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations. The question has been raised as to whether such provisions limit military activities on the high seas.¹ Wolff Heintschel von Heinegg has pointed out that naval activities in the most recent military conflicts have been concentrated in the maritime areas under the sovereignty or jurisdiction of the parties to the conflict concerned.² This fact had led earlier to D.P. O'Connell's statement that "an hypothesis that might serve to minimize the threat to the peace which results from situations of limited hostilities would be that no belligerent acts are permitted on the high seas

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except in case of immediate and direct self-defence.”³ However, this statement does not seem appropriately to reflect State practice.⁴

The following presentation seeks to establish whether and to what extent the provisions of the Convention on the Law of the Sea, and in particular Article 88, restrict military activities on the high seas. The view is commonly held that the LOS Convention forms part of the international law of peace⁵ and thus has limited relevance with respect to activities of States Parties in the time of war.⁶

The purpose of this paper is—at least to a limited degree—to question such an approach, on two grounds. It proposes that even in times of war the parties to a conflict have to respect the rights of other States concerning the use of the sea. The paper will further establish that the traditional division between the international law of war and of peace has lost some of its relevance as far as the utilization of the sea is concerned.

Provisions of the UN Convention on the Law of the Sea

As already mentioned, Article 88 provides that the high seas shall be reserved for peaceful purposes only. The terms “peaceful use” or “for peaceful purposes”⁷ as used in international conventions are, in general, highly ambiguous, leaving aside for the moment the fact that Article 301 of the LOS Convention has to be regarded as an attempt to clarify the meaning of this clause. Similar provisions in other international treaties may shed some light on the interpretation of Article 88.

The Clause Restricting Activities on the High Seas for Peaceful Purposes. In general, the peaceful use clause may be interpreted as a prohibition of any military activities, or of only aggressive activities in the sense of Article 2, paragraph 4, of the United Nations Charter. A clear interpretation of this term in the former sense is found, for example, in the Antarctic Treaty.⁸ It preserves a nonmilitarized status of Antarctica by prescribing in Article I that the continent be used for peaceful purposes only. This general clause is further specified by the Article’s prohibition (the list not being exhaustive) of “any measure of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.”⁹ As an exemption from the general provision, the Article allows the use of military personnel and equipment “for scientific research or for any other peaceful purpose.” This exemption proves that the peaceful purposes clause in the Antarctic Treaty has to be understood as excluding all

military activities.¹⁰ The treaties on Spitzbergen of 9 February 1920¹¹ and on the Åland Islands of 20 October 1921¹² contain more or less the same interpretation of the peaceful use clause. Based upon those multilateral treaties, the position has been put forward that the peaceful use clause in the LOS Convention has to be understood generally as a prohibition of any military activity.¹³

Having referred to those international treaties using the phrase “peaceful” in the sense of nonmilitary, one should mention the Outer Space Treaty¹⁴ as a counter-example, one where the same clause has been used in the meaning of “non-aggressive.” This interpretation, however, is not undisputed. The arms control provisions of the Outer Space Treaty (Articles III and IV) distinguish between outer space on the one hand, and the moon and other celestial bodies on the other. The Antarctic Treaty, which evidently influenced the wording of the Outer Space Treaty in this respect,¹⁵ served as an example for addressing the moon and other celestial bodies, which have been regulated through Article IV, paragraph two. As this paragraph is not as broadly phrased as the corresponding Article I of the Antarctic Treaty—the prohibition of “any measure of a military nature” is lacking—a less extensive stage of nonmilitarization was intended. Accordingly, the term “for peaceful purposes only” in Article IV, paragraph two, could be read as “non-aggressive.”¹⁶ This interpretation, however, would bring the moon and other celestial bodies under the system envisaged by Article IV, paragraph one, which applies for outer space in general. Such an interpretation would clearly contradict the different wording of the two paragraphs of Article IV. That being so, the moon and the celestial bodies have to be regarded as demilitarized like Antarctica, Spitzbergen, and the Åland Islands.¹⁷ Hence, the way the peaceful use clause is used in other international treaties does not give a clear answer as to its meaning under the LOS Convention.¹⁸

The legislative history of the equivalent provision in the LOS Convention, Article 88, sheds little light on the meaning of that article. Before the elaboration of the Revised Single Negotiating Text (RSNT),¹⁹ which contained a peaceful use clause, only three drafts existed. None of them had a provision along this line. Nevertheless, the introduction of the peaceful use clause into the RSNT was not intended to change the Single Negotiating Text (SNT) substantially.²⁰ Article 74 of the SNT (Part II) stated: “The high seas shall be open to all States, whether coastal or landlocked, and their use shall be reserved for peaceful purposes.” The first part of this provision was incorporated into the later Article 76 of the RSNT (Part I), the forerunner of the LOS Convention Article 87, which sets forth the freedoms of the high seas. In turn, Article 74 of the SNT (Part II)

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had been inspired by Article 69 of the Malta proposal,²¹ which was based upon the Declaration of Principles Governing the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction.²²

The peaceful use clause remained unchanged from issuance of the RSNT in 1976 until 1980, when a draft sponsored by ten States sought to enrich Article 88²³ by adding the following sentence: "All States shall refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and the principles of international law." Sponsors of the draft clearly interpreted the term "peaceful purposes," contrary to the Antarctic Treaty example, as permitting all nonaggressive acts of a military nature.

The most striking argument that Article 88 does not exclude military activities on the high seas derives from a comparison of the regulations on high seas navigation with those governing passage of warships through foreign territorial seas. According to Article 19 of the LOS Convention, such passage shall be considered not to be innocent if a foreign ship engages in any threat or use of force against the sovereignty, territorial integrity, or political independence of the coastal State, conducts weapons exercises, lands or takes on board any military device, etc. If it is necessary to declare such typical military activities in the territorial sea illegal, even though this area constitutes ocean under national sovereignty in which foreign activities are subject to certain legal restrictions, the activities must be legal on the high seas, which are open to use for all States.²⁴ Finally, it should be mentioned that Article 298, paragraph 1(b) of the LOS Convention refers to military activities within the context of dispute settlement.

Full clarity on the exact content of the peaceful use clause can be achieved by evaluating the impact of Article 301 of the LOS Convention²⁵ on the interpretation of Article 88. The legislative history of Article 301 again casts very little light on the intentions of its drafters. The first and only (informal) draft in this respect was tabled by the sponsors who also intended to enrich Article 88, the wording of both drafts being nearly identical.²⁶ The proposal discussed in the Informal Plenary was redrafted²⁷ and subsequently received wide support. However, it did not dispose of the reservations of some delegations, who feared that it had an impact on the regulations of innocent passage and transit passage, which contain very similar formulations. Therefore, further consultations took place among interested delegations. These led to a compromise package.²⁸

Article 301 is clearly modeled along the lines of Article 2, paragraph 4 of the UN Charter. Apart from differences that are clearly of a drafting nature, one distinction has to be stated. Instead of the term “or in any manner inconsistent with the purposes of the United Nations,” Article 301 uses the phrase “or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.” This difference highlights that Article 301 refers not only to Chapter I of the UN Charter (Purposes and Principles) but to other parts too, such as Chapter VII, which includes Article 51 (right of self-defense).²⁹

In conclusion, Article 88, considered in the light of Article 301, does not impose any obligations upon States exceeding those of Article 2, paragraph 4, of the UN Charter.³⁰ It is, however, a different question whether restrictions derive from other aspects of the rules of the LOS Convention concerning activities on the high seas.

Restrictions Deriving from the Freedom of the High Seas and Rights Concerning Deep Seabed Mining. The freedom of the high seas as enshrined in Article 87 of the LOS Convention, although embracing the possibility of all States undertaking military activities on the high seas,³¹ may also serve as a limitation on such activities. In accordance with Article 87, paragraph 2, the exercise of the freedom of the high seas is limited by the interest of other States in their exercise of the freedom of the high seas (due regard clause). Equally, under the same provision,³² the rights with respect to activities in the “Area” have to be duly respected.³³ However, the obligation to respect other uses of the sea is not a one-sided obligation, since activities in the Area³⁴ shall be carried out with reasonable regard for other activities in the marine environment. Hence, a balance has to be struck, for example, between the freedom of the high seas, in particular the freedom of navigation, and any military activity not prohibited under Article 301, which restricts such freedom of navigation.

One of the most controversial issues discussed in this context is whether a party to a conflict may establish maritime zones of war or zones of exclusion from which shipping is totally or partially excluded, thus limiting freedom of navigation and overflight. The system of maritime exclusion zones was first introduced in the Russo-Japanese War by Japan, in an effort to control the navigation of neutral Powers in specified areas. In the First World War, the United Kingdom proclaimed the North Sea to be a military area within which exceptional measures would be taken. This was in response to indiscriminate minelaying by Germany. In 1915 Germany declared that all maritime spaces

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surrounding the British Isles constituted a war zone in which any enemy merchant vessel would be sunk by submarines, even if it was not possible to save the crew or passengers. Equally, the ships of neutral States would be exposed to danger.

In the Second World War, the United Kingdom declared exclusion zones, which were effected by means of mine fields. The exclusion zones declared by Germany were of a different nature; in these all shipping would be attacked on sight. The International Military Tribunal of Nuremberg declared the establishment of the latter zones to constitute a war crime.³⁵ More recent examples of the establishment of war zones were the two proclamations of the United Kingdom in 1982 establishing a “maritime exclusion zone” around the Falkland islands, which had been occupied by Argentine forces. These zones were first directed against Argentine warships and Argentine naval auxiliaries, but they were later transformed into a “total exclusion zone” directed against any non-Argentine ships, aircraft, or the like giving support to the Argentine occupation.³⁶ At the end of hostilities, this zone was cancelled.

In assessing State practice after the Second World War³⁷ one cannot but state that the practices of the various States differ significantly. It is worth considering whether the LOS Convention limits the establishment of exclusion zones beyond existing restrictions recognized under the international law of war.

Pursuant to Article 88, paragraph 1, of the LOS Convention, the ships of all States (not only of States Parties) enjoy the right of freedom of navigation. This provision reflects a wider principle underlying the rules of the convention, namely that the *ius communicationis* among nations. However, the right to freedom of navigation is not unrestricted. It is to be used with due regard to the interests of other States in their exercise of the freedom of the high seas, which includes respect for military activities. Even in times of war, the freedom of navigation cannot be regarded as suspended between States which are not parties to the conflict. In this respect, it has to be taken into consideration that the Convention does not just govern the relations among certain States but establishes a comprehensive legal order for the use of ocean space,³⁸ taking into consideration that the rights of States which are not parties to the conflict also prevail in times of war. Accordingly, the establishment of exclusion zones is restricted. The freedom of navigation requires that limitations imposed upon shipping by the establishment of exclusion zones—and the same applies to overflight—have to be kept to the minimum necessary. Neither the limitations imposed upon shipping in these zones (nor their duration) nor the rights of military ships therein may exceed what is strictly necessary (principle of necessity and proportionality) for the protection of the security of the party to

the conflict having established the zone. In consequence thereof, the range of military activities is limited, and they may not be directed indiscriminately against military and nonmilitary targets.³⁹ Only under such preconditions and with proper notification may one characterize marine exclusion zones as a valid limitation on the freedom of navigation and overflight.⁴⁰ This balance of rights is appropriately reflected in paragraph 106 of the *San Remo Manual*,⁴¹ which reads:

However, should the belligerent, as an exceptional measure, establish such a zone: (a) the same body of law applies both inside and outside the zone; (b) the extent, location and duration of the zone and the measures imposed shall not exceed what is strictly required by military necessity and the principle of proportionality; (c) due regard shall be given to the rights of neutral States to legitimate uses of the seas; (d) necessary safe passage through the zone for neutral vessels and aircraft shall be provided: (i) where the geographical extent of the zone significantly impedes free and safe access to the ports and coasts of a neutral State; (ii) in other cases where normal navigation routes are affected, except where military requirements do not permit; and (e) the commencement, duration, location and extent of the zone, as well as the restrictions imposed, shall be publicly declared and appropriately notified.

Similar problems arise with regard to laying mines.⁴² Mines have frequently been used as a means of sea warfare,⁴³ and although they are considered indispensable, attempts have been made to restrict their use. In this respect, one should refer to the 1907 Hague Convention on Mine Warfare at Sea (which, however, has not entered into force).⁴⁴ The International Court of Justice has dealt with the emplacement of sea mines twice. In the *Corfu Channel Case*,⁴⁵ it stated:

The obligation incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefields exposed them. Such obligations are based, not on the Hague Convention of 1907, No. VIII, which is applicable in time of war, but on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of the freedom of maritime communication; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.

In the *Nicaragua Case*,⁴⁶ it argued along the same lines:

The Court has noted above . . . that the United States did not issue any warning or notification of the presence of the mines which had been laid in or near the

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ports of Nicaragua. Yet even in time of war, the Convention relative to the laying of automatic submarine contact mines of 18 October 1907 (the Hague Convention No. VIII) provides that "every possible precaution must be taken for the security of peace shipping" and belligerents are bound

"to notify the danger zones as soon as military exigencies permit, by a notice addressed to shipowners, which must also be communicated to the Governments through the diplomatic channel" (art. 3).

... [I]n peacetime for one State to lay mines in the internal or territorial waters of another is an unlawful act; but in addition, if a State lays mines in any waters whatever in which the vessels of another States have rights of access or passage, and fails to give any warning or notification whatsoever, in disregard of the security of peaceful shipping, it commits a breach of the principles of humanitarian law underlying the specific provisions of Convention No. VIII of 1907.

This view, namely that the State emplacing sea mines is faced with obligations to safeguard the interests and rights of third States, was confirmed by Judge Schwebel in his Dissenting Opinion in the *Nicaragua Case*.⁴⁷

Leaving aside the prohibition of certain mines due to the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and the Subsoil Thereof, February 11, 1971,⁴⁸ some restrictions on the emplacement of mines may be derived from the LOS Convention.⁴⁹

Again, the interests and rights of third States in the maintenance of the freedom of navigation have to be balanced against the security interests of the belligerent parties. The principle of the freedom of navigation requires that the emplacement of minefields meets the conditions of the principles of necessity and proportionality. Minefields must not amount to a blockage of navigation to and from ports of nonbelligerent States, the national occupation of areas of the sea, or the unnecessary abolishment of the freedom of navigation for ships of nonbelligerent States. Generally speaking, States emplacing minefields are under an obligation to take every precaution to secure the safety of shipping of nonbelligerent States. Only to the extent that the emplacement of mines leaves room for a safe passage of ships of nonbelligerent States, the minefields are appropriately published, and the fields are kept under permanent surveillance and meet the applicable international rules on marine warfare may the resulting restrictions on the freedom of navigation be justified. The rules provided on that point in the *San Remo Manual* fail to meet these criteria fully. It reads: "The

mine-laying States shall pay due regard to the legitimate uses of the high seas by, inter alia, providing safe alternative routes for shipping of neutral States.”

This provision does not—as does the one on zones of exclusion—adequately reflect that restrictions imposed upon the freedom of navigation of ships of nonbelligerent States on the high seas should be regarded as an exception which needs particular justification. The restrictions imposed upon third States have to meet a double standard. First, they have to conform to the rules of warfare at sea; as the rules of warfare already restrict indiscriminate attacks, this must be even more true if ships of nonbelligerent States are made the target of an attack. Additionally, military activities must not restrict the freedom of navigation in an unreasonable manner.

One further aspect should be taken into consideration. Sea mines may result in a negative change of the marine environment to the extent that they constitute a hindrance to marine activities in the respective area. In this context, note should be taken of the fact that Article 192 of the LOS Convention obliges all States to protect and to preserve the marine environment. Might this obligate States concerned to remove sea mines? This possibility deserves further consideration.

Conclusion

As indicated at the outset of this article, one may wonder whether an area designed for the common use of the community of States may be appropriately used by certain States for activities which by their very nature exclude or at least severely restrict the use by other States. That the Third United Nations Conference on the Law of the Sea avoided issues relating to naval warfare does not preclude the Convention from having an impact thereon. Under the modern doctrine of international law, one cannot distinguish between the international law of peace and the international law of war sufficiently to conclude that the former does not apply in times of war. It is even doubtful whether such an approach was accepted under international law before the Second World War. Apart from that, and with respect to the questions dealt with in this article, one should not forget that the UN Convention on the Law of the Sea is a law-making treaty,⁵⁰ which is not meant to deal with the relationship between particular parties but rather to establish a legal order for the utilization of the sea. Such order prevails in times of war at least for the nonbelligerent States. Accordingly, the rights nonbelligerent States have under this order are not meant to be restricted by the fact of war. Even under the rules of neutrality, belligerent States are under an obligation not to infringe

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unnecessarily the rights of nonbelligerent States. In this respect, one may even invoke a main principle of humanitarian law referred to earlier, namely, that in a conflict indiscriminate attacks are to be avoided. What applies to the civilian population or protected objects of a party to a conflict should certainly be applicable in favor of nonbelligerents, as well as their nationals. Therefore, under the new rules governing the use of the sea it might be worthwhile to reconsider D.P. O'Connell's hypothesis, set forth above, that military activities at sea are limited to the zones under the jurisdiction of the parties to the conflict, whereas military activities on the high seas are limited to the ones necessary in direct and immediate self-defense.

Notes

1. See, in this respect, HEINTSCHEL VON HEINEGG, *SEEKRIEGSRECHT UND NEUTRALITÄT IM SEEKRIEG* 235 ff. (1995), although the declaration made by Brazil upon signature and ratification of the LOS Convention refers to the "maritime areas under the sovereignty or jurisdiction of the coastal State" (Law of the Sea Bulletin No. 5, July 1985, at 6; No. 25, June 1994, at 11) and, thus, has no relevance for the high seas.

2. HEINTSCHEL VON HEINEGG, *supra* note 1, at 226 ff. Particular reference is made to a statement made by the U.S. government vis-à-vis North Vietnam on August 3, 1964:

United States ships have traditionally operated freely on the high seas, in accordance with the rights guaranteed by international law to vessels of all nations. They will continue to do so and will take whatever measures are appropriate for their defense. The United States Government expects that the authorities of the regime in North Viet-Nam will be under no misapprehension as to the grave consequences which would inevitably result from any further unprovoked. . . .

3. O'Connell, *International Law and Contemporary Naval Operations*, 44 BRIT. Y.B. INT'L L. 19, 82 (1970). Ronzitti, *The Crisis of the Traditional Law Regulating International Armed Conflicts at Sea and the Need for Its Revision*, in *THE LAW OF NAVAL WARFARE*, 1, 5 (Ronzitti ed., 1988), states in this respect:

Therefore, practice shows a tendency to confine naval operations to areas close to the coast of belligerents and even to their territorial waters. However, it is difficult to say whether this practice is dictated by a legal conviction to do so or by considerations of advantage, as, for instance, when belligerents have limited naval capability.

4. See HEINTSCHEL VON HEINEGG, *supra* note 1, at 229 ff.

5. Halkiopoulos, *The Interference between the Rules of the New Law of the Sea and the Law of War*, in *A HANDBOOK ON THE NEW LAW OF THE SEA* 1321 (Dupry & Vignes eds., 1991).

6. HEINTSCHEL VON HEINEGG, *supra* note 1, at 236. A more cautious view is that of Rauch, *Military Uses of the Oceans*, 28 GERMAN Y.B. INT'L L. 229, 233 (1985). This author only states that the provisions of the Convention are not meant to regulate the law of naval warfare.

7. The wording of the clause varies to a certain extent. Article 143; 147, paragraph 2 (d); 155, paragraph 2; 240 (a); and 246 add the word "exclusively." However, this difference, compared to Articles 88, 141, and 242, does not justify a different interpretation.
8. 402 U.N.T.S. 71.
9. Taubenfeld, *A Treaty for Antarctica*, in INTERNATIONAL CONCILIATION, No. 531, at 262 ff. (1961), points out that the conclusion of such a far-reaching demilitarization clause was only possible because Antarctica was regarded to be of very limited strategic value.
10. Senator Engle, Hearings before the Committee on Foreign Relations, U.S. Senate, 86th Cong., 2d sess. June 14, 1960, at 5.
11. 2 L.N.T.S. 7.
12. 9 L.N.T.S. 217.
13. The best evaluation of the Soviet literature, which for a long period endorsed such an interpretation, is to be found in: RAUCH, POLITISCHE KONSEQUENZEN UND MÖGLICHKEITEN DER SEERECHTSENTWICKLUNG AUS DER SICHT DER UDSSR, BERICHT DES BUNDESINSTITUTS FÜR OSTWISSENSCHAFTLICHE UND INTERNATIONALE STUDIEN 21 ff. (1977).
14. 610 U.N.T.S. 205, 6 I.L.M. 386 (1967).
15. Dembling, *Principles of Space Law*, in MANUAL OF SPACE LAW 360 ff. (with further references) (Jasentuliyana & Lee eds., 1979).
16. Meyer, *Der Weltraumvertrag*, 16 ZEITSCHRIFT FÜR LUFTRECHT UND WELTRAUMRECHTSFRAGEN 65, 69 (1967); FAWCETT, INTERNATIONAL LAW AND THE USES OF OUTER SPACE 34 (1968).
17. Stein, *Legal Restraints in Modern Arms Control Agreements*, 66 AM. J. INT'L L. 255, 261 (1972), Wolfrum, *Restricting the Use of the Sea to Peaceful Purposes: Demilitarization in Being?* 24 GERMAN. Y.B. INT'L L. 200, 202 (1981).
18. As to the development of such clause, see Vukas, *Peaceful Uses of the Sea, Denuclearization and Disarmament*, in Dupuy & Vignes, *supra* note 5, at 1233, 1235 ff.
19. U.N. Doc. A/CONF. 62/WP.8/Rev.1.
20. Informal Single Negotiating Text - U.N. Doc. A/CONF.62/WP.8; Zedalis, "Peaceful Purposes" and other Relevant Provisions of the Revised Composite Negotiating Text: A Comparative Analysis of the Existing and the Proposed Military Regime for the High Seas, 7 SYRACUSE J. INT'L & COMP. L. 1, 18 (1979).
21. U.N. Doc. A/AC.138/53: "International Ocean Space shall be open to use exclusively for peaceful purposes by all States, whether coastal or landlocked, without discrimination in accordance with the provisions of this Convention."
22. A/Res.2749 (XXV), para. 5, which, however, only referred to the seabed.
23. In Doc. C.2/Informal Meeting/55, March 20, 1980, Peru, one of the cosponsors introduced a similar proposal as a drafting change. Text in UNCLOS III (1st series, vol. V) 66 (Platzöder ed.).
24. Rauch, *Militärische Aspekte der Seerechtsentwicklung*, in ASPEKTE DER SEERECHTSENTWICKLUNG 75, 80 ff. (Vitzthum ed., 1980) (with further arguments); Wolfrum, *supra* note 17, at 214; Vukas, *supra* note 18, at 1238.
25. Article 301 of the LOS Convention reads:

In exercising their rights and performing their duties in accordance with the provisions of this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.

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26. GP/1, 21 March 1980: "In exercising their rights and performing their duties in the different zones of the ocean space all States shall refrain from any threat of use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations." Informal proposal by Costa Rica, Ecuador, El Salvador, Pakistan, Peru, Philippines, Portugal, Senegal, Somalia, and Uruguay. Text in Platzöder, *supra* note 23, at vol. V, 60.

27. For details, see Supplementary Report of the President on the Work of the Informal Plenary, U.N. Doc. A/CONF.62/L.53 Add. 1, para. 6.

28. For further details, see Wolftrum, *supra* note 17, at 215.

29. *Id.* at 215.

30. Oxman, *The Regime of Warships under the United Nations Convention on the Law of the Sea*, 24 VA. J. INT'L L. 831 ff. (1984); Kwiatkowska, *Military Uses in the EEZ—A Reply*, 11 MARINE POLY 249 (1987); Treves, *La notion d'utilisation des espaces marins à des fins pacifiques*, 26 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 687 (1980).

31. Fenrick, *The Exclusive Economic Zone Device in the Law of Naval Warfare*, 1986 CAN. Y.B. INT'L L. 91, 93; Heintschel von Heinegg, *supra* note 1, at 255.

32. See also *supra* Art. 147, para. 3, LOS Convention.

33. Lowe, *The Laws of War at Sea and the 1958 and 1982 Conventions*, 12 MARINE POLY 286, 294 ff. (1988).

34. Defined as "activities of exploration for, and exploitation of, the resources of the Area" (Art. 1, para. 3, LOS Convention).

35. SCHENK, SEEKRIEG UND VÖLKERRECHT 69-75 (1958). For a more detailed account of the establishment of zones of exclusion, see 2 OPPENHEIM, INTERNATIONAL LAW, (Disputes, War, and Neutrality) 678-684 (H. Lauterpacht ed., 8th ed. 1955); 2 O'CONNELL, THE INTERNATIONAL LAW OF THE SEA (Shearer ed., 1984); Halkiopolous, *supra* note 5, at 1326; Zemanek, *War Zones*, 4 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 337, 338 (1981-1989).

36. For further details, see Halkiopolous, *supra* note 5, at 1327; O'CONNELL *supra* note 35, at 1111-12; HEINTSCHEL VON HEINEGG, *supra* note 1, at 447 ff.

37. As to more recent examples, for instance in the Gulf War, see HEINTSCHEL VON HEINEGG, *supra* note 1; LEVIE, MINE WARFARE AT SEA (1992).

38. See, in this respect, the Preamble, which states in its fourth paragraph:

Recognizing the desirability of establishing through this Convention, with due regard to the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication.

39. Zemanek, *supra* note 35; opening a wider range of possibilities for military action, Lagoni, *Gewaltverbot, Seekriegsrecht und Schiffahrtsfreiheit im Golfkrieg*, in FESTSCHRIFT WOLFGANG ZEIDLER, 1833, 1855 (1987); see also Fenrick, *supra* note 31, at 122.

40. HEINTSCHEL VON HEINEGG, *supra* note 1, at 464 ff.; Zemanek, *supra* note 35, at 338.

41. SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA (Doswald-Beck ed., 1995).

42. For further details, see LEVIE, *supra* note 37, at 41 ff., 177; Hoog, *Mines*, 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, *supra* note 35, at 284.

43. For details, see LEVIE, *supra* note 37, at 9 ff.

44. For details, see *id.* at 23 ff.

45. 1948 I.C.J. 15, 22.

46. 1986 I.C.J. 1, 112, § 215.
47. 1986 I.C.J. 266, 368, § 234 ff.
48. 955 U.N.T.S. 115. For an analysis, see Wolfrum, *supra* note 17, at 220 ff.
49. See the analysis of HEINTSCHEL VON HEINEGG, *supra* note 1, at 393 ff. (with further references).
50. 1 OPPENHEIM, INTERNATIONAL LAW (Peace) 1203 ff. (Jennings & Watts eds., 1992).