International Maritime Legislation Regulating Military Operations and Activities at Sea

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Military activities and naval operations conducted in oceans and maritime zones in peacetime are characterized by a variety of functions normally performed by navy vessels. First and foremost, military vessels have the legal authority to control the legal compliance of national subjects that perform their activities in maritime zones under state jurisdiction. In addition, military vessels ensure the inviolability of the integrity of territorial waters, which are legally considered part of the territorial integrity of the state, from attacks or armed conflicts. Furthermore, military and naval vessels often engage in maneuvers and combat exercises in international waters, which have a substantial impact on the freedom of navigation of foreign ships in the region, and often have a negative effect on the relations of the state carrying out these activities with other coastal states, which may feel threatened by foreign military presence. The third function ties in with Lord Grey's saying that diplomacy without military force is like an orchestra without musical instruments, whish especially refers to powerful maritime states using military vessels to demonstrate their influence and power in the international stage. In terms of maritime law and legislative jurisdiction, analyzing the operation and activities of military vessels is of utmost importance as they promote maritime security on the one hand, but can also lead to regional and global conflict. In the light of these considerations, this study analyzes both the naval operations and activities of military vessels in oceans and maritime zones which are considered strategically important for the national interests and security of coastal states, and their potential impact on international maritime law, the international system, and potential maritime conflicts.

KEY WORDS

~ Military vessels,
~ Naval operations,
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~ Use of force.

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1. INTRODUCTION

The conceptual discrepancy between the norms of the international Law of the Sea and the national interests and security of states escalated particularly in the period of codification and consolidation of customary maritime law norms in the 20th century. This situation was widely reflected in the codification of these norms by the United Nations in the 1960s-1980s, when the importance of freedom of navigation to powerful maritime states led to fierce inter-state disputes over the definition of the breadth of territorial waters. The issue of the passage of military vessels through certain maritime zones, reflected in the legal notions of innocent passage, transit passage, and freedom of navigation through archipelagic waters, was another legally acute conflict situation that made it difficult to reach inter-state agreements on the formulation of the relevant legal norms expressed in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The legislative impact of the decision of the International Court of Justice (ICJ) in the Corfu Channel Case concerning the adoption of these legal norms should not be underestimated in this context. In this case, the ICJ was confronted with a very sensitive and critical situation, that had emerged in the aftermath of the Second World War, when security issues for coastal states such as Albania, and the issue of the freedom of navigation for maritime superpowers such as England, represented an absolute priority. The Court relied on the general and recognized principles of civilized nations, like the right of innocent passage of warships in peacetime and the obligation of coastal states not to allow the performance of any actions in their maritime territory that conflict with the rights of other states[1]. The ICJ ruling on the exercise of the right of innocent passage by warships in peacetime was later incorporated into UNCLOS (1982)[2]. The concept of the freedom of navigation or the innocent passage of military vessels through the territorial waters of other states, considered by the ICJ to be a general principle of law with special legal status in international law, can be regarded as a fundamental concept for the interpretation of legal norms on this subject. Nevertheless, the aforementioned legal concept is generally considered problematic, as it can lead to legal ambiguities in international law, the interpretation of which has led to numerous international disputes. In this respect, the legal analysis in this study consists of deliberations on the impact of the Law of the Sea on military operations, the role of UNCLOS 1982 in this crucial matter, the legal involvement of the UN in military activities at sea, as well as on the legal doctrines of the use of force and the right to self-defense, concluding with final remarks.

2. THE EFFECTS OF THE LAW OF THE SEA ON MILITARY OPERATIONS

Like any other legal system, the Law of the Sea aims to prevent the use of force by its subjects to resolve their disputes and conflicts. As established by the ICJ in the Nicaragua v. United States and expressed in ICJ Report 14, 1986, these rules encompass some of the most fundamental and important international obligations. The primary obligation of peaceful resolution of conflicts is, according to the legal philosophy of the ICJ, generally recognized as an incontrovertible legal principle (jus cogens) in the international community. Nonetheless, subject matter of the Law of the Sea is considered one of the most challenging in the international legal system. Although states in the international system accept the notion that the use of force is impermissible in theory, there is still considerable disagreement about the specific circumstances in which it can be lawfully used. Of course, this concept is not unknown to the international system as armed forces play a central and indispensable role in international relations. However, it is undeniable that many states are not willing to give up their ability to resolve disputes by force in favor of an international system in which disputes are resolved on the basis of legal principles and international law. The Russian invasion of Ukraine in 2022 proved that the principle of the use of force still prevails and is applied in practice.

The US naval quarantine imposed in response to the Cuban Missile Crisis in 1962, which threatened to trigger an armed conflict on an international scale, brought this concern to the fore. When states with large military capabilities feel powerful enough, legal norms, whether based on the legal concept of self-defense or the law of war and neutrality, can no longer be seen as a comprehensive and effective mechanism to contain their actions[3]. The United States was neither mandated nor authorized by the UN Security Council and did not

[1] International Court of Justice: Corfu Channel (*United Kingdom v Albania*) *ICJ Rep 4*, (1949): 22.
[2] International Court of Justice: Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v United States*) *ICJ Rep 14,* 111-112.
[3] Churchill & Lowe, *The Law of the Sea,* 426.

apply the norms of the Geneva Conventions on the Law of the Sea (1958) before taking action to enforce the naval quarantine of Cuba to prevent the transfer of nuclear missiles from the Soviet Union by merchant vessels to that island state. The Organisation of American States approved the conduct of this military action by the United States, but this approval did not confer legitimacy or legal right to its military actions, nor was the alleged threat to the United States considered an immediate and direct danger that would have allowed this powerful maritime state to exercise its universal right of self-defense[4].

In his address to the American people on 22 October 1962, president Kennedy emphasized that the imposition of maritime quarantine on Cuba was consistent with the principle of self-defense in international law, as US action was justified by the protection of America's national security and that of the entire Western Hemisphere[5]. Assuming that the Soviet missiles in Cuba did indeed pose a threat to the United States, the question arises as to whether this threat was so great as to justify a naval blockade of Cuba under the recognized international law doctrine of self-defense. Nevertheless, by imposing the quarantine on Cuba, the United States violated Article 2 of the 1958 Convention on the Law of the Sea, which provides for freedom of navigation. Article 2 of this convention states that international waters are open to all states for their free use and that no state may exercise jurisdiction or sovereignty over these waters and thus over the persons using this maritime area. All coastal and landlocked states have the right to free navigation and fishing, to lay submarine cables and pipelines, etc. However, the terminology and description of this article are considered legally ambiguous and could be interpreted broadly, affecting the implementation of this unilateral action by the US[6]. Regarding the legal concepts of the UN Charter, it should be noted that the legal provisions on the quarantine of Cuba correspond to those of Article 2(4), which stipulates that in the conduct of their international relations all states must refrain from threatening to use or using force against the territorial integrity or political independence of any member of that organization or in a manner otherwise inconsistent with the legal provisions and purposes of the UN. However, this legal provision can also be considered ambiguous from the legal perspective and is open to interpretation. Therefore, some American lawyers have justified the quarantine of Cuba with the legal principle of deterrence by war, which can be seen as a form of threat to the territorial integrity and political independence of the United States[7].

Although international law, according to various states, does not provide an appropriate, valid and binding legal mechanism for the peaceful resolution of disputes and the penalization of entities and state actors that tend to disrupt international peace and security, the Law of the Sea, as reflected in UNCLOS (1982), establishes important legal norms that dictate rules for inter-state conflict resolution on issues such as the use and exploitation of the oceans' natural resources. In this context, this Convention can be considered as the main international legal instrument regulating the conduct of States in connection with the use and exploitation of the oceans and contributing to the productive development and consolidation of international relations. The importance of this international treaty in the context of international relations can therefore not be underestimated. The same principle applies to the impact that this Convention has on inter-state political and economic relations, which are crucial to the international system[8]. UNCLOS is considered a treaty with a global constitutional character that establishes the rights and obligations of states and other international actors in various maritime domains with regard to human activities in the oceans. The importance of UNCLOS lies not only in the legal control and legislative jurisdiction over human activities in the oceans, but also in the procedures established for the settlement of inter-state disputes over competing claims to the vast natural resources of the oceans[9]. This Convention is considered one of three international treaties that establish binding legal standards for disputes arising from the interpretation and implementation of this legislation. International disputes are usually resolved through diplomatic channels and can only be settled in court, by formal mediation or arbitration with the consent of the parties involved. In this context, the adoption of an international treaty that contains legal mechanisms for the compulsory adjudication or arbitration of interstate conflicts related to the exploitation of

[4] Churchill & Lowe, *The Law of the Sea,* 426.
[5] Standard, W. L. "The United States Quarantine of Cuba and the Rule of Law," *American Bar Association Journal*, Vol. 49, No. 8 (1963): 745-47.
[6] Standard, "The United States Quarantine of Cuba and the Rule of Law," 745-747.
[7] Standard, "The United States Quarantine of Cuba and the Rule of Law," 746-747.
[8] Klein, N. (2009). *Dispute Settlement in the UN Convention on the Law of the Sea,* Cambridge University Press, 1-3.
[9] UN (1982). *United Nations Convention on the Law of the Sea.* UN Publishing, London, UK, Part XV.

natural resources, which are hugely important to the economy, security and politics of various states in the international system, is considered a fundamental departure from the standard legal norms of international law[10].

3. UNCLOS (1982) IN THE CONTEXT OF MILITARY ACTIVITIES AT SEA

In the light of these considerations, it is important to emphasize that UNCLOS was adopted primarily to regulate maritime matters in peacetime, not during armed conflict. The assumption that the scope and legal effect of the rights and obligations set out in this Convention can be modified or suspended (annulled) in time of war is problematic and controversial for the international system, additionally complicated by the ambiguities that characterize the international law of war. This does not mean that all maritime activities carried out by military vessels are considered equally problematic from the legal perspective. The lawful use of military or state vessels in everyday oceanic activities such as the prevention of illegal fishing, violations of tax and customs laws or threats to the national security of coastal states in territorial waters and the Exclusive Economic Zone (EEZ) are obviously governed by UNCLOS. After the Second World War, a comprehensive international practice of the use of force in the oceans and maritime zones emerged. While the military-maritime aspects were very carefully adopted and developed during the Vietnam War, to minimize their impact on non-military activities and avoid military action in international waters, subsequent armed conflicts have had an impact on states and international actors not involved in these global crises. This is particularly true for the armed conflict over the Falkland and Malvinas Islands between Argentina and the UK in 1982 and the Iran-Iraq war in 1980-1988[11]. Both armed conflicts, as well as the bombing of Tripoli by US forces during the 1986 naval conflict over the jurisdiction of the Gulf of Sidra, have been labelled in the field of international relations as immediate crises caused by random and immediate events, very short in duration and difficult to foresee by the international community[12].

Direct and indirect legal references in UNCLOS to military operations with regard to the use of the oceans and maritime zones promote effective and comprehensive norms suggesting that military-naval operations are generally not incompatible with the legal concept of the peaceful use and exploitation of the oceans. Military capabilities can be used to ensure the implementation of international legal norms that protect the rights and sovereignty of coastal states, the exercise of the right to self-defense under general international law, and the conduct of individual or joint military operations to maintain peace and security on the basis of the UN Charter[13]. Many UNCLOS provisions aim to improve the safety of military operations at sea, balancing the interests of coastal states with those of states having military-maritime interests and ambitions. In this context, it is important to note that the US, which is both a coastal state and a state with military-maritime interests, refused to sign UNCLOS not because its national security interests were not sufficiently protected by the Convention, but because it had serious legislative reservations about the legal provisions of Part XI regulating the seabed and the use of advanced maritime technologies[14].

In the context of UNCLOS, Article 29 establishes the legal elements of the legal concept of "warship" and contains a general definition of the objectives of the Convention in this area. Transit and navigation through archipelagic waters are considered legal norms that are sensitive due to their potential impact on military operations, and recognizing the right of military vessels to transit through these waters with the same status as merchant ships was considered important for states with strong maritime capabilities[15]. Similarly, the freedom of navigation of military vessels in international waters, including the EEZ, was fundamental to the global acceptance of the above legal regime. UNCLOS also brings important developments in the field of international law, which apply to peacetime military operations, including the responsibility of flag states for any loss or damage to coastal states resulting from the non-compliance of foreign military vessels with the national laws of coastal states concerning passage through their territorial sea[16].

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[10] Klein, *Dispute Settlement in the UN Convention on the Law of the Sea,* 22-24.
[11] Churchill & Lowe, *The Law of the Sea,* 421.
[12] Nathanaili, P. (2011). *Krizat dhe Marredheniet Nderkombetare,* Cikel Leksionesh per Marredheniet Nderkombetare, Fakulteti i Historise dhe Filologjise, 3-4.
[13] Rothwell, D. R. & Stephens, T. (2010). *The International Law of the Sea,* Hart Publishing: Oxford, 266.
[14] Borgerson, S. G. The National Interest and the Law of the Sea, *Council Special Report No.46*, Council on Foreign Relations Publications, May 2009, 22-27.
[15] UN, *United Nations Convention on the Law of the Sea*, Articles 39 and 53.
[16] UN, *United Nations Convention on the Law of the Sea*, Articles 31 and 236.

Among the many issues that reflect the impact of the Law of the Sea on military activities and, consequently, on relations between different states with maritime interests, two can be considered the most important. The first issue is related to the establishment of the EEZ regime based on the legal norms of UNCLOS. The main problem is that, despite the fact that freedom of navigation, overflight and other lawful activities of military vessels are enshrined in the EEZ legal provisions of UNCLOS (Articles 58 and 87), it is not legally clear whether military maneuvers, exercises and the use of combat weapons in this maritime zone are considered permissible on the basis of the norms of the Convention. In view of the great importance of armed forces for the national interests of states, it remains to be seen how this legal issue, which could lead to international crises, is to be resolved by the international system in the future.

The second problem pertains to the installation of electronic surveillance equipment in certain marine and oceanic regions, such as the US sonar detection system installed along the continental shelf, in the North Sea and in the Mediterranean[17]. These devices can be considered as maritime structures that are covered by the legal provision of Article 60 of UNCLOS, which gives coastal states the exclusive right to authorize or not to authorize the construction and use of structures and installations in the EEZ that affect the exercise of its sovereign rights in this area. Maritime experts are of the opinion that maritime powers will continue to install and operate electronic maritime surveillance equipment in the EEZs of foreign states despite international maritime law which generally prohibits the installation of such equipment. In this respect, it should be noted that this situation creates the conditions for conflicts or tensions between different states.

Several coastal states have taken the legal position in international organizations that military exercises and maneuvers by foreign states in their EEZs, including the use of combat weapons, are only permissible with the prior consent of the State having national jurisdiction over the maritime area. These coastal states rely on Article 301 of UNCLOS, which is considered elusive and ambiguous by many international legal experts. Bangladesh, Brazil, India, Malaysia, Pakistan and Uruguay have legally supported this initiative in declarations submitted to the UN in connection with the signing and ratification of UNCLOS (1982)[18]. Countries such as France, Italy, the Netherlands and the United Kingdom reject this legal interpretation, while the United States considers military-maritime operations, exercises and activities in the EEZ and in international waters as legitimate rights within the context of the lawful use of the oceans and seas[19]. Given the diversity that characterizes the evolution of state practices on this important issue, some authors, such as Churchill and Lowe, emphasize that there is no common universal legal interpretation of the relevant legal provisions of UNCLOS on the use of the EEZ for military purposes and that customary international norms do not unambiguously prescribe whether there are unlimited rights to conduct military operations in the maritime zones of the EEZ[20].

4. INTERNATIONAL STRAITS VS. TRANSIT PASSAGE OF NAVAL VESSELS

An important legal issue in the resolution of inter-state conflicts concerning the passage of military or naval vessels through international straits is determining what is meant by the concept of normal navigation (normal mode) of such vessels under Article 39 (UNCLOS) and whether the normal navigation of military vessels may, in view of their special nature, pose a threat to the national security of coastal States bordering the strait. Given the absence of clarification of this issue by the Law of the Sea, many actors in the international system have in certain cases resorted to the ICJ ruling in the Corfu Channel case, in which the court emphasized that the passage of British ships through the strait, equipped with military personnel on full alert and at battle stations with combat-ready weapons, still constituted a legitimate passage in view of the tensions between Albania and the United Kingdom at the time[21]. However, it is highly debatable whether the navigation of British military vessels, supported by the legal deliberations of the ICJ as a legitimate transit passage, can be applied to all

[17] Churchill & Lowe, *The Law of the Sea,* 427.
[18] UNDOALOS, United Nations Convention on the Law of the Sea: Declarations, cited in Rothwell and Stephens, *The International Law of the Sea,* 280.
[19] Roach R.W. & Smith, J.A. *Limits in the Sea: United States Responses to Excessive Maritime Claims*, No.112, (Washington D.C: U.S. Department of State Bureau of Oceans and International Environmental and Scientific Affairs, 9 March 1992), 411.
[20] Churchill, R. 'The Impact of State Practice on the Jurisdictional Framework contained in the LOS Convention' in *Stability and Change in the Law of the Sea: The Role of the LOS Convention*, ed., A. Oude Elferink (Leiden: Nijhoff, 2005), 135.
[21] International Court of Justice: Corfu Channel *(United Kingdom v Albania), ICJ Rep 4*, (1949): 31.

cases of transit passage by military vessels. This is particularly relevant for modern military vessels which possess the capability to rapidly launch missiles, carry and serve as landing strips for aircraft and helicopters, and use sophisticated military radars and sonars, as well as for modern identification and detection equipment used for defense purposes installed in the straits. All these legal issues are insufficiently (if at all) covered by UNCLOS provisions, increasing the possibility of misinterpretation of various problematic situations involving the threat to peace, security and order of the coastal states bordering straits on the one hand and the maritime states whose military vessels exercise the legal right of passage on the other.

Certain international straits are of paramount importance due to their strategic location, which makes the national interests of states even more sensitive to the legal restrictions that may be imposed on the passage of their ships through these straits. In the case of the Northwest Passage in the Canadian Arctic Archipelago, Canada has imposed a number of legal restrictions on foreign military vessels navigating through the strait[22]. While many of these restrictive legal standards do not apply to vessels with immunity, Canada is particularly concerned about nuclear submarines travelling through its strait. If the strait is legally considered international in the future, nuclear submarines will be allowed to navigate below the surface of the sea under UNCLOS; however, if the waters of the strait continue to be classified as Canadian internal waters, underwater navigation by submarines will not be legitimate[23].

This international issue remains legally and practically unresolved and repeatedly leads to diplomatic tensions between Canada and the USA and between Canada and the EU. Similar conflicts have also arisen along the northern coastal region of the Arctic Ocean, which is under Russian jurisdiction and where US submarines are alleged to have undertaken underwater navigation during the Cold War[24]. Further regional conflicts also arose from Yemen's decision to deny foreign military vessels passage through the international Bab el-Mandeb strait without its prior authorization or consent [25]. On the other hand, Iran claims that only UNCLOS member states have the right to transit through the Strait of Hormuz, prompting a reaction from the US, which has long opposed the ratification of this convention[26]. Interestingly, even countries such as Sweden and Denmark are calling for the Baltic Sea Strait, including the Øresund Strait, to be regulated by the region's historic international conventions, which provide for the taxation of military vessels travelling through certain straits in this important maritime area[27].

Recently, another international crisis arose in the Black Sea between Ukraine and Russia, affecting the peaceful use and exploitation of marine resources, peaceful transit and freedom of navigation of foreign-flagged merchant vessels (Articles 17, 45, 87 and 88) in this sensitive and strategic maritime area. In the light of these considerations, Turkey, as the main state actor with legislative jurisdiction and legal control over the Bosporus Strait, has practically and legally prohibited Russian warships (with some exceptions) from exercising the right of transit passage due to their involvement in the conflict. These legal measures taken by Turkey against Russian naval vessels as a belligerent party in the conflict were based on the international law of war, the special legal status of the Montreux Convention of 1936 (Articles 19, 20), the UN Charter and UNCLOS (1982). With regard to this problematic situation, it must be stated that the Ukrainian-Russian conflict in the Black Sea per se violates the core legal principles of international law, humanitarian law, the UN Charter (Article 1, Chapter VI) and the main legal values of UNCLOS on the resolution of international conflicts and interstate disputes by peaceful means and international legal mechanisms (Part XV).

5. LEGAL INVOLVEMENT OF THE UN IN MILITARY OPERATIONS AT SEA

The legal authority of the UN to intervene lawfully in matters considered to be a threat to international peace and security in general, and to maritime security in particular, is considered an important development in

[22] Rothwell, D. R. The Canadian-US Northwest Passage Dispute: A reassessment, *26 Cornell International Law Journal*, (1993): 331-372.
[23] Roach R.W. & Smith, J.A. *Limits in the Sea: United States Responses to Excessive Maritime Claims*, No.112, Washington D.C: U.S. Department of State Bureau of Oceans and International Environmental and Scientific Affairs, 9 March 1992, 339-353.
[24] Rothwell & Stephens, *The International Law of the Sea,* 273.
[25] Roach & Smith, *Limits in the Sea: United States Responses to Excessive Maritime Claims*, 289-299.
[26] UN Division for Ocean Affairs and the Law of the Sea, UNCLOS: Declaration from Iran; an assertion which was strongly rejected by the United States, cited in Roach and Smith, *Limits in the Sea,* 312.
[27] Rothwell & Stephens, *The International Law of the Sea,* 274.

international maritime law in the post WW2 period. The mandate of the Security Council to deal with such fundamental issues is enshrined in Chapter VII of the UN Charter. If the Security Council decides that certain situations of a global nature constitute a threat to international peace and security, it can bring resolutions on the basis of Articles 40, 41 and 42 of the UN Charter, setting out recommendations or legal norms for dealing with these issues. The measures that may be taken, excluding the use of military force, are listed in Article 41 and may include measures to protect the seas, such as imposing trade sanctions in particular maritime zones and oceans. Similarly, Article 42 of the UN Charter authorizes the implementation of measures such as the use of force and military blockades, including military-naval operations in various oceanic regions[28].

In both cases, the naval forces of UN member states may be involved in the implementation and enforcement of the legal norms contained in Security Council resolutions. While the Security Council imposed some sanctions of a maritime nature prior to the 1990s, the bulk of UN jurisprudence on this issue has been adopted since the end of the Cold War and particularly in the context of the armed conflicts in Iraq (1990-2003), the former Yugoslav Republic of Macedonia (1992-1993) and Haiti (1994)[29]. Armed conflict in Iraq is highly relevant in the context of the effect of international maritime legal norms on the resolution of crises and armed conflicts within the context of the United Nations, as it was the first demonstration after the Cold War of the effective and overriding authority of the legal norms enshrined in the UN Charter.

The implementation of maritime security measures in the Persian Gulf in the 1990s, based on the relevant legal provisions of the UN Charter, enabled the successful implementation of economic sanctions against Iraq by blocking the maritime transport of Iraqi oil to other countries. These measures included a comprehensive legal dimension of a maritime nature. In this context, Security Council Resolution 665 (1995) states that "Member States cooperating with the Kuwaiti Government which have naval forces in the region are called upon, under the authority of the Security Council, to use the necessary measures to stop all vessels entering and leaving the maritime area in order to inspect and verify their cargo and destination, and to ensure the implementation of the relevant provisions set out in Resolution 661." The above-mentioned resolution formed the legal basis for conducting UN-mandated operations against illegal maritime transport and vessels navigating in the vicinity of the Iraqi coast, including the Red Sea and the Persian Gulf, for 13 years. At times, the number of naval forces of UN member states involved in maritime operations to enforce economic sanctions against Iraq totaled to 95 military vessels from 18 different UN member states[30].

Following the launch of a deactivated nuclear missile by North Korea into the Sea of Japan in 2009, which caused great concern in the international community about North Korea's nuclear capabilities, the Security Council increased the number and effectiveness of sanctions against this state[31]. Resolution 1874 (2009), adopted for this purpose, not only mandated member states to take action against their vessels engaged in illicit trade with North Korea, but with the consent of the flag state, UN military vessels could inspect foreign vessels in international waters if they had credible information that these vessels were carrying legally prohibited cargo[32]. Flag states that did not authorize the inspection of their ships in international waters should allow these ships to enter national ports so that state authorities can carry out the appropriate inspections and controls. The effect of these UN measures is that they authorize UN member states to apply the legal concept of the right of visit laid down in Article 110 (UNCLOS) in a limited manner. In this context, legal norms of a maritime nature formulated by the Security Council can clearly have a considerable influence on inter-state relations within the international system. The restriction of maritime trade in cargoes subject to UN sanctions against North Korea and in particular Iraq, which also holds a significant portion of the world's oil reserves, has led to financial losses for states, resulting not only in changes in the economic policies of certain states, but in some cases also in the violation of embargo rules and the emergence of inter-state tensions.

The case of the Syrian civil war reflects the complexity of international disputes quite well and brings to light the contradictions between the alliance between the US and the EU, which calls for strict economic-political sanctions and military intervention against Syria, and Russia, which does not respect the decision of other states, violates embargo sanctions and supplies weapons to the Syrian army and government. On the other hand, certain UN norms and resolutions that limit the legal concept of freedom of navigation in international waters, which is strongly promoted by the United Nations Convention on the Law of the Sea (UNCLOS) and customary

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[28] Rothwell & Stephens, *The International Law of the Sea,* 276.
[29] "UN Security Council Resolution 787" (1992), (12); "UN Security Council Resolution 820" (1993) (22).
[30] McLaughin, R. "United States Mandated Naval Interdiction Operations in the Territorial Sea," 51 *International and Comparative Law Quarterly 249* (n 123), (2002): 261.
[31] Rothwell & Stephens, *The International Law of the Sea,* 277.
[32] "UN Security Council Resolution 1874" (2009), (12).

sea law, have also created political issues which could lead to disputes between states over the control and blockade of their flag vessels, which are often unreasonably stopped and inspected by military vessels of maritime powers such as the US, UK, France, etc.

In 2003, in view of international developments regarding terrorism and the use of nuclear weapons, President Bush proposed that the Security Council adopt a resolution addressing the above issues. The Security Council then formulated Resolution 1540 (2004)[33]. The resolution contains a series of legal measures that states should take to combat the use and proliferation of weapons of mass destruction (nuclear, chemical and biological), including their transport by sea, which is considered a threat to international peace and security. The resolution calls on states not to support non-state actors that acquire or seek information on weapons of mass destruction and to take measures to prevent the production of such weapons on their territory. Resolution 1540 (2004) also emphasizes that states should cooperate, on the basis of national legal authorities, national legislation and international law, to take preventive measures against illicit trafficking in nuclear, chemical and biological weapons, their means of transport and related materials.

6. USE OF FORCE AT SEA AND THE RIGHT TO SELF DEFENSE

In the international system, there are two different views on the impact of the Law of the Sea on armed conflicts or international crises. The first view, held by the majority of actors in the field of international relations, reflects the opinion that the use of military force can at present only be legally authorized by the Security Council or the General Assembly of the United Nations on the basis of UN Resolution "United for Peace" or otherwise on the basis of the traditional customary right to self-defense, which is legally reflected in Article 51 of the UN Charter. The second view, regardless of the legitimacy of the use of force in international relations, reflects the opinion that armed conflicts should be governed by the law of war and neutrality when the use of force is on a large scale[34]. Evidence in favor of both positions can be found in international practice. During the Iran-Iraq War (1980-1988), the US adopted the legal approach of the customary law of war to define the rights and obligations of the parties involved in the conflict. On the other hand, in a similar armed conflict situation, the United Kingdom carefully circumvented the norms of the law of war by fully invoking the rights that the states involved in the armed conflict have under Article 51 of the UN Charter[35]. This legal position is an essential element of the influence that the international Law of the Sea exerts on military operations and international relations in general. For instance, on the basis of the customary law of war and neutrality, the parties involved in the conflict have the right to constantly stop and inspect all ships of neutral states in order to seize contraband or the ships themselves, while under Article 51 of the UN Charter the belligerents only have the right to stop and inspect ships that are reasonably and credibly suspected of illegally transporting weapons of the opposing state, without arresting these ships, but merely forcing them to change their destination[36].

The legal norms of international law that provide for the right of states to use force or the *ius ad bellum* can be divided into two categories. The first category comprises legal norms that regulate the use of military force by individual states or a number of states acting on their own initiative. Regardless of whether armed actions are carried out by individual states or a group of states, this legal concept is understood as a unilateral use of force[37]. On the other hand, there are legal norms that define the concept of the use of force by authorized international organizations such as the UN or NATO. This usually implies joint use of force, as it is based on the collective decision of a legally authorized international organization. As a rule, these armed actions involve a number of states, as was the case with the multinational military operation against Iraq in 1981 and the invasion of Kuwait in 1990, and essentially involve the use of force on behalf of all states in support of the common objectives of the international community. The difference between the unilateral and collective use of force therefore lies not in the number of states, but in the authority and purpose for which this force is used[38]. Regardless of the number of states involved, the first case is a situation resulting from a unilateral decision aimed

[33] Rothwell & Stephens, *The International Law of the Sea,* 278.
[34] Churchill & Lowe, *The Law of the Sea,* 422.
[35] Churchill & Lowe, *The Law of the Sea,* 422.
[36] US State Department, *Special Report No.166. US Policy in the Persian Gulf,* (Washington DC: US Government, 1987); See International Court of Justice: Nicaragua Case (1986) *ICJ Report 12*, 112.
[37] Dixon, M. (2010). *E drejta Nderkombetare,* Instituti i Studimeve Nderkombetare Tirane, 404.
[38] Dixon, *E Drejta Ndërkombëtare,* 405.

at the objectives of the acting state or states, while the second case reflects the situation of a decision taken by an authorized and legitimized international organization in the interest of the international community as a whole.

The Persian Gulf War (1980-1988) between Iraq and Iran raised many legal issues regarding the use of military force. One of the main concerns was the use of force in defense of foreign flag ships. During the final months of the conflict, attacks on ships of neutral states escalated, ship-owners began to register their ships under the flags of United Kingdom and the United States in order to secure maritime protection from their warships stationed in the Persian Gulf. This practice, which could have serious military and political implications if it were to continue on a large scale, raised issues about the true factual connection between the ship and the flag state, as well as the right or duty of warships to protect foreign merchant ships from attacks by belligerents. This controversial issue remains legally unresolved. Another recent similar case is the Russian-Ukrainian maritime confrontation in the Black Sea (2022-2025) where the military operations of belligerents have had an impact on foreign flag merchant ships exercising their right to freedom of navigation in that maritime zone. In this respect, the so-called Russian shadow maritime fleet has registered many Russian flag tanker ships in other open registry countries to circumvent EU and US sanctions and embargo, due to the absence of UNCLOS legal provisions that regulate this legal vacuum, while the UN Convention on the Conditions of Registration of Ships (1986), adopted specifically to provide a solution to the legal jurisdiction on the specific issue, has not yet entered into force due to interstate disputes of an economic and political nature. Historically, this particular situation has contributed to the emergence of tensions between states such as Panama, Liberia and Cyprus, which allow the registration of foreign ships despite the fact that there is no physical or legal connection (genuine link) between the states concerned and the ship, and states such as Germany, the United Kingdom, Japan and the United States, which have traditionally not favored the transfer of their commercial ships to the open maritime registers of these states. To avoid a diplomatic crisis between two opposing camps, which held opposing views on this issue important for their national economies, in 1960, the IMO requested an advisory opinion from the ICJ regarding this interstate conflict of a legal nature, and international implications for states[39].

Another important aspect of the impact of the Law of the Sea on the international system and inter-state relations is the legal issue of demilitarization and maritime areas prohibited for the use of nuclear weapons. Since the Second World War, the international system has been characterized by increasing pressure to demilitarize certain maritime zones that are regarded as the common heritage of mankind (res communes). In this context, Antarctica is considered one of the maritime zones subject to the normative provisions of the International Antarctic Treaty (1959), whose legal effect extends to the southern areas of the Pacific and Indian Oceans up to 60° south latitude[40]. Article 1 of the Treaty stipulates that Antarctica may only be used for peaceful purposes, and any activities of a military nature, such as the establishment of military bases and installations, the conduct of military maneuvers and the firing of military weapons, are prohibited[41]. Under the Antarctic Treaty, the conduct of any military operations in the South Pacific and Indian Oceans is prohibited. Argentina and the United Kingdom, signatories to the Treaty, adhered to its legal basis during the 1982 Falklands Conflict by not extending their military-naval operations beyond the oceanic boundaries defined in the Treaty[42]. In an effort to prevent the escalation of nuclear weapon detonations in the oceans, several multilateral treaties have been adopted that prohibit states from conducting nuclear tests in territorial waters, EEZs and generally in international waters near the coasts of Latin America, the Caribbean, the South Pacific, Southeast Asia and Africa[43].

7. CONCLUSIONS

[39] "International Maritime Organization," *Constitution of Maritime Safety Committee and IMO Council,* accessed November 23, 2024, http://www.imo.org/KnowledgeCentre/ReferencesAndArchives/Documents/CONSTITUTION%20OF%20THE%20MARITIME%20SAFETY%20COMMITTEE.pdf.

[40] Rothwell & Stephens, *The International Law of the Sea,* 281.

[41] "Secretariat of Antarctic Treaty", accessed November 25, 2024, http://www.ats.aq/e/ats.htm.

[42] Rothwell & Stephens, *The International Law of the Sea,* 281.

[43] Parish, S. "Nuclear Weapon Free Zone and Maritime Transit of Nuclear Weapons," in *The oceans in the Nuclear Age,* eds., Caron and Scheiber (Martinus Nijhoff Publishing, 2010), 337-351.

In conclusion, it must be emphasized that the violation of international Law of the Sea in the context of military operations can cause numerous issues in the international system for various coastal states, seriously affecting the process of inter-state cooperation and coordination in international relations. In addition to legal sanctions that can be imposed by international institutions such as the UN or the EU, states can also incur other political and economic costs. The loss of influence and trust resulting from violations of international legal norms can lead to a decline in foreign trade, the loss of foreign aid, or the blocking of bilateral or multilateral negotiations on issues of national importance. Many states may refuse to enter into intergovernmental agreements with other countries, if they have violated international law and regional or global treaties. As a result of the military intervention in Grenada, the United States lost influence and trust in the ranks of the non-aligned world, which had serious consequences for American policy in the Caribbean region. The same global phenomenon can be observed in the Russian invasion of Ukraine, as well as in the case of Argentina's military-navy intervention in the Falkland Islands, which affected Argentina's international relations on the world political stage, especially with the United Kingdom and its allies.

However, it is also important to emphasize that there are legal issues in international maritime law regulating the operations of military and naval vessels at sea. Although UNCLOS (1982) makes partial reference to military-naval operations in its provisions, they were formulated for peacetime situations and not for regional or international conflicts on the world's oceans. As analyzed in this study, these legal problems are due to the absence of this important military matter in the current legal framework, to misinterpretations of the legal provisions of the international maritime legislation and to the legal ambiguities that characterize the specific legal provisions of UNCLOS. On the other hand, the United Nations, through the Security Council, has adopted specific legal resolutions on the issue of military activities and operations at sea in the context of embargoes, economic sanctions, and naval blockades. However, these resolutions only have limited legal effect, are vague, and raise problems of interpretation. Furthermore, these resolutions are often subject to veto by certain member states of the Security Council, as international practice has shown in the past. In our opinion, a positive, rational and efficient legal approach to resolve these important issues peacefully is to conduct efficient and comprehensive analysis and evaluation of the international maritime legislation in relation to the operations and activities of military vessels at sea, adopt new norms, and improve on key legal provisions in the international legal framework to prevent conflicts or disputes between states.

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