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"Understanding Maritime Military Operations within the Framework of International Law and Education"

Luo Fang: *Kunming Frontier Information Research Center, China*

He Haiyang: *Southwest University of Political Science & Law, China*

Muhammad Kamran Taj: *China Study Center Quetta, Balochistan*

Saud Al Taj: *Deputy Head of Business School, Anglia Ruskin University, London, United Kingdom*

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ABSTRACT

Maritime military activities are an important part of maritime activities between countries. The United Nations Convention on the Law of the Sea has established a standardized mechanism for the settlement of maritime disputes between countries, but it has not clearly defined maritime military activities, and the ambiguity of this issue has become a legacy of the Convention. In the existing international judicial practice, the criteria for judging military activities are inconsistent, and there have been many disputes in related maritime disputes, reflecting the realistic dilemma in the identification of military activities. Today, when high and new technologies are continuously put into marine activities, the confusion between military activities and related marine activities has posed a great challenge to this vague provision. Combined with the existing cases of international judicial practice, when identifying maritime military activities, the regional situation and background at the time of the incident should be taken into consideration, and attention should be paid to whether the behavior mode exceeds the principle of "necessary and reasonable", and the civil subject and the military-related subject should be distinguished at the object level.

Introduction

As an important part of national maritime rights, maritime military activities are closely related to a country's national security. Although modern international law has generally denied the legality of the use of force, it has not completely prohibited countries from conducting military activities. Paragraph 1 (b) of Article 298 of the United Nations Convention on the Law of the Sea (hereinafter referred to as the Convention) stipulates the exception of military activities, so when a country makes a declaration according to this article, it excludes the jurisdiction of international judicial institutions. However, the Convention itself does not give a clear definition of military activities, which leads to a series of disputes in practice about what kind of behavior should be classified as military activities in the Convention and how to distinguish military activities from related maritime activities. In recent years, in international judicial practice, such as the South China Sea Arbitration Case, the case of detaining three Ukrainian naval vessels (hereinafter referred to as "the case of detaining warships") and the case of rights of coastal States in the Black Sea, the Sea of Azov and the Kerch Strait (hereinafter referred to as "the case of rights of coastal States"), all involve maritime military activities, but the international judicial arbitration institutions have not given consistent identification standards. This paper starts with the dilemma of the identification of maritime military activities, discusses the distinction between military activities and related maritime activities, and puts forward the considerations for the identification of maritime military activities in combination with the identification of international judicial practice.

1. The dilemma of maritime military activities identification

Article 298, paragraph 1 (b) of the Convention stipulates: "Disputes concerning military activities, including those of government ships and aircraft engaged in non-commercial services, and disputes concerning law enforcement activities in the exercise of sovereign rights or jurisdiction that are not under the jurisdiction of courts or tribunals according to paragraphs 2 and 3 of Article 297." According to this article, "a country may, at the time of signing or ratifying the Convention or afterwards, exempt its maritime military activities from compulsory procedures by means of a written statement". It can be seen that the establishment of the identification of military activities is directly related to the existence of the jurisdiction of judicial arbitration institutions. At the same time, according to article 288, paragraph 4, of the Convention, disputes over whether a court or tribunal has jurisdiction shall be decided by the court or tribunal itself before the substantive trial of the case. However, in the process of adjudicating cases involving maritime military activities, it is often in trouble because of the vague criteria for determining "maritime military activities", which leads to frequent disputes in international judicial practice. The dilemma is embodied in the following aspects.

1.1 The lack of authoritative definition

As an international legal document regulating the marine activities of various countries, the Convention contains many contents about military forces, and Article

Corresponding Author's Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | 92-81-9211245|

29 clearly defines the definition of warships. Articles 30 to 32 stipulate the consequences of warships' failure to comply with the laws and regulations of coastal countries and the damage caused; Article 95 provides for the complete immunity of warships on the high seas. Article 110 stipulates the relevant contents of the right to board warships. Articles 107, 111 and 224 respectively stipulate that the right of seizure, hot pursuit and enforcement against foreign ships can only be exercised by warships, military aircraft or other government ships or aircraft with clear signs that can be identified as serving the government and authorized. The clause of innocent passage in Article 19 stipulates twelve situations that are not innocent passage. This subsection indicates that it is applicable to all ships, but whether warships are suitable for innocent passage is also controversial in practice. Article 236 stipulates that "the provisions on the protection and preservation of the marine environment shall not apply to any warship, naval auxiliary ship, other ship or aircraft owned or operated by the state and used only for non-commercial services of the government at that time". Thus, although the Convention stipulates the rights and obligations of a large number of military or government ships and aircraft, it only points out the specific rules of conduct that these vehicles should follow under special circumstances. However, there is no corresponding provision in the Convention itself to clearly define the extension and connotation of "military activities", which leads to the lack of international rules or criteria for clearly defining military activities in practice.

Maritime military activities have always been closely related to the development of international law, but there are many different understandings of maritime military activities. The Ocean Dictionary holds that military activities should cover general activities such as ship navigation, military maneuvers, aircraft take-off and landing, ordnance operation, information and intelligence collection, military exercises, weapons experiments, military mapping and so on. Commander's Manual of the United States Maritime Operations Act According to the manual, American warships can not only carry out non-international military activities such as electronic warfare and propaganda warfare, but also have the right to set up warning zones at sea and ask relevant ships to accept inquiries and investigations when enforcing the law at sea. In the Joint Operations of the Armed Forces of the United States, non-war military activities are interpreted as all military activities related to the use of military power except war, and the main goal of non-war operations is also to promote national security and defend national interests.

As for the scope of military activities, Professor Gao Jianjun believes that in addition to war, maritime military activities should also include military exercises, weapons tests, deployment of military equipment and delineation of warning zones.Professor Natalie Klein's Maritime Safety and the Law of the Sea analyzes the contents related to maritime safety in existing international laws and regulations, and summarizes the reasons and specific circumstances that lead to the changes and development of relevant rules. According to his point of view, in addition to naval warfare, maritime military activities should also include military exercises, weapons testing, troop

Corresponding Author's Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | 92-81-9211245|

stationing, installation of military equipment and demarcation of warning areas. Colonel J·Ashley Roach of the National University of Singapore believes that military activities should be interpreted as national military deployment, military mapping, intelligence gathering, operation and testing of military equipment. After the entry into force of the Convention, some scholars have classified maritime military activities into seven categories by enumerating, namely: (1) surface and underwater navigation (and overflight), including routine cruises, naval exercises, other actions with or without weapons testing or explosive use, and regarding naval presence as a foreign policy tool ("naval gun diplomacy"); (2) As a part of strategic deterrence of ballistic missile nuclear submarines; (3) Monitoring the naval and other military activities of potential opponents, in which anti-submarine warfare using various sea-based equipment (such as sonar and other sound detection systems) is one of the important parts; (4) Installation of navigation and communication facilities on the sea and seabed; (5) Laying conventional weapons, such as mines; (6) Military research; (7) Logistics support, including maintenance of naval bases.

It can be seen that there is no unified conclusion on the definition of military activities in the theoretical circles of various countries, which makes it difficult for the practical circles of various countries to form a consensus. The formulation of international law depends largely on the consensus among countries. The difference of views between different countries and scholars is the important reason why it is difficult to reach an agreement among countries when negotiating the relevant norms of maritime military activities, and thus it is too late to clearly define this important concept. However, due to the lack of clear regulations, countries have deviations in judging the nature of a certain behavior in maritime activities, which leads to high conflicts in practice.

1.2 The challenges brought by technological progress

There is a boundary between military activities and other activities. One of the important criteria to distinguish military activities from civilian activities, scientific research activities and law enforcement activities is whether they can have certain military consequences for certain military purposes. Such as causing military threats and endangering military security. New technologies are often used first in military activities. Before the third industrial revolution, traditional military activities were mostly carried out with distinctive features such as specific subjects, specific equipment and specific methods. Such as military reconnaissance of ships and aircraft, maritime military exercises, etc. The hardware and software needed for military activities are often more professional than the general subject can have. However, with the continuous progress of technology, more and more facilities and equipment put into the civilian market and scientific research fields also have the capabilities that traditional military subjects only have, such as seabed topographic mapping, underwater acoustic monitoring, radio monitoring and so on. This trend can also be reflected from the high incidence of China fishermen salvaging foreign underwater vehicles in recent years. High-tech equipment, such as autonomous underwater vehicle, is widely used in

maritime activities in peacetime, and various data collection activities are carried out through a large number of integrated sensors. This kind of event has far exceeded the traditional understanding of the term maritime military activities. Judging from the identification elements of military activities in the existing international judicial practice, it is difficult to identify the activities carried out by such high-tech equipment as military activities. However, judging from its potential consequences, the continuous investigation and monitoring of sensitive areas by unmanned submersibles and the collection of performance data of military facilities and equipment in other countries may completely pose a huge military threat to other countries. Today, with the unprecedented increase of military activities' dependence on intelligence information, intelligence reconnaissance has undoubtedly become an important part of military activities, but in the identification of maritime military activities, technological progress has largely blurred the boundary between military activities and other activities.

As mentioned above, some people think that military activities at sea can be defined in an enumerated way. For example, they think that military activities include carrying out information warfare, psychological warfare and other types of non-international armed conflicts, setting up warning zones at sea, and requiring relevant ships to be questioned and inspected during law enforcement, naval exercises, weapons tests, garrison tasks, as well as the installation of military facilities and equipment and the declaration of safe areas. However, technological progress also challenges the enumeration definition, and the enumeration identification method can certainly identify the activities included in it accurately. However, its defect lies in that unless the content is constantly updated, it still cannot cope with the constant changes and development of maritime military activities caused by technological progress, and ultimately it is difficult for it to cope with increasingly diverse and complex maritime military activities. A typical example is “taking off and landing on a ship or picking up any aircraft” listed in paragraph 2 (e) of the innocent passage clause in Article 19 of the Convention, that is, non-innocent passage. Its original intention should be to point to the actions of taking off and landing combat aircraft such as aircraft carriers and amphibious assault ship, and few ships were able to take off and land at sea when the Convention was formulated. However, in today's practice, a large number of ships, including civilian yachts, have the ability to take off and land at sea, and this kind of behavior is more common in the context of the miniaturization of drone technology. If all of them are identified as military activities according to this clause, it is difficult to call them reasonable. Therefore, the enumerated coping style can't adapt to the challenges brought by technological progress.

1.3 The conflict between traditional maritime powers and emerging powers

The conflict of interests between countries is an important reason why it is difficult to give a clear definition or identification standard for maritime military activities. Since the post-war period, in the context of peaceful use of the oceans, countries have formulated the Convention through consultation for the purpose of maintaining peace and

Corresponding Author’s Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | **92-81-9211245|**

development, so as to resolve maritime disputes and maintain the order of the oceans. The Foreign Relations Committee of the United States Senate once suggested that the condition for the United States to agree to join the Convention is that each state party has the right to decide whether an activity belongs to military activities, and such decisions are not subject to review. Emerging maritime powers, such as China, often advocate restricted freedom at sea, and maritime military activities cannot endanger the sovereignty and security of coastal countries. The maritime military activities tend to be clearly identified in order to limit the activities of traditional maritime powers in their offshore areas and safeguard their own maritime rights and interests. For maritime countries such as Britain and the United States, "free access to the sea is a core principle of their national security and economic prosperity" Traditional maritime powers have powerful maritime forces. In order to gain benefits on a global scale, they have the motivation and the ability to expand the scope of activities of maritime military forces as much as possible. Such countries tend to advocate that maritime activities should be given a greater degree of freedom. For a long time, western countries, represented by the United States, have also sent warships to carry out activities in many sensitive areas around the world in the name of "freedom of navigation", and there are not a few approaching reconnaissance to China. The fuzziness of the identification of maritime military activities helps to keep their activities in a "gray zone", and it is difficult to identify them in the sense of international law, so they are naturally not restricted by international law. However, maritime military activities are often closely related to politics, and its definition is of great interest. If military activities become a distinct legal issue, it will not be able to leave enough room for its maritime activities by making use of the ambiguity and controversy of the relevant provisions of the Convention under the existing conditions, nor will it be able to achieve its specific political goals by means of the so-called "freedom of navigation". Based on the conflict between traditional maritime powers and emerging powers, especially under the background that traditional powers have the right to speak internationally, the identification of maritime military activities will remain an unclear issue.

2. The division between military activities and related activities

According to article 298 (1) (b) of the Convention, the main body of military activities should include but not limited to "government ships and aircraft engaged in non-commercial services". However, in practice, not all acts carried out by "government ships and planes engaged in non-commercial services" are military activities. For example, military vessels and law enforcement vessels cooperate with each other to complete specific tasks; Warships conduct hydrological mapping, intelligence gathering and other activities in the exclusive economic zone of other countries; Activities carried out by ships that belong to a country's navy but actually engage in marine scientific research and other activities. The official policy of the US Navy has set four tasks for the Navy: strategic deterrence, maritime control, projecting power to the shore and military presence. The fifth task-scientific research-is also very important for the navy and may be included in its policy. The frequent

Corresponding Author's Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | 92-81-9211245|

occurrence of such international disputes also intensifies the indistinguishability between maritime military activities and related activities, especially between law enforcement activities and maritime scientific research activities.

2.1 Military activities and law enforcement activities

Article 298 (1) (b) of the Convention lists maritime military activities and some "law enforcement activities exercising sovereign rights or jurisdiction" as "optional exceptions" to the compulsory procedure of the Convention, and the high correlation between them can be seen. The confusion between maritime military activities and maritime law enforcement activities has always been an important and difficult point in judging whether the optional exception clause is applicable in the Convention. The main reason is that warships often participate in law enforcement activities as symbols of state power. However, there are many similarities between them, for example, they are both directly controlled by the will of the state, the main actors are government ships or planes, and their behaviors are often compulsory to a certain extent. Article 111 of the Convention allows warships to carry out maritime law enforcement activities by exercising the right of hot pursuit, which also implies that the use of force in the process of maritime law enforcement under certain conditions is permitted by international customary law. For this reason, the International Tribunal for the Law of the Sea pointed out in the "Arrest of Warships" case that military activities or law enforcement activities cannot be defined only by whether there are military vessels or law enforcement vessels involved, because the boundary between the military and law enforcement properties of ships owned by the government has become quite blurred, and joint actions of the two are also very common. The maritime activities of warships are not necessarily military activities because they are military subjects. Similarly, the use of force by warships cannot be regarded as military activities. When determining the nature of a specific activity in a specific case, we need to consider it comprehensively from multiple angles.

The confusion between military activities and law enforcement activities is mainly reflected in three situations: law enforcement forces participate in military activities, military forces participate in law enforcement activities and their joint actions. A typical example of military forces participating in law enforcement activities is the United States Coast Guard. It is officially positioned as one of the five major services in the United States, with a total service population of more than 50,000, and is equipped with weapons including 76mm naval guns and 12.7mm heavy machine guns. In the history of its development, it has also directly participated in the overseas military operations of the US military for many times. It can not only cooperate with the naval operations, but also carry out effective law enforcement activities within its jurisdiction. Its military boundaries and law enforcement boundaries have been quite blurred. In the same situation, Japan Coast Guard, China Marine Police and Korean Marine Police Agency are also included. In addition to routine law enforcement activities, such units often cooperate with their own navies to some extent and engage in certain military

Corresponding Author's Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | 92-81-9211245|

activities. For example, the China Marine Police has repeatedly confronted Philippine naval vessels in the South China Sea. Therefore, it is impossible to make a clear distinction between military activities and law enforcement activities only from the subject.

The author believes that the distinction between maritime military activities and law enforcement activities should focus on two aspects: behavior mode and behavior basis. Judging from the basis of behavior, maritime law enforcement activities are based on a country's laws or official orders, and their behavior is administrative. Law enforcement actions are mostly carried out on the grounds of violating domestic laws, and the results of their actions are mostly legal punishments such as imprisonment and fines after trial, which have sufficient legal basis. However, military actions are based on national will or military instructions, and most of them are carried out on the grounds that direct national interests are violated. The consequences of military actions include but are not limited to casualties, capture, damage to facilities and equipment caused by activities immediately, and these consequences generally do not exist in the laws of a country. In a word, maritime law enforcement activities have a clear legal basis in subject, procedure and behavior, and are often made according to a country's domestic law or international law. However, maritime military activities are not based on law, nor do they take procedural justice or substantive justice as the elements.

From the perspective of behavior, both military activities and law enforcement activities use force, but there are differences in the restrictions on the use of force between them. There are no strict restrictions on the use of force in military activities, while the use of force in law enforcement activities generally follows the “principle of necessity”. The guarantee for the smooth progress of law enforcement activities is mostly backed by state power and directly based on the law, which forms a psychological deterrent to the law enforcers, making the law enforcers believe that they can't escape the sanctions of the state machine after all and give up their resistance, so that the law enforcement activities can be carried out smoothly. It doesn't need to actually implement or have the ability to implement high-intensity violence at the law enforcement site. Even if certain violent activities are carried out, the purpose is still to show the law enforcers that they have the ability to immediately strike them violently, implement further deterrence, disintegrate their resistance will, and thus successfully enforce the law. The intensity of violence used in law enforcement activities is often low, and the specific forms are mostly firing guns and warning shots. In international judicial practice, such as “Lonely Case” and “Surinam and Guyana Case”, relevant instruments often use expressions such as “minimum”, “necessary and reasonable” and “inevitable” to define the conditions for the use of force in law enforcement activities. It reflects that international judicial arbitration institutions are cautious and conservative in judging the nature of the use of force. It is believed that the use of force should be an act of necessity, which has exhausted other methods and still cannot achieve the goal of law enforcement, and this act should be restrained to the maximum extent. That is to say, the use of force in law enforcement

Corresponding Author’s Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | 92-81-9211245|

activities should be as conservative and necessary as possible in behavior. In the case of “Loneliness”, the Committee held that only the target ship could be boarded or arrested in the process of exercising the right of hot pursuit. At that time, there was no rule of international law to support the use of force or even sinking the ship, so it was finally concluded that the sinking of the ship was not justified. Contrary to law enforcement activities, the guarantee for the smooth progress of military activities is often direct violent suppression, and the smooth progress of military activities can be achieved by demonstrating or even implementing violence far higher than the intensity of law enforcement. In the case of “seizure of warships”, Russia not only shelled Ukrainian ships to prevent Ukrainian naval vessels from crossing the Kerch Strait, but also dispatched armed helicopters to catch up. The way and intensity of its use of force is obviously far beyond the principle of “necessity and rationality” that international judicial arbitration institutions have always believed in law enforcement activities. Under this circumstance, it is still controversial to regard Russia's actions as law enforcement actions. Therefore, from the perspective of behavior, the significant difference between military activities and law enforcement activities lies in whether the way of using force between them meets the requirements of “necessary and reasonable” or “minimum” in terms of the specific circumstances at the time of the incident.

2.2 Military activities and marine scientific research

There has always been a vague boundary between military activities and marine scientific research. Especially today, with the continuous improvement of technology, a large number of capabilities possessed by traditional military subjects have been applied to civilian equipment, which makes it difficult to distinguish the boundary between military activities and marine scientific research. Generally speaking, if there is no military-related subject, military-related behavior and military-related purpose in the whole process of collecting marine information, it is difficult to identify the activity as a military activity. However, with the improvement of human understanding of the ocean, especially the breadth and depth of marine information acquisition, a large number of information collected from nominal scientific research activities can be used for both scientific research and military activities. Military activities are usually very confidential, so it is difficult for the outside world to know where the information collected through non-military channels is going, and it is naturally difficult to make a reasonable judgment on the nature of the behavior. In addition, similar to military activities, the Convention itself does not define the behavior of scientific investigation, but only stipulates the rights and obligations related to marine scientific research in some provisions. As stipulated in article 21, paragraph 1 (b), coastal countries may formulate laws and regulations on' marine scientific research and hydrographic survey'; Article 56 (1) (b) stipulates that coastal States have jurisdiction over marine scientific research in the exclusive economic zone. The lack of authoritative definition of international law has also become an important reason why maritime military activities are difficult to distinguish from marine scientific

Corresponding Author’s Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | **92-81-9211245|**

research.

There are also many kinds of confusion between military activities and marine scientific research activities, such as surveying, interception and collection by warships; Marine activities completed by scientific research vessels and military vessels in cooperation with each other. The dependence of modern military activities on intelligence information has greatly increased, and intelligence activities have become an important part of military activities. Especially in today's technological progress, equipment and instruments with the same technical level are often used in scientific research activities and military activities at the same time, which makes it difficult to distinguish them from each other in appearance that can be directly known from the outside world. Both scientific research activities and military activities have strong confidentiality, and the contained purpose is even more unknown. Some scholars advocate that military survey and hydrological survey should be classified as “scientific research”, so that the marine scientific research system in Part XIII of the Convention can be applied. Some scholars believe that there are significant differences between military survey and marine scientific research in the implementation subject, rights and obligations and the sensitivity of activities. It must be admitted that there are no technical obstacles to the militarization of some information obtained from marine scientific research activities. As far as China's national conditions are concerned, China, as a new maritime power, is still facing the activities of approaching China by traditional maritime powers in various names, such as reconnaissance, surveillance and intelligence gathering, which pose a long-term threat to China's national interests. However, due to geographical conditions and comprehensive strength, it is difficult for China's maritime forces to conduct reciprocal intelligence reconnaissance activities against other countries. Considering the technical advantages of foreign powers in marine equipment, if the subject and mode of behavior of marine scientific research are used to determine whether it constitutes military activities, it will inevitably make other countries occupy the dual advantages of technology and jurisprudence. Therefore, in this case, we should distinguish between marine scientific research activities and military activities by combining the militarization of the collected information and the sensitivity of the incident location, and we should weigh the military value and scientific research value of the information itself. It is not appropriate to consider the distribution of fish in the high seas far from the mainland as a military activity, but it should be considered as a military activity to approach other countries, carry out topographic mapping and underwater acoustic survey in the exclusive economic zone of other countries or even in the territorial sea. Pure information gathering behavior can't cause practical consequences at the military level, but as a military activity, information gathering behavior has a characteristic in essence, that is, the information it collects can provide highly targeted help for future military operations. For example, the detection and identification of modern submarines is mainly based on the unique underwater acoustic information of the submarine, and the continuous mastery of the underwater acoustic information of other countries'

Corresponding Author’s Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | **92-81-9211245|**

coastal ports is helpful to eliminate interference in wartime and detect the activities of enemy submarines. In this regard, this kind of information has a certain scientific research value and a high degree of militarization, and its military value far exceeds the scientific research value, so it should be recognized as military activities. Another important factor is the location of the incident. Based on the reason that military intelligence often needs to be close to the territory and territorial waters of other countries, intelligence gathering of military activities is highly location-sensitive, that is, it mostly occurs in the offshore areas of other countries. In the impeccable incident in 2009, as a professional ship listening to the sound information of underwater submarines, impeccable conducted reconnaissance activities only about 120 kilometers away from Hainan Province in order to obtain the information of new submarines in China. In recent years, the U.S. military's aerial reconnaissance of China has mostly been carried out by flying parallel to the coastline, and the distance from the baseline of China's territorial waters is often less than 30 nautical miles. It can be seen that military intelligence gathering activities usually take place in more sensitive places. Therefore, the location of the incident should be taken as an important factor to distinguish between military activities and marine scientific research activities.

As Judge Gao Zhiguo said in the "Arrest of Warships" case: "The high threshold of military activity exception can be used as a' disguised incentive', which urges countries to escalate conflicts by deploying a large number of naval vessels and increasing their troops, rather than easing conflicts, so as to meet the exceptions of military activities with compulsory dispute settlement jurisdiction." With the wider scope and more diverse forms of modern marine activities, the confusion between marine scientific research and military activities will become more and more complicated, and it is difficult to make an accurate judgment simply by relying on factors such as subject, behavior and militarization of information. Based on the principle of peaceful use of the ocean and reducing the intensity of conflict, we should grasp the characteristics of military intelligence reconnaissance and information collection under the cloak of scientific research action, and make a comprehensive judgment in combination with factors such as the location of the incident.

3. Identification of military activities in international judicial practice

Disputes come from practice. In international judicial practice, many cases, including Corfu Strait Case and South China Sea Arbitration Case, involve the identification and reasoning of maritime military activities. These arbitrations or judgments have unavoidable disputes, which leads to different views on the identification standards of maritime military activities. It is necessary to analyze the factors to be considered when identifying maritime military activities in practice by combining the facts of typical cases with the judgment results of judicial arbitration institutions. This paper mainly starts from the following three cases:

3.1 Corfu Strait case

Corfu Strait case is usually cited as a classic case of passage through international straits or territorial waters. However, because some actions of British

Corresponding Author's Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | **92-81-9211245|**

warships in navigation involve military-related issues, this case is also of great significance to the study of maritime military activities. The case was triggered by a British warship trying to pass through the Corfu Strait. On May 14th, 1946, two British cruisers were shelled from Albania while passing through the Corfu Strait. In the subsequent diplomatic communication, Albania believed that the narrowest part of the strait was its territorial waters, and foreign ships had no right to pass without authorization from Albania. Britain also advocates the right of innocent passage for its ships, but the two sides have not reached a consensus on this issue. On October 22nd of the same year, in order to test Albania's attitude, the British Navy dispatched a fleet of cruisers and destroyers to enter the territorial waters claimed by Albania in the Corfu Strait again. However, during the voyage, two destroyers of the formation were seriously damaged and caused 82 casualties. Subsequently, the British government informed Albania that the British army would carry out mine-clearing activities in the Strait, but the Albanian government refused. Subsequently, on November 13th, the British Navy unilaterally carried out mine-clearing activities in Corfu Strait, and cleared a total of 22 mines. The Albanian government protested that this act violated the country's sovereignty, but Britain said that the Albanian government should be responsible for the threat of navigation safety caused by mines in the strait, and then Britain submitted the incident to the United Nations Security Council for handling. Since Albania was not a member of the United Nations at that time, the Security Council allowed Albania to participate in the deliberation of the incident on the condition that Albania was required to assume the same obligations as a member, and Albania wrote back to express its agreement. In the first judgment of the court, it was also relying on Albania's willingness to accept the jurisdiction of the court expressed in this letter that the court had jurisdiction over the case.

In this case, British warships made three passes, and the International Court of Justice also adopted different attitudes towards these three passes. On the first passage, the British warship was in the intention of innocent passage, but it was shelled by Albanian artillery. In the second passage, the number of British warships doubled to four, and for the purpose of intentionally testing the attitude of Albania, but its behavior itself still met various requirements of innocent passage, so the International Court of Justice still considered the passage legal. The purpose of its third passage was to clear mines in Albanian territorial waters and collect evidence to prove that Albania had committed illegal acts. Of all the three acts of passage, the International Court of Justice only recognized the third passage as a “threat of use of force”. The basis is mainly two points: First, the nature of the passing ships-including a transport ship that can carry fighters, several cruisers and other large warships. The second is the purpose of behavior-to carry out large-scale mine-clearing activities in the territorial waters of Albania. Undoubtedly, mine clearance is a typical military activity, and the British side is also trying to collect evidence of violations by the Afghan side. However, this sea area belongs to Albanian territorial waters, and no rules of international law can support a country's warships to conduct legal military activities or collect some

Corresponding Author’s Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | **92-81-9211245|**

evidence in other countries' territorial waters, and this behavior is only beneficial to maritime powers. Once this precedent is set, it means that warships are endowed with some power that is not recognized by general international rules. Although the British side insists that the purpose of mine clearance is to protect the navigation safety of its warships, the International Court of Justice holds that respecting the principle of territorial sovereignty is the most important principle in international relations. Accordingly, the International Court of Justice held that the British behavior was a threat to use force and constituted "illegal intervention".

This judgment has also been questioned by some scholars. For example, Professor John Norton Moore of the University of Virginia in the United States believes that if a country lays mines in the international straits in peacetime, it actually hinders the freedom of navigation of other countries in the Strait. If other countries want to exercise this right, they have to take corresponding mine-clearing actions, but this will be considered as military activities and illegal. He believes that ships exercising freedom of navigation should enjoy certain "legitimate defense rights." Similarly, Professor O'Connell believes that when warships exercise the right of innocent passage, they should be able to carry out activities such as mine clearance for the purpose of avoiding danger, and should not be considered illegal, otherwise the right of innocent passage will be restricted to a great extent.

3.2 "Rights of Coastal States" and "Arrest of Warships"

Both the case of the rights of coastal States and the case of the seizure of warships revolved around the dispute over the Kerch Strait between Russia and Ukraine. The International Tribunal for the Law of the Sea and the arbitral tribunal in the case of the rights of coastal States have discussed the standard of maritime military activities successively, so the discussions on military activities in the two cases are discussed together. In a series of actions carried out by Russia and Ukraine around the passage of the Kerch Strait, the most intense action was the seizure of three Ukrainian warships on November 25, 2018. On the same day, two Ukrainian gunboats and a tugboat were on their way to the port of Azov to perform a defense change mission. When crossing the Kerch Strait, they were stopped by the Russian Coast Guard. After waiting for 8 hours, the Ukrainian ship tried to turn around and return, but it was chased by the Russian Coast Guard. During the chase, a Russian ship shelled the Ukrainian ship, causing three crew members to be injured. The Russian side also dispatched a Ka -52 helicopter gunship and a frigate of the Black Sea Fleet to participate in the interception. Subsequently, the Russian side detained three Ukrainian ships and their crew, and Uzbekistan submitted the incident to the International Tribunal for the Law of the Sea for settlement.

On May 25, 2019, the court issued an interim measure order, demanding that Russia immediately release the vessel and crew involved. In the measure order, the court discussed the content of military activities in the incident. There are two main views of the court. First of all, the dispute between Russia and Ukraine is essentially a dispute over the passage of the strait and has no military significance. Secondly, the court affirmed the right of

innocent passage enjoyed by warships, and concluded that the passage of warships did not constitute a military act. Then, in the arbitral tribunal's award, in view of Russia's use of force in interception, it denied the inevitability that the behavior of warships as special subjects constituted military activities. The arbitral tribunal held that Russia's use of force was a law enforcement activity rather than a military activity, thus establishing its jurisdiction over the case, and held that the content of paragraph 1 (b) of Article 298 of the Convention was not applicable to the case. This series of rulings has caused considerable controversy. In fact, many judges who voted in favor of the voting expressed different views in the attached opinions, including the objection of one judge, the individual opinions of three judges and the statements of two judges. These include Judge Kolodkin and Judge Gao Zhiguo of the Tribunal. In addition, the ruling holds that the use of force by the Russian side took place in the context of law enforcement activities. Although the intensity of violence used is high, its fundamental nature is still law enforcement activities, so it should not be considered as military activities. The problem with this view is that, as mentioned above, the boundary between law enforcement activities and military activities is already very vague. In practice, in order to avoid taking responsibility for the escalation of the situation, countries often carry out maritime confrontation activities in the name of law enforcement. If all the use of force in the name of law enforcement cannot be regarded as military activities, the content of paragraph 1 (b) of Article 298 of the Convention is almost in name only. The ruling did not take into account the fact that under the background of the long-term tension between Russia and Ukraine due to the Crimea issue, the warship changing behavior carried out by Ukraine itself was a military activity, nor did it take into account whether the act of dispatching frigates and armed helicopters to carry out “law enforcement activities” was in line with the principle of “necessity and rationality” in the use of force in law enforcement activities. It is inevitable that the Russian use of force will be treated in isolation in the warship navigation incident that occurred that day, and the conclusions drawn will inevitably lead to controversy. In fact, the occurrence of military activities at sea is usually not an isolated event, and the background before and after the event should also be taken as an important consideration. For example, in the Corfu Strait case, the third passage of a British warship, which was regarded as a military activity, was based on the background that the two sides had friction during the first two passages and the British army suffered losses. Otherwise, why did the British army go overseas to conduct a mine-clearing activity out of thin air? In addition, as discussed above about the division between maritime military activities and maritime law enforcement activities, it is generally believed in international judicial practice that the use of force in law enforcement activities needs to follow the principle of “necessity and rationality”. That is, the intensity of the use of force should meet the needs of law enforcement at the time of the incident, and the use of force beyond a reasonable range will greatly increase the possibility that the act will be characterized as a military activity. In this case, the Russian side once used

helicopter gunships and frigates of the Black Sea Fleet, while the Ukrainian side only used two gunboats and a tugboat, which obviously far exceeded the strength of force usually used in law enforcement activities, and it was considered that law enforcement activities were difficult to convince the public.

3.3 "South China Sea Arbitration Case"

Under the "South China Sea Arbitration Case", some of the numerous demands made by the Philippines involved the identification of maritime military activities. Paragraph 3 (a) of Article 297 of the Convention stipulates: "Disputes over the interpretation or application of the provisions of this Convention on fisheries shall be settled in accordance with Section 2, but coastal States are not obliged to agree to submit any disputes concerning their sovereign rights over biological resources in the exclusive economic zone or the exercise of this right, including ……". On this basis, the Philippine side believes that China's "law enforcement activities" against Philippine fishing boats in the waters around Huangyan Island took place within the territorial waters of Huangyan Island, while the content of paragraph 3 (a) of Article 297 is only within the "exclusive economic zone", so it cannot be excluded by compulsory procedures. As for China's island reef construction, the arbitral tribunal thinks that it is not a military activity, and the original text of its reasoning part reads: "The arbitral tribunal will not think that these activities are military activities, because China itself has always and formally opposed this characterization, and its top claim is just the opposite. Therefore, the arbitral tribunal accepted China's repeatedly stated position that civil use included the main (if not the only) motive for extensive construction activities on seven islands and reefs in Nansha Islands. As a civil activity, the arbitral tribunal held that China's actions did not fall within the scope of Article 298, paragraph 1 (b), and therefore concluded that it had jurisdiction to consider Philippine claims 11 and 12(b). " In this case, the arbitral tribunal's judgment on whether to carry out military activities was based on the official statement, so it decided that China's construction activities in the South China Sea were civil activities, thus establishing its jurisdiction over the case. As mentioned above, the statements or opinions of the parties are important considerations in the determination of maritime military activities. However, it must be admitted that in order to avoid being responsible for the escalation of the situation, it is generally difficult for countries to directly recognize their activities as military activities, and often carry out activities with implied military purposes under the banner of law enforcement and scientific research. It is difficult to draw a convincing conclusion whether it is a military activity only by relying on official statements, and it will also lead to the fact that Article 298, paragraph 1, subparagraph b, of the Convention has been shelved.

In addition, for the confrontation between the two sides near Renai Reef, the arbitral tribunal adopted a low threshold for the determination of military activities. The arbitral tribunal found that the two sides facing each other near Renai Reef were the Philippine Armed Forces on the one hand and the China Navy, Marine Police and other government vessels on the other, thus forming a "confrontation

Corresponding Author's Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | **92-81-9211245|**

situation". Because of this confrontation situation, although these ships are not military ships, but because China navy warships are cruising nearby, a military situation has actually formed, that is, one side is military power, and the other side is a mixture of military and paramilitary forces, so it is determined that this matter belongs to the scope of military activities exception and is exempt from the jurisdiction of the arbitration tribunal. Here, the arbitral tribunal only relies on the fact that both parties are military-related subjects to conclude that their activities belong to military activities and are exempt from jurisdiction. This reasoning method is also not convincing enough. Similar to the confusion between scientific research activities and military activities, military-related subjects and civil subjects are often mixed to carry out some maritime activities, and military-related vessels often participate in other maritime activities more because of their high performance and professionalism. Ships such as polar icebreakers are often incorporated into the battle sequence of a country's navy and have the status of military subject, but it is generally difficult to think that polar icebreaking activities belong to military activities. It is also biased to take a purely subjective benchmark to identify maritime military activities.

As far as the Corfu Strait case is concerned, the identification of military activities seems to focus on the subject, purpose and background. As far as the "seizure of warships" case is concerned, it denies the important role of actors and backgrounds, and even ignores the use of high-intensity force by Russia. As far as the "South China Sea Arbitration Case" is concerned, the arbitral tribunal did not even consider the actors, purposes, methods and other elements, but took the statement of a head of state as the basis for determination. However, in the case of Suriname and Guyana, the arbitral tribunal took into account the background of the tension between the two countries, and the threat of low-intensity force was still considered as a military activity. From this, it can be seen that in many international judicial arbitration cases involving the determination of maritime military activities since the war, the international court of justice lacks uniform standards for the determination of military activities. Even the identification of the same factors, such as incident background and behavior intensity, has different standards, which makes the practice not only controversial, but also difficult to promote the cognitive unity of countries in factor consideration through judicial precedent.

4. Factors to be considered in the determination of military activities

In the international judicial practice of identifying maritime military activities, different standards are often adopted for different cases. As a result, disputes often arise, and it is difficult for countries to identify clear boundaries of behavior, and then use the rules of international law to safeguard their maritime rights and interests. In practice, the inconsistent criteria for identifying military activities are mainly due to the lack of detailed considerations, but only relying on some more general principles for identification. For example, in the case of "seizure of warships", the court held that "it is necessary to rely on the objective evaluation of the nature of the disputed behavior and the consideration of individual factors to identify the dispute."

Corresponding Author's Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | **92-81-9211245|**

However, different court members in different cases will naturally produce different "objective evaluation" and "consideration of case factors." As Judge Gao Zhiguo held in his separate opinion: "When evaluating military activities, we should make a comprehensive evaluation of relevant factors." Therefore, it is necessary to introduce certain common reference factors. Considering the need of dividing maritime military activities from related activities, and considering the definition of military activities in relevant controversial cases, the author thinks that it should be considered from three aspects: behavior background, behavior mode and behavior object.

4.1 The behavior background

The occurrence of controversial events is not an isolated existence, but mostly a derivative behavior based on a certain event background. For example, in the "seizure of warships" case, Russia's interception and seizure of Ukrainian ships is one of many military hostile acts between the two sides based on the long-standing tense confrontation over the Crimea issue. In the "South China Sea Arbitration Case", the confrontation between China and the Philippines near Renai Reef and the related acts of island reef construction were also based on the long-standing dispute over the relevant rights and interests in the South China Sea, and the contradictions intensified at the time of the incident. In the Corfu Strait case, the third passage of the British army, which was regarded as a military activity, took place against the background that Albania denied its right of innocent passage, and the first two attempts to pass were successively bombarded and mined. In fact, the court "seems to be more inclined to separate the conflict background from the existing evidence for simple case facts and legal determination". As far as the "warship seizure case" is concerned, after the Crimean incident in 2014, both Russia and Ukraine claimed full jurisdiction over the Kerch Strait. The purpose of Ukraine's crossing the Strait was to strive for a more favorable fait accompli in the territorial dispute between the two sides, and according to the evidence provided by Russia, the navigation list found on the Ukrainian warship showed that one of the tasks of the Ukrainian fleet was to "secretly invade" Russian territorial waters. Accordingly, the Ukrainian action had a certain military purpose from the beginning, and the Russian reaction caused by it was hard to think that it was for law enforcement rather than reciprocal military purpose. In this context, if we look at the incident itself in isolation, we may ignore the environmental factors that affect the behavior of both parties, and it will also produce a controversial ruling that Russia will dispatch armed helicopters to pursue this "military confrontation situation" that is more intense than that between China and the Philippines in Renai Reef. Take the frequent "freedom of navigation actions" of the US Navy around China as an example. American officials and scholars often call such actions "non-provocative actions" and emphasize their significance in international law. Professor Dennis Mandsager of the United States Naval War College argues that calling such actions "military actions" is a misunderstanding of the nature of "freedom of navigation" in the United States. In fact, however, the United States regards China as its biggest competitor. Under the background of

Corresponding Author's Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | 92-81-9211245|

increasingly tense relations between the two countries in recent years, the so-called "freedom of navigation" of the United States frequently occurs in sensitive areas such as disputed waters in the South China Sea and the Taiwan Province Strait. It is hard to think that this is only an act in the sense of international law rather than a military declaration.

4.2 Behavior mode

From the perspective of behavior, the main purpose is to distinguish between military activities and maritime law enforcement activities. The important reason for the confusion between maritime law enforcement and maritime military activities is that there are many similarities in the external behavior of the two, such as the use of force in both cases, and the equipment used is often similar. However, as mentioned above, the law enforcement activities recognized in international judicial practice usually require it to follow the principle of "necessary and reasonable" in the use of force. It reflects that international judicial arbitration institutions are cautious and conservative in judging the nature of the use of force. It is believed that the use of force should be an act of necessity, which has exhausted other methods and still cannot achieve the goal of law enforcement, and this act should be restrained to the maximum extent. That is to say, the use of force in law enforcement activities should be as conservative and necessary as possible in behavior. Humanitarian considerations must apply to the law of the sea, just as it applies to other areas of international law. However, because of its strong national will, the use of force is based on the fundamental principle of achieving military goals, and there are often no specific rules of engagement to guide the use of violence under what circumstances. Therefore, it is an important feature of military activities that the way and degree of the use of force are extremely high.

From the perspective of behavior, both military activities and law enforcement activities use force, but there are differences in the restrictions on the use of force between them. There are no strict restrictions on the use of force in military activities, while the use of force in law enforcement activities generally follows the "principle of necessity". The appearance of military activities is often direct violent repression, and military objectives are achieved by demonstrating or even implementing violence far higher than the intensity of law enforcement. As Professor Lowe, a famous jurist, said: The navy's display of force, although seemingly peaceful, may have indirect and rude consequences, which may undermine the principle of non-interference. In the "seizure of warships" case, in order to intercept Ukrainian naval vessels, Russia not only shelled Ukrainian vessels, but also dispatched armed helicopters to catch up. The way and intensity of its use of force is obviously far beyond the principle of "necessity and rationality" that international judicial arbitration institutions have always believed in law enforcement activities. Under this circumstance, it is still controversial to regard Russia's actions as law enforcement actions. Therefore, from the perspective of behavior, the significant difference between military activities and law enforcement activities lies in whether the way of using force between them meets the requirements of "necessary and reasonable" or "minimum" in terms of the specific circumstances at the time of the

Corresponding Author's Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | 92-81-9211245|

incident. However, it must be admitted that whether the behavior mode and the specific situation are appropriate is an abstract standard, and whether the behavior mode in a specific case exceeds the principle of "necessary and reasonable" depends largely on the subjective decision of the judge, which may lead to a situation in which the judgment standard is different in practice. Therefore, it is necessary to emphasize the necessity of comprehensive judgment by combining multiple factors.

4.3 The object of behavior

The object of behavior is an important indicator to judge whether a maritime activity belongs to military activities. Generally speaking, the behavior of military activities often points directly to military-related objects, such as the mine clearance of British warships in Corfu Strait case and the shelling of warships in the case of seizing warships. Generally speaking, the behavior of civil subjects is not dominated by the will of the state, but dominated by its free will. It lacks the ability and intention to confront the state machine, and the maritime behavior of using coercive force against civil subjects according to law usually does not produce conflicts between countries. As a "mobile maritime territory", warships have always enjoyed a special status. In the case of "ARA Libertad", the court held that warships were symbols of a country's sovereignty. Judge Gao Zhiguo wrote in a separate opinion of the case: firing at a warship symbolizing a country's sovereignty should be regarded as an act of force against the flag state. If the maritime activities are carried out by force, and the targets are "non-commercial government ships and aircraft" such as warships of other countries, the confrontation situation described by the arbitral tribunal in the South China Sea Arbitration Case is that "one side is military forces, and the other side is a mixture of military and paramilitary forces", which makes it very easy for the act to be identified as military activities. However, this does not mean that acts that are not directed at military-related objects must not be regarded as military acts. For example, in the case of Guyana and Suriname, the activities of Surinamese naval vessels threatening the staff of Guyana drilling platform were regarded as military activities. This determination is the result of a comprehensive judgment based on the background of the dispute over maritime delimitation between the two countries and the fact that the main body of activities in southern Suri is warships. It is difficult to draw a reasonable judgment if we adopt pure subject benchmark and purpose benchmark.

Conclusion

With the increase of disputes involving maritime military activities in recent years, and the occurrence of typical cases such as the Kerch Strait case, which can fundamentally determine the existence of jurisdiction because of the establishment of military activities, the research on the elements of maritime military activities has gradually deepened, and the research on the definition of military activities has gradually pointed to the subject, behavioral background, behavioral purpose and so on. But as for what should be taken into consideration; What characteristics should each element of military activities have? Under the

Corresponding Author's Email Address:kamrancasvab@yahoo.com | jehr@um.uob.edu.pk | **92-81-9211245|**

background of the increasing intensity of maritime conflicts and the continuous application of high-tech equipment, how to distinguish military activities from law enforcement activities and scientific research activities has still not formed a common theory. The continuous implementation of China's strategy of becoming a maritime power will inevitably bring about increasing maritime interests. How to regulate its own behavior and safeguard its legitimate rights and interests within the framework of international rules has put forward a new test for China to establish rules of maritime conduct. A strong maritime military force is a powerful guarantee for national maritime interests. However, only by clarifying the definition and behavior boundary of maritime military activities can we make full use of existing international rules and safeguard national interests to the maximum extent.

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