

海洋法公約「軍事活動」管轄例外條款研析

一 論克赤海峽爭端案及中菲南海爭端之分歧

Assessing the UNCLOS Military Exception Clause — The implication of

ITLOS Ukraine v. Russian (Kerch Strait) and PCA South China Sea

Arbitration

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摘要

聯合國海洋法公約規定，締約國對公約解釋、適用所生之爭端，應依公約第 XV 部分爭端解決規範處理；然公約第 298 條，亦允許國家透過單方聲明，排除爭端解決機制對特定類型爭端之管轄權。其中挪威、中國、英國、俄羅斯等國，均聲明排除海洋法公約爭端解決機制對涉及軍事活動爭端之適用。然而，當前爭端解決實務對於何謂「軍事活動」，缺乏統一之定義和判准。本文以 2019 年 5 月國際海洋法法庭(ITLOS)就烏克蘭與俄羅斯克赤海峽衝突案之暫時性措施裁決，以及 2016 年中國與菲律賓南海仲裁案對管轄權之判斷為研究對象，分析各仲裁庭對「軍事例外」解釋之差異，並研析其對管轄權除外條款適用之影響及衝擊。

關鍵字：克赤海峽爭端、軍事活動例外、管轄權

Abstract

The United Nations Convention on the Law of the Sea (UNCLOS) stipulates that any disputes between the State Parties concerning the interpretation and application of the UNCLOS shall be settled in accordance with the compulsory dispute settlement mechanisms set forth in Part XV of the UNCLOS. Under Article 298 of the Convention, however, states are permitted to exclude the UNCLOS dispute settlement compulsory jurisdiction over specific types of disputes. Exercising such rights, UNCLOS parties such as Norway, China, the United Kingdom, and Russia have declared to exclude the UNCLOS dispute settlement mechanism's jurisdiction over any disputes relating to military activities. While UNCLOS provisions fails to provide actionable definition over the term "military activities" and the current jurisprudence provides limited guidance, the diverse interpretation and application of the military exception clause create jurisprudential inconsistencies. This paper assesses the ITLOS ruling over the request for provisional measure over the Kerch Strait dispute between Ukraine and Russia. The goal is to examine the interpretation and application of military exception clause, and shall highlight some of the questionable arguments of ITLOS's decision.

Keywords: Kerch Strait dispute, military exception clause, jurisdiction