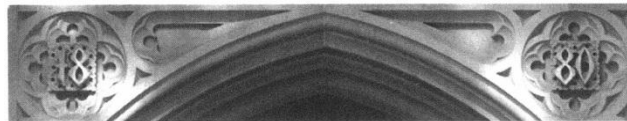


**Kiev Arbitration Days, 7 November 2014**

**DISPUTE RESOLUTION UNDER UNCLOS**

Simon Olleson  
13 Old Square Chambers, London

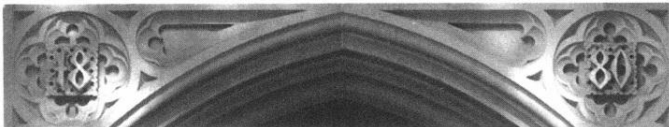


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**United Nations Convention on the Law of the Sea, Montego Bay, 10  
December 1982; 1833 *UNTS* 3.**

## **Part XV: Settlement of Disputes**

- Primarily disputes between States as to the interpretation and application of UNCLOS: **but**
  - participation of International Organizations (Article 305(1)(f) and Annex IX, UNCLOS)
  - ITLOS may have jurisdiction over disputes to which natural persons are parties:
    - Seabed Disputes Chamber of ITLOS has jurisdiction under Part XI in certain circumstances in relation to disputes involving individuals or corporations arising out of exploration and exploitation activities on the deep seabed beyond the limits of national jurisdiction (“the Area”) under the authority of the International Seabed Authority (Article 187(c)-(e) UNCLOS; cf. Articles 285 and 291, UNCLOS);
    - Cf. Article 20(2), Annex VI UNCLOS [Statute of ITLOS]



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## Part XV UNCLOS

### Section 1: General Provisions

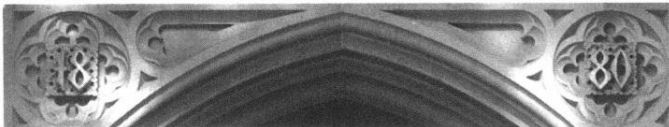
Applicable to all disputes relating to the interpretation or application of UNCLOS, whether or not also subject to compulsory judicial settlement (i.e. “compulsory settlement entailing binding decisions”) under Section 2 of Part XV, UNCLOS:

- Obligation to settle disputes by peaceful means in accordance with Articles 2(3) and 33 United Nations Charter (**Article 279, UNCLOS**)

➤ Cf. Article 33, UN Charter:

*“The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”*

- Saving for any agreed means of dispute settlement (**Articles 280-282, UNCLOS**)



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## Part XV UNCLOS

### Section 1: General Provisions (continued)

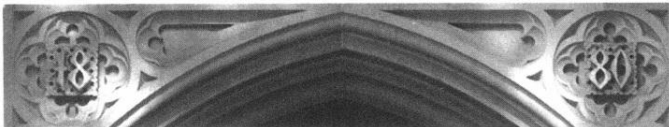
- Obligation to exchange views (**Article 283(1), UNCLOS**):

*“When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.”*

- Cf. ITLOS, *MOX Plant (Ireland v. United Kingdom)*, *Provisional Measures, Order of 3 December 2001*, *ITLOS Reports 2001*, p. 95, at p. 107 (para. 60):

*“a State Party is not obliged to continue with an exchange of views when it concludes that the possibilities of reaching agreement have been exhausted.”*

See also ITLOS, *The “ARA Libertad” (Argentina v. Ghana)*, *Provisional Measures, Order of 15 December 2012*, *ITLOS Reports 2012*, p. 332, at p. 345 (para. 71); ITLOS, *The “Arctic Sunrise” (Netherlands v. Russian Federation)*, *Provisional Measures, Order of 22 November 2013*, para. 76.

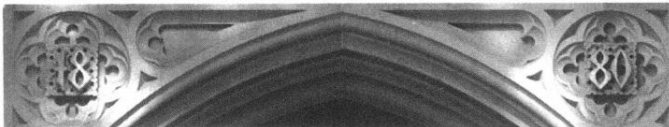


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## Part XV UNCLOS

### Section 1: General Provisions (continued)

- Voluntary conciliation (Article 284, UNCLOS):
  1. *A State Party which is a party to a dispute concerning the interpretation or application of this Convention may invite the other party or parties to submit the dispute to conciliation in accordance with the procedure under Annex V, section 1, or another conciliation procedure.*
  2. *If the invitation is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.*
  3. *If the invitation is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.*
  4. *Unless the parties otherwise agree, when a dispute has been submitted to conciliation, the proceedings may be terminated only in accordance with the agreed conciliation procedure.*



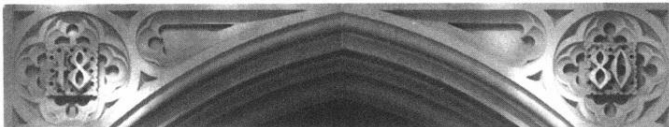
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## **Part XV UNCLOS**

### **Section 2: Compulsory Procedures Entailing Binding Decisions**

#### **Article 286, UNCLOS:**

*“ Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.”*



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## Part XV UNCLOS

### Section 2: Compulsory Procedures Entailing Binding Decisions (cont.)

#### Article 287(1), UNCLOS:

Declaration as to choice of means for the settlement of disputes:

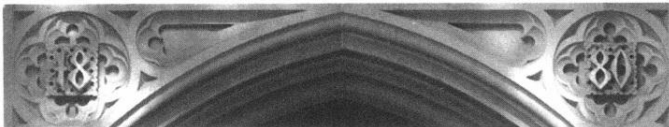
- International Tribunal for the Law of the Sea (ITLOS)
- International Court of Justice
- arbitral tribunal under Annex VII
- special arbitral tribunal under Annex VIII

#### Article 287(3)-(5), UNCLOS:

*“3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.*

*4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.*

*5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.*



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## Part XV UNCLOS

### Section 2: Compulsory Procedures Entailing Binding Decisions (cont.)

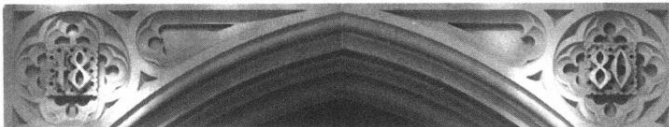
#### Article 288, UNCLOS:

*“1. A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.*

*2. A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.*

*[...]*

*4. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.”*



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## Part XV UNCLOS

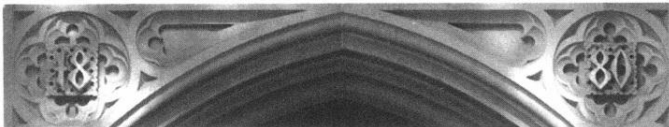
### Section 2: Compulsory Procedures Entailing Binding Decisions (cont.)

#### Provisional measures

#### Article 290, UNCLOS:

“1. If a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.”

[...]



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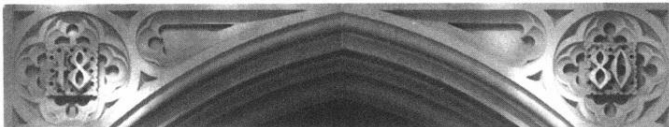
## Part XV UNCLOS

### Section 2: Compulsory Procedures Entailing Binding Decisions (cont.)

#### Provisional measures

#### Article 290, UNCLOS:

*“5. Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that prima facie the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.”*



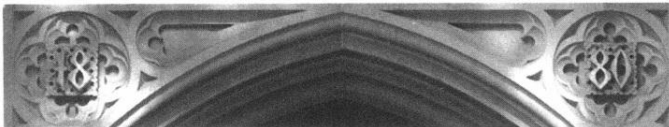
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## Part XV UNCLOS

### Section 3: Limitations and Exceptions to Applicability of Section 2

#### Cf. Article 286, UNCLOS:

*“ Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.”*



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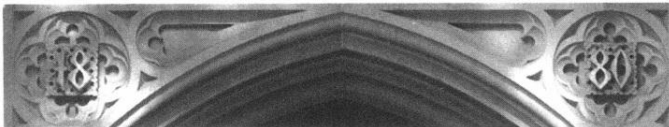
## Part XV UNCLOS

### Section 3: Limitations and Exceptions to Applicability of Section 2

#### Article 297(1), UNCLOS:

*“Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:”*

- (a) when it is alleged that a coastal State has acted in contravention of the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or other internationally lawful uses of the sea specified in article 58;
- (b) when it is alleged that a State in exercising those freedoms, rights or uses has breached either UNCLOS, or laws or regulations adopted by the coastal State in conformity with UNCLOS and other rules of international law not incompatible with UNCLOS;



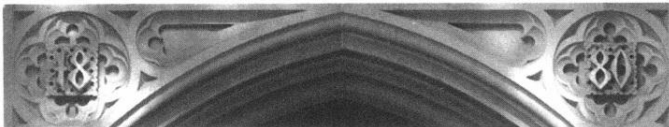
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## Part XV UNCLOS

### Section 3: Limitations and Exceptions to Applicability of Section 2

#### Article 297(1), UNCLOS (cont.):

(c) *“when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention”.*



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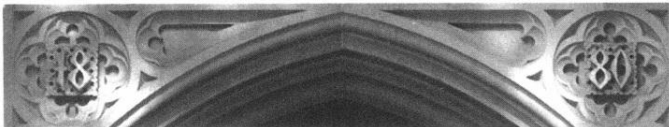
## Part XV UNCLOS

### Section 3: Limitations and Exceptions to Applicability of Section 2

#### Article 297(2), UNCLOS :

*“Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with section 2”, except where:*

- (i) the dispute concerns the exercise by the coastal State of a right or discretion under Article 246 UNCLOS [sc. authorisation of marine scientific research in the EEZ];
  - (ii) the dispute concerns a decision by the coastal State to order suspension or cessation of a research project
- In such cases, the dispute is to be referred to ‘compulsory’ conciliation under Annex V, Section 2 (subject to certain excluded matters)



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## **Part XV UNCLOS**

### **Section 3: Limitations and Exceptions to Applicability of Section 2**

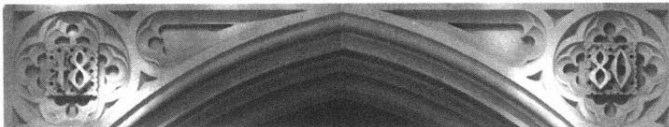
#### **Article 297(3), UNCLOS :**

*“Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2”*

except where the dispute relates to

*“its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.”*

In certain specified cases falling within these exceptions, the dispute must be referred to ‘compulsory’ conciliation under Annex V, Section 2.



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## Part XV UNCLOS

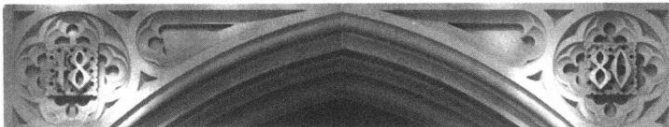
### Section 3: Limitations and Exceptions to Applicability of Section 2

#### Article 298(1) UNCLOS :

Provision for the making of a declaration excluding, without prejudice to Section 1, certain additional categories of disputes from the application of Section 2 :

(a) *“disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles”*

- must be submitted to ‘compulsory’ conciliation where no negotiated settlement within a reasonable period, and thereafter must be submitted to one of the compulsory means of judicial settlement if no negotiated settlement then possible;
- BUT subject to general carve out/exclusion for any dispute *“that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory”*



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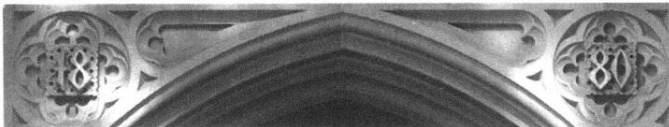
## Part XV UNCLOS

### Section 3: Limitations and Exceptions to Applicability of Section 2

#### Article 298(1) UNCLOS (cont.)

(b) *“disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3”*

(c) *“disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in this Convention.”*



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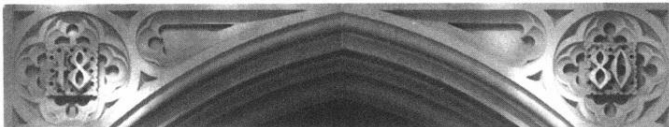
## **Part XV UNCLOS**

### **Section 3: Limitations and Exceptions to Applicability of Section 2**

#### **Declaration made by the Russian Federation upon ratification, 12 March 1997:**

*“The Russian Federation declares that, in accordance with article 298 of the United Nations Convention on the Law of the Sea, it does not accept the procedures, provided for in section 2 of Part XV of the Convention, entailing binding decisions with respect to disputes concerning the interpretation or application of articles 15, 74 and 83 of the Convention, relating to sea boundary delimitations, or those involving historic bays or titles; disputes concerning military activities, including military activities by government vessels and aircraft, and disputes concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction; and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations.*

*[...]”*



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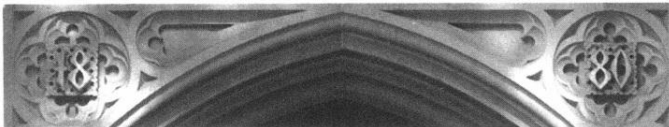
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### Section 3: Limitations and Exceptions to Applicability of Section 2

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*[...]”*



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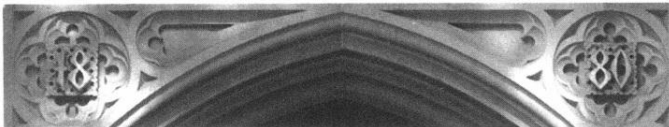
## Part XV UNCLOS

### Section 3: Limitations and Exceptions to Applicability of Section 2

#### Article 298(1) UNCLOS (cont.)

(b) *“disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3”*

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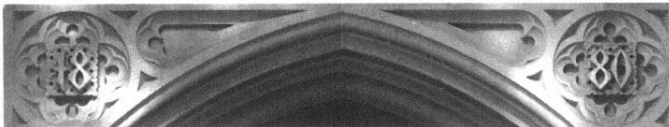
## Part XV UNCLOS

### Section 3: Limitations and Exceptions to Applicability of Section 2

#### ITLOS, *The Arctic Sunrise (Netherlands v. Russian Federation)*

“in the view of the Tribunal, the declaration made by the Russian Federation with respect to law enforcement activities under article 298, paragraph 1(b), of the Convention *prima facie* applies only to disputes excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3, of the Convention [...]”

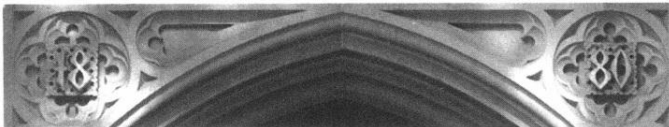
ITLOS, *The “Arctic Sunrise” (Netherlands v. Russian Federation)*, *Provisional Measures*, Order of 22 November 2013, para. 45.



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## Arbitrations under Annex VII UNCLOS

1. ***Southern Bluefin Tuna (Australia v. Japan; New Zealand v. Japan)*** (1998-2000)
  - Award on Jurisdiction and Admissibility, 4 August 2000; *RIAA*, vol. XXIII, p. 1.
2. ***"MOX Plant " (Ireland v. United Kingdom)*** (2001 – 2008)
  - Order No. 6 on Termination of Proceedings, 6 June 2008
3. ***Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)***(2003 – 2005)
  - Award on agreed terms, 1 September 2005
4. ***Barbados v. Trinidad and Tobago*** (2004 - 2006)
  - Award of 11 April 2006
5. ***Guyana v. Suriname*** (2004 - 2007)
  - Award of 17 September 2007
6. ***Bay of Bengal Maritime Boundary (Bangladesh v. India)*** (2009 – 2014)
  - Award of 7 July 2014



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## Arbitrations under Annex VII UNCLOS (continued)

### 7. *The ARA Libertad (Argentina v. Ghana)* (2012 – 2013)

- Termination Order of 11 November 2013

### 8. *Atlanto-Scandian Herring Arbitration (Kingdom of Denmark (in respect of the Faroe Islands) v. The European Union)* (2013 – 2014)

- Termination Order of 23 September 2014

### 9. *Chagos Archipelago Arbitration (Republic of Mauritius v. The United Kingdom of Great Britain and Northern Ireland)* (2010 – )

- Award pending

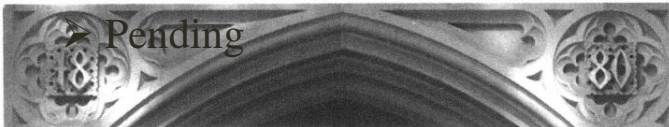
### 10. *Republic of the Philippines v. People’s Republic of China* (2013 – )

- Pending

### 11. *The “Duzgit Integrity” (Malta v. São Tomé and Príncipe)* (2013 – )

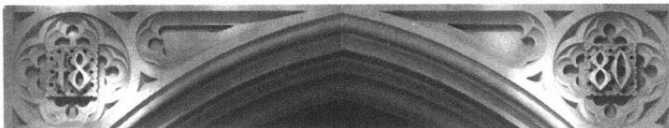
- Pending

### 12. *The “Arctic Sunrise” (Netherlands v. Russian Federation)* (2013 – )



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# Maritime Boundaries in the Southern Part of the Black Sea



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# Maritime Boundaries in the Western Basin of the Black Sea

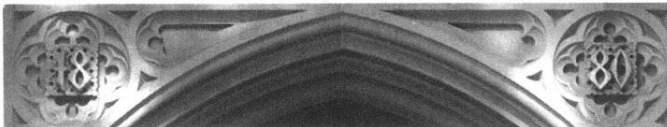
MARITIME DELIMITATION (JUDGMENT)

114



57

**Source:** Sketch Map No. 6, *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*  
*ICJ Reports 2009*, p. 61, at p. 114



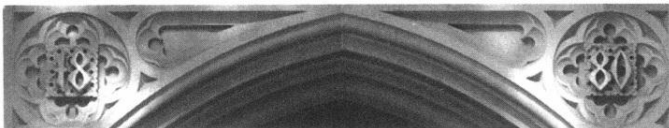
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# Maritime Boundaries in the Western Basin of the Black Sea



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**Source:** Sketch Map No. 9, *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*  
*ICJ Reports 2009*, p. 61, at p. 114

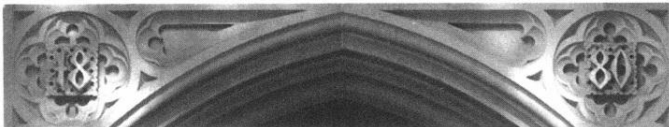


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**Declaration made by the Russian Federation upon ratification, 12  
March 1997:**

*“The Russian Federation declares that, in accordance with article 298 of the United Nations Convention on the Law of the Sea, it does not accept the procedures, provided for in section 2 of Part XV of the Convention, entailing binding decisions with respect to disputes concerning the interpretation or application of articles 15, 74 and 83 of the Convention, relating to sea boundary delimitations, or those involving historic bays or titles; disputes concerning military activities, including military activities by government vessels and aircraft, and disputes concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction; and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations.*

*[...]”*

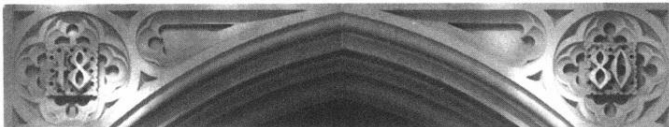


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*[...]”*



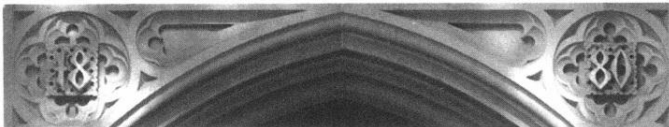
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**Declaration made by Ukraine upon ratification, 26 July 1999:**

*“2. Ukraine declares, in accordance with article 298 of the Convention, that it does not accept, unless otherwise provided by specific international treaties of Ukraine with relevant States, the compulsory procedures entailing binding decisions for the consideration of disputes relating to sea boundary delimitations, disputes involving historic bays or titles, and disputes concerning military activities.”*

Cf. the declaration made upon signature, 10 December 1982

*“2. The Ukrainian Soviet Socialist Republic declares, in accordance with article 298 of the Convention, that it does not accept compulsory procedures, involving binding decisions, for the consideration of disputes relating to sea boundary delimitations, disputes concerning military activities and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations.”*



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