Center for Oceans Law and Policy
University of Virginia School of Law

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982

A COMMENTARY

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Myron H. Nordquist, Editor-in-Chief
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Volume V

Articles 279 to 320
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disputes are subject to certain basic procedures for the settlement of disputes. Should, however, a State make a declaration excepting the disputes specified in subparagraphs (b) and (c) from the procedures in section 2, these obligations under section 1, though omnipresent, are cut down to a minimum, and their scope depends completely on the parties' agreed choice, if any.

298.33. Paragraph 1(b), relating to disputes concerning military and enforcement activities, owes its origin to the preoccupation of the naval advisors to the delegations that activities by naval vessels should not be subject to judicial proceedings in which some military secrets might have to be disclosed. They pointed out that several maritime conventions contained provisions making it clear that these conventions (including their provisions for the settlement of disputes) did not apply to "any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service."[50] In order to protect all these vessels, the draft articles on the settlement of disputes submitted by the United States in 1973 to the Sea-Bed Committee provided that "[n]othing in these articles shall abridge the sovereign immunity to which certain vessels and aircraft are entitled under international law."[51] This was repeated in a slightly different form in the 1974 proposal by the informal working group on the settlement of disputes, allowing exclusion of disputes "concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law" (see Source 1, alternative C.1(d)). Doubts were raised, however, as to whether any vessels are entitled to sovereign immunity in a case brought before an international tribunal, as that doctrine applies only to domestic courts which are not allowed to bring before them a foreign sovereign, and as the very purpose of international tribunals is to deal with disputes between sovereign States. Consequently, to make sure that these vessels would be protected against international adjudication, another provision was added excluding disputes "concerning military activities [,unless the State conducting such activities gives its express consent]" (see Source 1, alternative C.2(d)).

298.34. At the third session of the Conference (1975), the informal working group on the settlement of disputes omitted the provision on sovereign immunities, and decided to distinguish between military activities and law enforcement activities. It suggested, therefore, that a State may exclude by a declaration disputes "concerning military activities, including those by government vessels and aircraft engaged in non-commercial service, but law enforcement activities pursuant to this Convention shall not be considered military activities" (Source 19, article 17, paragraph 3(c)). In adapting this provision for inclusion in the ISNT, Part IV (Source 2), President

[50] See, e.g., the 1973 Convention for the Prevention of Pollution from Ships, Article 3, Paragraph (3), XII ILM 1319 (1973); Nordquist and Churchill, IV *New Directions in the Law of the Sea* 345 (1975); and Cmnd. 5478, Misc. No. 26 (1974).

[51] A/AC.138/97, article 8, para. 3, reproduced in II SBC Report 1973, at 22, 23 (U.S.A.).