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MILITARY ACTIVITIES IN SEA IN PEACETIME

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ABSTRACT: *This article deals with the military activities in sea in peacetime. This problematic issue has to been studied bearing in mind two central contextual factors: firstly, the Great Powers have raced throughout the history to have control over seas to expand their international supremacy; secondly, seas have gained more and more importance as major routes for global trade.In a legal perspective, we state the attempts to regulate the use of seas that came up in the late of the 20th century with the 1982 Convention for the Law of the Sea, insisting on the will of Great Powers to leave this issue without clear legal mechanisms keen on preserving their interests in sea.Our study presents, in one hand, the various military activities of seas in peacetime, and in another hand, the International legal procedures set up to rule those activities.*

KEY-WORDS: Military Activities, 1982 Convention For The Law Of The Sea, Mass Destruction Weapons, Freedom In High Seas Principle, Innocent Passage Principle, Demilitarized Zones.

QUESTIONS

-Shall militaries activities be allowed in seas in peacetime?
-What may be the classification of the different activities performed?
-Did the 1982 Convention of the Law of the Sea bring a solution to the question of military operation in seas in peacetime?
-Are the general principles of the 1982 Convention enough to solve this matter?
-What are the other mechanisms that may be applied to regulate those activities?

RESEARCH METHODOLOGY

This research is based on the qualitative research methodology, where the adopted methods to be used in achieving the objectives of research are the following:

- Descriptive research method.
- Analytical research method.
- Criticism of legal texts.

Justifications of choosing the methods:

- Where the research is purposed to deal with a specific legal agreement, the most reliable method to be adopted here is the analytical research method.

- The choice of the analytical method is attributed with the use of the descriptive research method, where one of the major aims that this research is trying to achieve is attached with the formal rules governing and organizing the chosen topic. And it also draws on the views of the scholars and the provisions of the judiciary in the positions of the relationship to the subject matter of the present research.

INTRODUCTION

With the entering to the modern epoch, seas have become gradually and more and more intensely an object of covet for great powers. Not only does the sea cover approximately three quarters of the Earth's surface, but also it plays a very important role in determining the future of mankind, considering its natural resources[1] which tempt both Great Powers and riparian countries, and its strategic position as a key route for global transferring. It means that controlling the sea ensure entire control of international trade routes, and it explains the motivation of most countries in the world to raise visions and design plans to guarantee them the supremacy of the most strategic sites in the sea.

In order to limit these ambitions, the International Law aimed at, and since its establishment, developing general legal principles to regulate the legal status of the sea. These efforts became manifest more clearly by the twentieth century[2] when a satisfactory agreement was found between the contending States to avoid any military conflicts that may occur between major countries racing to control the sea. These attempts, which appeared fragmented and shy, though, tried to resolve the legal status of a specific area in the sea in order to prevent war between old colonial powers, like the case of the Strait of Gibraltar, or the legal status of some marine channels. But time has shown that these efforts were unable to deal with all complicated issues related to the sea; it showed up the need for International Conventions to present a

[1] In this regard, Dr. Ghassan AlJundi mentions the following:" (...), and a billion of people in Asia depends on fish as their main source of protein in nutrition,(...) , and the sea mineral resources will be used more and more ,(…), also the sea used as way of the transportation where daily 46000 ship penetrates the sea daily that use around 4000 ports.(…)", *Bright Meteors in the Law of the Sea* , Dar Wael for Publication, Amman, i 1.2014, p.7.

[2] See the Resolution of the International Law Association for the year 1926 and 1927 and which can be summarized as "the laws of maritime jurisdiction in peacetime".

general perspective to resolve core issues about the sea and to avoid wars between the major powers.

Some attempts were made by the League of Nations through the Barcelona Convention in 1922 to guarantee the freedom of maritime traffic[3]; this would not have been achieved – at least partially, from the Researcher's point of view- only after the creation of the United Nations in the aftermath of World War II, which put forward the regulation of the legal status of the sea as a paramount of the International Organization concerns.

It is only after a short period that the fruits of these efforts began to materialize in the form of Resolutions of the United Nations General Assembly, and then of the 1958 United Nations Conference, which resulted in four agreements about the sea [4]; this was followed by the desire of the United Nations in developing an International Convention that would deal with most legal issues about the sea, that resulted in signing of the Montego Bay Agreement in 1982, considered to be the foundation of the Contemporary International Sea Law [5]. The analysis of the Convention leads to notices that the text has only dealt with the case of peaceful use of the sea during peace time; therefore, the 1982 Agreement raises a pressing question about the activities of a military nature in the sea during peace time, especially when the text of Article 88 about high seas mentions explicitly that high seas can be the locations only to peaceful activities.

To find an answer to this question requires analyzing two central issues; first, the study of the States practices and norms (First Chapter); then, the review of the International legal texts (Second Chapter). To understand the mechanisms of International Law of the Sea keeping in mind the idea of the peaceful use of the seas.

The use of the sea for military purposes.

Sea can be used for military purposes during time of peace and the most common uses are included in the following.

The use of the sea in military exercises.

States have the right to conduct military exercises in the seas which is a standard practice, and a stable and fixed marine norm. Frequently, every any month, the global news media would report bilateral or multi maritime military exercises[6]. According to the rules of Public International Law, a State has the right to develop its military marine forces in order to guarantee its self-defense. This is explained clearly in the San Remo Manual for Naval Warfare (1994), which provides for the right to the States to carry out a naval warfare in one of these

[3] See Salah al-Din Amr, *Introduction to the Study of Public International Law*, 2009 Dar al Nahda Al Arabia, Cairo , p 513.
[4] Mohammed Haj Mahmud, *The International Law of the Seas*, Dar Al-Thaqafa, Amman, Jordan , 2008, i 1 p. 40.
[5] The researcher will not prolong in this field in order to avoid getting out of his research subject and suggests the reader to refer to general books of International Law.

[6] For example, the military exercises carried out by both China and Russia on a regular basis in the month of April of each year, as well as military exercises carried out by NATO forces annually with the countries bordering on the Mediterranean Coast, and the same case for the Caribbean.

two cases: the first case is self-defense and the second one is the application of the decision of the United Nations Security Council based on Chapter VII of the Charter of the United Nations.

These military exercises can be carried out by the riparian State in its regional water individually or in cooperation with an allied State; in this case, the military exercises should be undertaken according to the riparian state's national sovereignty rules. In the case exercises are carried out on high seas legal rules must be applied; these have an international legal perspective. It is important to point out that these military exercises in high seas do not necessarily have hostile nature, as they may be in the field of development or of the cooperation between States fighting smuggling or illegal trade. The military exercises carried out by a riparian State in its regional water are restricted by two justifications: first, these exercises can be conducted only if the riparian State approves them and if they occurred against the riparian State's will, this is considered as a violation of both Public International Law and the principle of innocent passage, which Article 19 of the 1982 Sea Convention defines as : " Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: "(b) any exercise or practice with weapons of any kind, (…), (f) the launching, landing or taking on board of any military device". The agreement guarantees, then, the right of the riparian States to perform peaceful military exercises with its consent within its regional water and conducting military exercises is acceptable within riparian State's regional water.

It is a customary practice for the State willing to conduct military exercises within its allied State's regional waters to inform all civil and commercial ships to stay away from the area of the current military practice without effecting on the lines of international trade.The legal rules relating to military exercises in high seas are of a different nature, because they are based on the Principle of Freedom of Navigation on High Seas[7], through Article 87: "The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this convention and by other rules of international law, (…)". High seas are, in other words, open areas no state has control on[8], and, theoretically, this area can be used freely, but under certain conditions in the section of high seas freedoms [9]; it does not explicitly prevent the use of sea to military exercises, then, allowing military forces to practice non-harmful activities, which finally leads to allow military exercises in high seas, despite the fact that Article 88 states that: " The high seas shall be reserved for peaceful purposes "; a French jurist, P. Laurent Lucchini who commented the negotiations that took place insisted on the point that the use of the sea for peaceful purposes was discussed only in the fourth round talks of the Convention of the Sea, and in a restricted and partial way that took into account mainly the major powers' interests:"Ces discussions n'eurent pas le but de limiter les utilisations militaires de la mer. Elles débouchèrent sur la formulation de règles sur les aspects fondamentaux du droit de la mer qui donnent aux puissances maritimes la possibilité de mener des activités militaires

[7] It is one of the most important general principles that controls the rules of International Law of the Sea; a deeper analysis may show that this principle has been originated by the global maritime powers, who are taking benefit from the application of this principle, and especially at the beginning of the nineteenth century in order to remove any obstacle that could prevent the arrival of their ships to their remote colonies.
[8] In this regard, Abu Al-Wafa writes: "no state can claim sovereignty over the high seas. So it is not permissible for any state that would incorporate parts of the high seas to their controlled Naval Extensions," Abu al-Wafa Ahmed, The International Law of the Sea, Cairo, Dar al Nahda Al Arabia, p. 332.
[9] See Geneva Convention on the High Seas in 1958, especially Article 2.

qu'elles considèrent comme une condition indispensable pour pouvoir accepter une Convention sur le droit de la mer.[10] "

However, as stated previously, the Convention did not come up with a defined meaning of peaceful purposes; on the contrary, it conferred to the definition a negative sense, that is the absence of military operations between warring countries, and the only restriction on the countries is the respect of high seas freedoms within the Convention itself and in this field Dr. Hammoud Mohammed al-Haj writes " the Article 88 text has no meaning other than the formal application of some basic principles of the public international law and the Charter of the United Nations. This text does not frankly and directly restrict any military activities[11] ." Thus, the Article 88 is unenforceable for the following reasons : First, it allowed high seas to be a zone of Navy operations in time of war, which nowadays is not legitimate except in cases of self-defense or if based on a Resolution of the UN Security Council Chapter VII, according to what is stated in the San Remo Manual. The only restriction that applies to the conflicting parties in the high seas is " Hostile actions on the high seas shall be conducted with due regard for the exercise by neutral States of rights of exploration and exploitation of the natural resources of the sea-bed, and ocean floor, and the subsoil thereof, beyond national jurisdiction, (...), avoid damage to cables and pipelines laid on the sea-bed which do not exclusively serve the belligerents." The previous text shows clearly that peaceful use of high seas is practically worthless in time of war for the warring Parties. Moreover, it is the duty of States which look over at the international straits or international channels to avoid the impeding of the international navigation in any case in these international passages.

What has been described previously is what really happens in the case of military exercises in high seas and which is considered as a legal norm; a State or a group of States which decides to conduct a military exercise usually announces it in advance, and tries as much as possible to avoid the international trade routes[12], and finally establishes a safe area to prevent civilian vessels from approaching the area of military exercises, which implicitly let to accept these military exercises.

In addition to that, a State cannot oppose another State to carry out military exercises in the high seas - even if they are displeased and suspect about the nature of them- because high seas are subject to no state sovereignty. The only way to protest in the case of suspicion is to raise a complaint to the UN Security Council which will only look at the general situation, and this has hardly ever happened.

Perhaps it confirms what has been mentioned previously, which is stated in Article 30:" In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence

[10] "Les opérations militaires en mer", Revue Générale de Droit International Public, Paris, 1984, p. 10.

[11] Mahmoud Haj Mohammed, *op. cit.*, p. 430.

[12] An in-depth look at this principle shows that the powerful marine States such as Britain in the nineteenth and the twentieth centuries, and the United States currently, give great importance to it, since it allows them to secure their maritime trade lines, and to transfer their military means and mechanisms through the seas to the combat positions. This is for these reasons that the two States supported this principle in order to maintain their marine military superiority; historically, what entrenched the superiority of the British Navy is the famous Battle of Feltar at the beginning of the 19th century whose limited British fleet led by Winston on the " French Spanish " maritime coalition thereby ended Napoleon's ambition to control the seas.

of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations." But this text come with general point of view and no specific restriction, and leaving the matter of determining wither the state violated the concept of peaceful use to the UN Security Council which is responsible for the application of the sanctions in the first place .

Thus, we find that the States have stable norm to hold military exercises in the sea in time of peace, despite that these military activities are stranglehold over the principle of peaceful use of sea as well as the principle of ships innocent passage. In that respect, new military usages of the sea in time of peace, like the transferring of weapons of mass destruction needs to be studied.

The Transfer of Mass Destruction Weapons across the Sea.

In the specific case of transferring mass destruction weapons, the major countries take advantage of the Principle of the Freedom of the Seas and the Freedom of Shipping [13]using the sea to transfer these weapons. Although the customary international maritime law impedes a lot of military activities in the sea, it does not prohibit such use [14]. Thereby, the leading States, especially those exporting weapons like the United States, Britain, France, and Russia are the primary beneficiaries of this loophole, which allows them to transfer these types of weapon, either by their naval submarines or by their giant battleships, in order to control strategic areas in sea or to sell these weapons to other States. The failure of the international law to prohibit such military activities represents a great threat not only to the riparian States, but also to the marine environment and to the whole humankind too; as an example of such a danger, the tragic sinking of the Russian submarine "Roursk" in August 2003, which was a warning to the seriousness of this type of maneuvers. And at this time, many non-governmental Organizations (Organizations Non- Gouvernementales, ou "ONG") which work on disarming the weapons of mass destruction of the world stressed the need to outlaw the transfer of these kinds of weapons across the sea.

Unfortunately, Article 23 of the 1982 Convention came with a loose text which does not apply only to the territorial sea that reports that:" Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements." This Article refers clearly to the issue of military transport ships according to the rules of Public International Law and other Agreements of this law.However, recently the ability to military industrialization has become more accessible to Southeast Asian States such as China, South Korea and North Korea as well as India, which created a new trend within the Western countries finding an intermediate combination between expansion of the right of visit, which is enforced by the military ships at the suspected civil or commercial vessels and which allow them to monitor the transfer of mass

[13] Hellendorf, Bruno, Kellner, Thierry, "Course aux armements navals en Asie: Vers une nouvelle Conference de Washington?", Groupe de Recherche et d'Information sur la Paix et la Sécurité, Bruxelles, 13 Decembre 2013, http://www .grip.org/fr/node/1159.

[14] Seniora, Jihan, and Royet, Quentin, "Trafic d'armes par voie maritime, un phénomène difficile à surveiller", Groupe de Recherche et d'Information sur la Paix et la Sécurité, Bruxelles, 26 Juin 2012, http://www .grip.org / fr / siteweb / images / NOTES ANALYSE/2012/NA 2012-06-26 FR J-SENIORA.pdf.

destruction weapons between the newly emerging countries [15], and without which the major countries would lose the concept of the maritime navigation freedom. So the Western countries started to engage in unilateral actions such as arresting suspected ships and inspecting them; for example, a North Korean ship heading towards China, alleged to carry weapons of mass destruction, was stopped and inspected by Australian and American ships, in the name of the application of the UN Security Council Resolutions on North Korea. Intercepting ships in the middle of the sea without international legal ground[16] would increase the concerns about inciting the States whose ships have been stopped for inspection to conduct operations of the same nature under the principle of reciprocity; this may lead to the beginning of new international disputes, as, for example, Russia that threatened the Western ships to respond heavily on them if they tried to stop their ships in the Mediterranean Sea.

Because transferring the weapons across the sea in peacetime is mainly subject to the right of innocent passage principle, many States started to transfer this type of weapons across the high seas in order to avoid infraction to this principle, as well as not to raise suspicions when their ships passes through the territorial waters of a State, which makes it difficult to carry out inspection by the riparian state without raising sensitivity between the two States. As stated in the case of military exercises, the transfer of weapons of mass destruction is considered as a restriction for both the principle of using seas for peaceful purposes and the principle of innocent passage. The third form of using sea in the case of military experiments must extend the study of International legal principles applicable to it.

The use of the sea for military experiments.

This is the most common form of high seas use for military purposes. The countries have the right to testing and checking their weaponry's accuracy and efficiency on the high seas. In this particular field, the International Law is devoid of any text that forbids those experiences; and about this, Ghassan AlJundi[17] asserts: "As for the matter of Testing nuclear weapons in high seas, the third law of Sea Conference did not address this particular point, but this issue have been broached during the preparation of the Geneva Convention on the high seas, and the International Law Commission confirmed on the two basic principles while addressing the nuclear weapons testing in the high seas: First, States must refrain from actions that use sea to cause damage to the other countries citizens. Secondly, States must cooperate to prepare a treaty which is aiming to resist pollution in the high seas, (...) ".

In accordance to the previous arguments, it is clear that the desire that existed within the negotiating States at the Sea Convention is to put general and loose restrictions and to avoid mentioning the military experiences in a clear and precise discourse; as a result, avoiding to prohibit these experiments and the legal nature of the high seas contributed significantly to make the sea as a place of military experiment, especially when Article 89 mentioned that: "No State may validly purport to subject any part of the high seas to its sovereignty", leaving the field open for activities not listed in the 1982 Convention. In that respect, a distinction has to

[15]Ghonaimi Mohamed Talaat , *The International Maritime Law in the New Vision* , Alexandria, Dar AlMareefa , p. 179.
[16] Batar Hamid , *Public International Law* , University Corporation for Studies , 2008 , pp. 366-367.
[17] See Ghassan AlJundi , *Bright Meteors in the Law of the Sea* , Amman, Dar Wael for Publishing, i 1.2014 , p. 230.

be made between two types of weapons experiment in the sea: the first type is testing the military arsenal and smart weapons, and the second one is examining the nuclear weapons and the weapons of mass destruction.

(A) The military experiments on weapons that do not reach the mass destruction limit and the experiments conducting weapons maritime and satellite natures- mainly rockets. The experiments that include firing different rockets to examine their efficiency and check their actual range, are carried out by many advanced industrialized countries[18] by building mobile and fixed launchers to carry out these kinds of experiments. States are committed to execute the security zone concept which often takes place within the economic zone, where the States have the right of creating a secure area to prevent commercial ships from passing through. The only trouble with this application is that, in many cases, the diameter of the given secure area would exceed 500 m, which is considered to be unrealistic and may cause a significant obstacle to the passage of commercial ships or to the fishing movement.

(B) Conducting experiments on the weapons of mass destruction (nuclear weapons). These types of experiments create a lot of ire among the writers of International Law[19]; one of them, Hamid Sultan, writes: "the United Kingdom has offered to lend the United States Islands region (Christmas) so that the latter would conduct experiments on new nuclear at it[20]" and especially on what was done by France while conducting several experiments on nuclear weapons in 1996 and which confronted international condemnation for these experiments at sea. Despite that, the Moscow Treaty to ban nuclear weapon tests in the atmosphere, in outer space and underwater was signed in 1963, but France was not a party to that treaty. There is another defect that appears in the text of the Convention as when the treaty divided the maritime zones in the Sea it was according the sovereign and thus it did not explicitly stipulating the prohibition of conducting of these tests in peace time on the high seas or in areas subject to the sovereignty of a riparian State as well as the lack of an International text prohibiting these experiments in any other Treaties.

The Moscow Treaty signed in 1963 was to ban nuclear weapon tests in the atmosphere, in outer space and underwater as stated in the paragraph (1) of Article (1); however, experimentation became a taboo when applied to territorial waters and to high seas. Eventually, the respect to this Treaty raises doubts, especially after France's conducting nuclear tests in the high seas twice a time, as well as the presence of many disputes between riparian States on determining their share of the sea, which forced the States to show off their naval forces continuously in order to dissuade disputing parties.

The Attempts to limit Military Activities in Peace Time by International Law.

The first chapter focused on international practices ruling military activities in sea during peace time and emphasized on the absence of international texts that forbid expressly these activities.

[18] Amer Salah al-Din, *Ibid* , p. 330.
[19] Concerning this subject, Hamid Sultan writes: " with the Geneva Conference of 1958 included explicitly text that intended to refer the subject of atomic tests carried out on the high seas to the General Assembly of the United Nations for the study and recommendation, not that the agreement included provisions impose on states to refrain from polluting the waters of the high seas with Atomic radiation " *Ibid*, p. 531.
[20] Sultan Hamid , *op. cit.*., p. 531.

The second chapter will study the attempts of the international law to curb these activities by several ways and to evaluate these attempts and so this chapter shall be divided into two sections:

The Establishment of Marine Demilitarized Zones.

This is one of the International gradual mechanisms that the States use to show their good intentions and to minimize the risks of bringing about a war. It has been achieved by announcing that there were no weapons in the disputed marine area and by avoiding undertaking any kind of military activities in that area. In that extent, the Indian Ocean region is perhaps the only region officially declared as a zone of peace under the Declaration adopted by the General Assembly of the United Nations [21]in 1971; it stated that the Indian Ocean[22] with the air space above and the ocean floor subjacent thereto are permanent peace zones. The announcement stated the following:

1. solemnly declares that the Indian Ocean, within limits to be determined, together with the air space above and the ocean floor subjacent thereto, is hereby designated for all time as a zone of peace;

2. calls upon the great Powers, in conformity with this Declaration, to enter into immediate consultations with the littoral States of the Indian Ocean with a view to:

(a) halting the further escalation and expansion of their military presence in the Indian Ocean;

(b) eliminating from the Indian Ocean all bases, military installations and logistical supply facilities;

(c) the disposition of nuclear weapons and weapons of mass destruction and any manifestation of great Power military presence in the Indian Ocean.

The Declaration came up with a general concept of cooperation between the countries bordering the Indian Ocean through patrols consisting of all bordering countries and may be also have the presence of a third Party. It is often that the term of neutral may be misused with the term of peace; in a neutral case, there is a Party which does not want to be a part of the dispute.The determination of demilitarized zones as an international practice has been applied increasingly in the contemporary times, especially in areas where the States have a low exercise of sovereignty [23].

[21] See the Declaration of the Indian Ocean as a Zone of Peace on 16 December 1977. AR - RES-2832.
[22] Salim Haddad , *Op* . p 169.

23 www.disarmament.un.org/treaties/t/bangkok/text Treaty on the Southeast Asia Nuclear Weapon-Free Zone Articles 3 et 4 :"

1. Each State Party undertakes not to, anywhere inside or outside the Zone:
   (a) Develop, manufacture or otherwise acquire, possess or have control over nuclear weapons;
   (b) Station or transport nuclear weapons by any means; or
   (c) Test or use nuclear weapons.
2. Each State Party also undertakes not to allow, in its territory, any other State to:
   (a) develop, manufacture or otherwise acquire, possess or have control over nuclear weapons;
   (b) Station or transport nuclear weapons by any means; or
   (c) Test or use nuclear weapons.
3. Each State Party also undertakes not to;

The declaration of certain areas as zones free of nuclear weapons.

Southeast Asia is one among the most famous of these areas. It has strongly worked to prevent the spread of nuclear weapons and was on top of these efforts with the Treaty Rarotonga concluded on August 6, 1985 in the South Pacific region, which turned into a zone free of nuclear weapons and created a system of censorship (Article 8) and also an information exchanging system (Article 9).In the same context, the Treaty of Bangkok was concluded in December 15, 1995 between ten Asian States, namely Brunei, Cambodia, Indonesia, Malaysia, Thailand, Vietnam, Singapore, Laos, the Philippines, Thailand, Myanmar to entrench the idea of moving a vast Southeast Asia sea areas away from being a place for the nuclear arms race as it is happening between regional States [24]. In another part of the world an Agreement between Latin American and the Caribbean States was concluded in 1967 in Mexico City. This agreement was considered as the most important attempt to keep the nuclear arms race and the nuclear testing away from the South American continent, especially after the bitter experience in the conflict between the United States and the Soviet Union in the crisis of the Bay of Pigs Invasion; so the Latin American States agreed on making the Caribbean a demilitarized zone [25].

The means of reducing military activities in sea during peace time has to be mentioned in parallel with the international treaties that prohibit nuclear tests in the sea beginning with the Moscow Treaty of August 5, 1963, which stipulates the prohibition of nuclear tests in the atmosphere, beyond its limits, including outer space, or underwater; concerning this Treaty, Prof. Dr. Ghassan AlJundi points out the failure of this Treaty by mentioning the following reasons: Firstly, the Cold War had opened the door widely for the nuclear arms race between the Eastern and the Western camps. Secondly, there is a lack of an Agreement on an International mechanism to monitor these nuclear tests.

(a) Dump at sea or discharge into the atmosphere anywhere within the Zone any radioactive material or wastes;

(b) Dispose radioactive material or wastes on land in the territory of or under the jurisdiction of other States except as stipulated in Paragraph 2 (e) of Article 4; (…).**Article 4**

1. Nothing in this Treaty shall prejudice the right of the States Parties to use nuclear energy, in particular for their economic development and social progress."

23 Article 4, South Pacific Nuclear Free Zone Treaty, http://www.disarmament.un.org/treaties/t/rarotonga/text; "Each Party undertakes:

(a) Not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes to:

(i) Any non-nuclear- weapon State unless subject to the safeguards required by Article III.1 of the NPT, or

Any nuclear- weapon State unless subject to applicable safeguards agreement with the International Atomic Energy Agency (IAEA). (…)."

24 Articles 1 and 3, Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, http://disarmament.un.org/treaties/t/tlatelolco/text.

1. The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:

(a) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way, and

(b) The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way. (…)

Article 3: For the purposes of this Treaty, the term "territory" shall include the territorial sea, air space and any other space over which the State exercises sovereignty in accordance with its own legislation."

In this regard, it is necessary to refer to the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil thereof signed in 1971 and which entered into force in 1972. The first Article stated that: "The States Parties to this Treaty undertake not to implant or emplace on the seabed and the ocean floor and in the subsoil thereof beyond the outer limit of a sea-bed zone, as defined in article II, any nuclear weapons or any other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons [26] ". The trouble of this Treaty is that it requires, at first, the installation of mass destruction weapons in the floor of the seabed, so it focuses on the high seas bottom, leaving States free to use their territorial sea and continental shelf for this purpose; and Salem Haddad commented on this Convention with the following " this treaty is not aimed to a comprehensive disarmament of the seabed, it only focused on nuclear weapon[27]."Finally, the United Nations General Assembly adopted in September 10, 1996, a comprehensive nuclear test-ban Treaty, which stipulates that the States cannot exercise any nuclear tests in the territory which is under their sovereignty, as stated in Article 1: "Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control." However, while prohibiting nuclear weapons the banning of nuclear tests in the high seas should be identified with more explicit texts, since high seas are not under any state sovereignty.

Banning the use of the ocean floor as an area of mankind heritage

For any military purpose in time of peace [28]or war, and following Malta Representative, Mr. Pardo's suggestions, who proposed the idea of using the ocean floor only for peaceful purposes, and because of the importance of the proposal before the General Assembly, it is a must to transcribe it as it is in the Official Records of the United Nations: "In conclusion, I would submit that the utilization for military purposes of the deep seas and of the accessible ocean floor, while perhaps attractive at first sight, might provoke political, military and economic complications of such magnitude as to compel very careful assessment of the probable consequences by the Powers concerned. I would respectfully urge upon the major Powers the utter futility of attempting to obtain a temporary military advantage by using the ocean floor, beyond the geophysical continental shelf, for military purposes. Legitimate defence needs and the balance of terror, as well as the interests of all countries, can far better be safeguarded by developing within an international framework credible assurances that the sea-bed and the ocean floor will be used exclusively for peaceful purposes. This has already been done with respect to outer space . We trust it will also be possible to do so with respect to the ocean floor [29]."

To sum up and to conclude, the use of the ocean floor for military purposes at first may seem tempting for States, but it will create political, economic and military complications and might generate massive losses, the military advantage that might be obtained by using the ocean floor,

[26] See Convention on the Prohibition of the Storage of Nuclear Weapons and other weapons of Mass Destruction in the Seabed and Ocean Floor and in the Subsoil, 1970.
[27] Salem Haddad, *The Legal Regulation of the Seas*, University Corporation for Studies, Beirut, 1996, pp. 171-176.
[28] This Principle appeared with the time of signing International Treaties on the sea, which made its first appearance in the International Treaty to protect the Arctic in 1959 as well as in 1967 Treaty 27/10 for the activities of States in the "Extra atmosphere"; these treaties stipulate on the disarmament of these areas and not necessarily prevent military activities.
[29] His Excellency Ambassador Pardo, Ambassador of Malta, United Nations General Assembly, 21th Sesssion, Official Records.

beyond the geophysical continental shelf would be temporary, and the interests of the international military will be better saved by a reliable international legal system that ensures the use of the oceans and the ocean floor for peaceful purposes.

Thus, Article 141 of the Sea Convention of 1982 stated that "The Area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination and without prejudice to the other provisions of this Part.", as well as Article 143 P 1 as " Marine scientific research in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole, (…)"; but this text did not prevent States from building specialized bases for nuclear weapons under the pretext of peaceful nuclear tests. It is, then, necessary to clarify the ban more thoroughly. It turns out that there is a serious attempt to reduce the use of the seabed in the military activities.

The Limited Ability for International Monitoring on Military Activities during Peacetime.

(A) It has been shown previously that a lot of military activities during peacetime are located within bilateral agreements between States or in an area of high seas, which prevent other countries from objecting to these activities; except in the case when ships, carrying the flag of an objecting State, were exposed to material damage, allowing the State to claim a financial compensation and moving the concept of International responsibility in that field. The only case when the International Court intervened was following the request of Australia and New Zealand against the French nuclear tests in the sea in 1965, but it was out of the legal competence of the Court which, consequently, let France free to continue its tests in the sea.

(B) Excluding the consideration of the complaint resulting from the military uses of the sea during peace time from the jurisdiction of the International Tribunal for the Law of the Sea, and for several reasons, including that the framers of the Agreement wanted the decision on such issues primarily may be taken by the UN Security Council, as well as the States' desire for the International Tribunal for the Law of the Sea to issue a jurisdiction far from the war, and the acceptance by the States to resort to it, especially for the legalization of the maritime boundary, and so Article 298 , paragraph (b) excluded " disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service (...)" from the Court jurisdiction.

It is obvious that the competencies of the International Tribunal for the Law of Sea are restricted by the Agreement on the activities for peaceful purposes. In addition, for the control of other United Nations bodies, the role of the UN Security Council is almost non-existent in the field of the military exercises, and its recent Resolutions focus on the fight against piracy only; another reason for this restriction is the unwillingness of the powerful States to impose on themselves the presence of a party that monitor their military activities in sea, especially because these activities are often performed in secrecy.

CONCLUSION

Thanks to the 1982 Treaty, International Law of the Sea in peace time has made a significant step towards its codification. However, the Great Powers have voluntary put aside the

codification of the use of the sea for military purposes, relying only on customary rule to legislate it. In this way, States may serve their own interests especially that customary rules are ineffective, and in addition to that, inadequate to deal with new concerns like transferring mass destruction weapons. Undoubtedly, the Agreement has lost a lot of its substance concerning peaceful use of high seas, especially since the Naval War is not prohibited by the International Law, as stated in the San Remo Manual in case of legitimate self-defense or in the case of a Security Council Resolution. This principle is only a formal principle since it does not contain any texts that actually define or restrict the forms of military uses of the sea, as in the case of the 1971 Treaty of Prohibition of the Emplacement of Nuclear Weapons and other weapons of Mass Destruction on the Seabed and the Ocean floor. The Treaty practically prohibited the nuclear weapons storage in the seabed and the ocean floor, so it was possible for example, to prevent the nuclear tests or to prevent the use of the high seas for military purposes.

FINDINGS

-Great Powers have profited of and sustained the loophole of the Law of the Sea and the Law of War concerning the use of high seas for military purposes to guarantee their freedom of maneuver in case of operations in high seas.
-The only attempt of legislation of peaceful use of high seas concerns a limited kind of disarmament.
-Since there is no specific legal framework to corner these activities, it seems that more and more operations of military nature will be performed by States.
-After 1982, the United Nations has never attempted to issue any Agreement or Declaration to solve this matter definitively.

RECOMMENDATIONS

-During their contemporary race to control the seas, there is an urgent need to put a specific legal system which will identify the concept of peaceful use of the seas and will restrict the military use of seas in peacetime.
- There is a need for an explicit text that will regulate the States' direct responsibility in military activities in sea during time of peace and will fix all the compensation that may be attributed to such activities.

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