

# *Spain and the Law of the Sea: 20 years under LOSC*

## Security and military questions

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### (A) INTRODUCTION

Spain's geographical, historical and economic circumstances have made it a seafaring nation. As such, for centuries the Spanish Navy was able to secure important overseas possessions in Europe, Africa, America and Asia. Nevertheless, current global complexities and threats make it almost impossible for a country to safeguard its security and defence with its own forces alone. Therefore, the Spanish security and defence architecture, in addition to its forces (the internal pillar), is founded on the support of Spain's allies (the external pillar), linked to its membership of the European Union (EU) and the North Atlantic Treaty Organization (NATO) and its the bilateral alliance with the United States.<sup>1</sup> For the purposes of this collective work, which is intended to mark the twentieth anniversary of the coming into force of the Law of the Sea Convention of 10 December 1982 (LOSC) for Spain, we will focus only on the maritime aspects of those pillars, although it should be noted that these aspects of security are interlinked.<sup>2</sup>

In this chapter, we recapitulate the Spanish practice of these twenty years since the application of the LOSC relative to security and military questions. Taking into account that this period has constituted one of peace, there have been few developments regarding the rules of International

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<sup>1</sup> See in this regard: F. Aznar Fernández-Montesinos, 'United States. Cooperation & Security' (Instituto Español de Estudios Estratégicos, Analysis Document, 37, 2016), at 9.

<sup>2</sup> States are currently facing a new generation of complex problems whose effects reach beyond their frontiers and borders. Because they are not exclusively military, they could not react efficiently alone and with fragmented policies. Comprehensive and collective approaches and actions were thus required to face new threats, such as maritime piracy, terrorism, illegal traffic of human beings, drug trafficking and illegal arms smuggling. In that context, the concept of maritime security has emerged as a set of activities and means aimed at protecting the life of people and goods at sea, both through the adoption of preventive measures and through corrective actions. With the change of Millennium, this renewed dimension has led the more relevant states and international organisations to adopt comprehensive maritime strategies or policies against these new threats. In Spain, this trend led to the adoption in 2013 of its own Maritime Security Strategy (see: Presidency of the Government of Spain, *The National Maritime Security Strategy* (2013), which develops the provisions set out in the National Security Strategy of 2013 and adapts them to the special requirements of the maritime domain, in line with the other international strategic instruments, which is examined in more detail in another chapter of this collective work. On this question, see the contribution in this volume by Blázquez Navarro on "[The National Maritime Strategy](#)".

Humanitarian Law (IHL) that regulate armed conflicts at sea.<sup>3</sup>

We will not address the different aspects concerning warships<sup>4</sup> such as navigation rights<sup>5</sup> since their particular regime is developed in more depth in subsequent chapters of this collective work. For now, we will say that the LOSC recognizes sovereign immunity to foreign warships and considers this type of vessels as the principal element for maintaining peace and security at sea<sup>6</sup> by affording it competences in the following matters: exercise of the right of visit and verification of the ship's right to fly its flag (Article 110); exercise of the right of hot pursuit (Article 111.5); seizure of a pirate ship (Articles 105 and 107); exercise of powers of enforcement against foreign vessels to protect the marine environment (Article 224). Besides these questions, competences are also granted to warships through the following treaties that deal with specific matters: measures to be adopted against a suspicious vessel of being engaged in the smuggling of migrants by sea (Article 9. 4 of the Palermo Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations

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<sup>3</sup> In this regard, it is important to stress that the rules of International Humanitarian Law are applicable to any use of force, irrespective of its intensity or legal justification. Indeed, according to Art. 2, para. 1 of the I Geneva Convention of 1949 (Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field), “[i]n addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”. In the commentary edited by the International Committee of the Red Cross to this paragraph, it is stated that: “It remains to ascertain what is meant by ‘armed conflict’. The substitution of this much more general expression for the word ‘war’ was deliberate. One may argue almost endlessly about the legal definition of ‘war’. A state can always pretend, when it commits a hostile act against another state, that it is not making war, but merely engaging in a police action, or acting in legitimate self-defence. The expression ‘armed conflict’ makes such arguments less easy. Any difference arising between two states and leading to the intervention of armed forces [...] is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to human personality is not measured by the number of victims”. [...] (see: *The Geneva Conventions of 12 August 1949, Commentary published under the general editorship of Jean Pictet, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (International Committee of the Red Cross, Geneva, 1952), at 32.

The rules of the IHL that regulate armed conflicts at sea will be applied in all the circumstances and in an equal way to all the parts in an armed conflict, without prejudice of the international responsibility that could correspond to the State for having had recourse to the use of force in violation of the United Nations Charter and other norms of international law. Having said that, it should nevertheless be kept in mind that modern naval operations are no longer conducted in a purely maritime environment. At present, naval forces operate together with other forces, especially air forces, and, therefore, they can no longer be considered bound by only one set of rules specifically and exclusively designed for them. In any case, it should be highlighted that the corpus of rules applicable today to the naval warfare has mainly a customary nature and has been put together in the San Remo Manual on International Law Applicable to Armed Conflicts at Sea, on 12 June 1994. See: [San Remo Manual on International Law Applicable to Armed Conflicts at Sea](#), 12 June 1994.

<sup>4</sup> Art. 29 of LOSC provides a definition of warship for the purposes of the Convention. According to it: “[...] ‘warship’ means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline”.

<sup>5</sup> Warships have the right to navigate through the territorial sea of foreign states as long as the passage is innocent (Articles 17-19 LOSC), but they required a specific permission to enter the internal waters and the ports of a foreign state. In Spanish Law, navigation through the maritime internal waters and their entrance in Spanish ports is regulated in Art. 51 of the Law 14/2014 on Maritime Navigation of 24 July 2014. (BOE No. 180, of 25 July 2014), an English version available [here](#). On this question, see the contribution in this volume by Díez-Hochleitner on “[Maritime zones under sovereignty and navigation](#)”.

<sup>6</sup> In this sense see: *Manual de Derecho del Mar*, Vol. I, Parte General (Ministerio de Defensa. Secretaría General Técnica, 2016), at 55.

Convention against Transnational Organized Crime, 2000); measures to be adopted against a suspicious vessel of being engaged in illicit trafficking by sea (Article 17.10 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988); measures to be adopted in order to assure the implementation of the measures set forth in the Convention (Article 8 bis. 10. d Convention for the suppression of unlawful acts against the safety of maritime navigation, SUA Convention 2005).

In view of the above, the second part of this chapter addresses Spanish military alliances. In the third part, we discuss the Spanish Navy and its role in a democratic State. Finally, we present our conclusion.

## (B) SPANISH MILITARY ALLIANCES

### (1) Spain's adhesion to NATO and participation in its naval operations.

Following the restoration of democracy, Spain struggled to emerge from decades of international isolation. To this end, it sought to improve its bilateral relations with the United States and to join the principal western international organisations. Spain first declared its intention to become a new member of the Alliance in December 1981. After having its application immediately accepted, Spain joined the Atlantic Organization on 30 May 1982, when it deposited its instrument of accession with the Government of the United States, in accordance with Article 10 of the Washington Treaty of 1949.<sup>7</sup>

Initially, Spain played a full role in the political instances of NATO, but refrained from participating in the integrated military structure, due to a strong anti-Atlanticist mood among Spanish public opinion. However, its position was reaffirmed in a referendum held in 1986. The modality of Spanish participation was defined by six Agreements of Coordination between the Spanish military authorities and those of NATO. According to these agreements, Spain would keep its forces under NATO command but would not accept deployment of its forces outside its borders for long periods of time. Over time, Spanish reservations gradually diminished and, on 14 November 1996, the Spanish Parliament endorsed the country's participation in the integrated military command structure,<sup>8</sup> a decision that coincided, not surprisingly, with the appointment of Javier Solana as NATO Secretary General. Spain finally became fully incorporated into the integrated military structure of the Alliance on 1 January 1999.

In what concerns maritime defence, NATO adopted the Alliance Maritime Strategy in 2011, which, in line with its Strategic Concept, sets out ways in which sea power could help respond to critical challenges facing the Alliance —both now and in the future— as well as the roles —long-term and new— that NATO forces may have to conduct in the maritime environment in order to contribute to

<sup>7</sup> BOE No. 129, 10 May 1982.

<sup>8</sup> See the [Congress acceptance of the participation of Spain in the military structure of NATO](#), BOCG, Serie E, No 65, 18 November 1996.

the Alliance's defence and security and to promote its values.<sup>9</sup>

In recent years, Spain has participated in a number of NATO naval military operations, described in another part of this collective work. Operation *Active Endeavour*, initiated in the immediate aftermath of the September 11 (2001) terrorist attacks in the United States, was conducted by the Alliance in direct application of the collective self-defence clause Article 5 of the North Atlantic Treaty. The aim of the operation was to deter, defend, disrupt and protect against terrorist activity in the Mediterranean.<sup>10</sup> At a meeting of the North Atlantic Council in Warsaw 8-9 July 2016, Operation *Active Endeavour* was replaced by a non-Article 5 Maritime Security Operation, Operation *Sea Guardian*, in order to perform the full range of Maritime Security Operation tasks as needed.<sup>11</sup> Building on previous counter-piracy missions, NATO's *Ocean Shield* naval operation, approved by the North Atlantic Council on 17 August 2009 and terminated on 15 December 2016, focused on at-sea counter-piracy operations off the Horn of Africa, in conjunction with the EU naval operation *Atalanta* and the US-led Combined Task Force 151, established in January 2009.<sup>12</sup> According to Spanish government sources, Spain contributed to Operation *Ocean Shield* from December 2013 to June 2014 with an F 100 class frigate.<sup>13</sup>

## (2) Bilateral agreements with the United States of America.

Ever since Spain and the United States (US) initiated diplomatic relations in 1785, with the exception of the Spanish-American war in the late 19<sup>th</sup> Century, the two countries have remained allies and partners. Following Spain's non-aggression policy during the Second World War, its signing of the Mutual Defense Assistance Agreement on 26 September 1953 – the so-called *Pacts of Madrid* – represented an important boost for the re-establishment of diplomatic, defence and economic ties between the two countries. Part of the 1953 pacts allowed the establishment of American air bases at Torrejón de Ardoz, Zaragoza and Morón de la Frontera and a US naval base at Rota (Cadiz)<sup>14</sup> in exchange for economic and military aid, but without outlining clearly the scope of that assistance. Notwithstanding the title of the agreement, “Mutual Defense Assistance Agreement”, it is quite difficult to ascertain what obligations the US had assumed with regard to Spain's defence. It certainly

<sup>9</sup> [Alliance Maritime Strategy](#). For a commentary on this instrument see: F. Álvarez Blanco, ‘Visión de la Armada sobre la seguridad marítima en nuestro país y la necesidad de una estrategia marítima de seguridad’, in: *Enfoque integral de la seguridad en el espacio marítimo español* (Escuela de Altos Estudios de la Defensa, Monografías 135, Ministerio de Defensa de España, 2013) 145-181, at 154-157.

<sup>10</sup> See: [Operation Active Endeavour](#).

<sup>11</sup> See: [North Atlantic Council approved Operation Sea Guardian](#), Warsaw Summit Communique issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Warsaw 8-9 July 2016, para. 91. In principle, Operation *Sea Guardian* is intended to conduct any of the agreed seven maritime security operational tasks: maritime situational awareness, freedom of navigation, maritime interdiction, countering the proliferation of weapons of mass destruction, protecting critical infrastructure, countering terrorism at sea and maritime security capacity-building.

<sup>12</sup> See: [Combined Task Force 151](#).

<sup>13</sup> See: [Defence: Spanish participation in Operation Ocean Shield](#), Spain, La Moncloa, Gobierno de España.

<sup>14</sup> [Agreement on Mutual Defense Assistance, Sept. 26, 1953, United States Spain](#), 4 United States Treaties and Other International Agreements (UST) 1950-1982; 1876, United States Treaties and Other International Agreements No. 2849; 207 UNTS 87. With regard to this Pacts, see: R. Piñero Álvarez, ‘Los Convenios Hispano-Americanos de 1953’, in *Historia Actual Online* (2006), 175-181.



could not be considered a pact for setting up a system of collective self-defence. At any rate, it is clear that with these bases, the US had strengthened its presence in the Mediterranean, in a further step to assure US predominance in its rivalry with the URSS during the Cold War, while Spain acquired international recognition, gradually bringing to an end its international isolation after the Spanish civil war.

The restoration of democracy in Spain in 1975 saw its bilateral relations reinforced and stabilized. As a result, in 1982, Spain and the US signed a new executive agreement on the use of Spanish bases. This agreement, the Agreement on Friendship, Defense and Cooperation<sup>15</sup> allowed the US retain its use of the Rota naval base and the airbases at Torrejón de Ardoz, Zaragoza, and Morón de la Frontera, as well as a number of storage and communications facilities.

Spain's entry into NATO in 1982 and subsequent membership of the then European Communities in 1986 also meant a significant strengthening of bilateral relations with the United States, culminating in the signing of the Agreement on Defence Cooperation in 1988.<sup>16</sup> Article 31 and Annex 2 of said agreement set forth the rules for the use of the Rota naval base, whose installations fall strictly under the Spanish flag. However the US and Spanish navies cooperate together and share many of the base's facilities. The American base at Rota supports the strategic priorities of Naval Forces Europe-Africa, 6th Fleet and COCOM by providing airfield and port facilities, security, force protection, logistical support, administrative support and emergency services to all US and NATO forces.<sup>17</sup> The Agreement has been subsequently revised three times through the Protocols of Amendment, on 10 December, 2002, 10 October 2012 and 17 June 2015,<sup>18</sup> which, among others, have allowed the installation of a NATO ballistic missile defence system on US Navy Aegis ships at Rota.<sup>19</sup>

### (3) The Western European Union and the EU

The Western European Union (WEU) was born out of the Treaty on Economic, Social and Cultural Collaboration and Collective Self-Defence (known as the Treaty of Brussels), signed in Brussels on 17 March 1948, as amended and completed by the Protocol signed in Paris on 23 October 1954. It was mainly committed to mutual defence should any of the signatories be the victim of an armed attack in Europe.<sup>20</sup> Spain signed up to the WEU in 1988.<sup>21</sup>

<sup>15</sup> Agreement on Friendship, Defense and Cooperation (adopted 2 July 1982, entered into force 14 May 1983) 1871 UNTS 381.

<sup>16</sup> See: [Agreement of defense cooperation between the U.S.A and the Kingdom of Spain with annexes and notes](#), of 1 december 1988.

<sup>17</sup> Commander, Navy Installations Command, [Naval Station Rota](#).

<sup>18</sup> [Protocols between the United States of America and Spain amending the Agreement of 1 December 1988](#), Treaties and other International Act Series 13-521.1.

<sup>19</sup> For a comment on the bilateral agreements between Spain and the US in defence matters see: Aznar Fernández-Montesinos, *supra* n. ¡Error! Marcador no definido., at 12; S. D. Murphy, 'The Role of Bilateral Defense Agreements in Maintaining the European Security Equilibrium', 24 *Cornell International Law Journal* (1991) 415-435, at 427-429; A. Viñas, 'La negociación y renegociación de los acuerdos hispano-norteamericanos, 1953-1988: Una visión estructural', 25 *Cuadernos de Historia Contemporánea* (2003), 83-108.

<sup>20</sup> According to the Art. V of the modified Brussels Treaty of 1948, "If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Art.

The WEU was largely evanescent for decades until the late eighties, when it was decided to set up some naval operations, starting with Operation *Cleansweep*, which helped to complete clearance of a 300-mile sea lane from the Strait of Hormuz, following the laying of mines in the Persian Gulf during the Iran-Iraq war.<sup>22</sup> The experience gained from these activities was instrumental in strengthening Europe's potential for concerted action in the future.

Building on the WEU's achievements and the principle of European solidarity, the EU has been undertaking crisis management tasks since 2000, and has developed a Common Security and Defence Policy (CSDP) over the years that was given a decisive impulse by the Lisbon Treaty of 2007. Among other things, the Lisbon Treaty included both a mutual assistance and a solidarity clause, which assumes responsibility for mutual defence set forth in the modified Treaty of Brussels. In fact, Article 42.7 of the Treaty on the European Union (TEU) now specifies that, if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power. Thus, with WEU no longer needed, the States Parties to the Modified Treaty of Brussels decided collectively in 2010 to terminate that treaty, thereby effectively closing the organization.<sup>23</sup> At present, the CSDP is regulated in Section 2, of Chapter 2, of Title V TEU. According to Article 42(1) TEU, CSDP "[...] shall provide the Union with an operational capacity drawing on civilian and military assets", which can be used "[...] on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter". The kind and nature of CSDP operations are further specified in Article 43(1) TEU, which refers to "joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation." This provision further states that "[...] All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories". Among the CSDP operations, the two approved naval operations —*Atalanta* and *Sophia*— are dealt with in other chapters of this *Yearbook's* section.<sup>24</sup>

### (C) THE SPANISH NAVY AND ITS ROLE IN A DEMOCRATIC STATE

#### (1) Functions and competences of the Navy.

Given that today's risks and threats are now global, highly diverse nature and, in many cases, highly interdependent, the Spanish Navy has undertaken reforms and adopted strategies to address the

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51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power."

<sup>21</sup> *Adhesion of Spain to the WEU*, [BOE No. 110](#), 8 May 1990.

<sup>22</sup> On Operation *Cleansweep* see: W., Van Eekelen, 'Naval cooperation in WEU', 18 *Marine Policy* (1994), 534-537.

<sup>23</sup> Statement of the Presidency of the Permanent Council of the WEU on behalf of the High Contracting Parties to the Modified Brussels Treaty terminating the Treaty – Belgium, France, Germany, Greece, Italy, Luxembourg, The Netherlands, Portugal, Spain and the United Kingdom, Brussels, 31 March 2010.

<sup>24</sup> On these questions, see the contributions in this volume by Sobrino Heredia on "[Piracy](#)" and by García Andrade on "[Migrants by Sea](#)".

conflicts of the 21<sup>st</sup> century. The Navy has moved from the traditional concept of territorial *defence* to a more complex one of *security*, which is broader in scope and not limited to certain physical spaces. *Security* is an aim that cannot be achieved through defence alone; hence it is imperative to view security from an integral perspective, requiring the full cooperation of the modern state's many agencies and bodies.

Furthermore, as highlighted in the introduction, Spain's increased activity in the international sphere since its return to democracy—a novelty in comparison with Spain's previous isolation and that of past centuries—calls for the international perspective to be taken into account when it comes to security. The Spanish Navy's role is no longer confined to the protection of Spanish territorial waters and areas of interest, but also to the defence of areas and interests of the international community. The new horizons of the security make imperative the cooperation with security agencies of other countries and international organisations.<sup>25</sup>

Therefore, the Organic Law 5/2005 of 17 November 2005 on National Defence,<sup>26</sup> Spain's basic norm in defence and security matters for defining missions, includes a flexible approach, unlike the fixed division of the past<sup>27</sup> between external and internal action, emphasizing the need for cooperation among the different agencies of the state with competences in security matters.<sup>28</sup> Moreover, the Organic Law 5/2005 underscores that the Spanish armed forces' current role is to contribute not only to Spain's security and defence interests, but also to cooperate with international forces for the sake of the security of Spain's allies and the maintenance of the peace and the stability of the entire international community, in the frame of the international organizations in which Spain takes part, under the supreme responsibility of the Security Council of the United Nations.<sup>29</sup>

Article 16 of the Organic Law 5/2005 specifies the type of operations that the Spanish armed forces can undertake. Among other operations, the Law specifies that it appertain to them the implementation of any activity aimed at assuring the sovereignty and independence of Spain, as well as to protecting the life of its population and its interests.<sup>30</sup> On the other hand, Article 16 envisages the cooperation of Spain's armed forces in peace-keeping and international stability operations in those zones where they may be compromised, the restoration of the security and governance as well as the reconstruction of a country, region or certain zone, in conformity with the international treaties

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<sup>25</sup> For a broader explanation of the necessity of a comprehensive and coordinated maritime strategy see, among others: F. Del Pozo, 'La mar nunca está en calma (II). Análisis del concepto de seguridad marítima en España', (Instituto Español de Estudios Estratégicos, Documento de Investigación del Instituto Español de Estudios Estratégicos 12, 2015), at 17-18.

<sup>26</sup> Organic Law 5/2005, 17 November 2005, on National Defense ([BOE No. 276](#), 18 November 2005).

<sup>27</sup> Following a process similar to that of other European coastal states and of other advanced nations, the second half of the 20th century saw the Spanish Navy losing competences in favour of the civil sector, such as the maritime jurisdiction for crimes occurring in the maritime scenario as, for example, meaningful shipwrecks, discipline on board of merchant ships, etc. For their part, warships, that had had wide competences in the pursuit of crimes at sea, fishing vigilance and others, began to lose them through successive legislative acts implementing important transformations of the armed forces in this period, in general consistent with the principle according to which armed forces are an instrument of the exterior action of the state but not of the interior action. In this regard see: Pozo, *supra* n. 2525, at 32-33.

<sup>28</sup> Organic Law 5/2005, Art. 15(3).

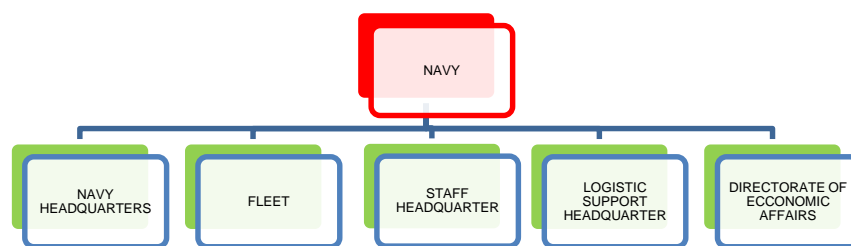
<sup>29</sup> *Ibid.*, Art. 15(2).

<sup>30</sup> *Ibid.*, Art. 16(a).

and agreements in force.<sup>31</sup> Furthermore, Article 16 entrusts the armed forces with the support to the State Security Forces and Bodies in the fight against the terrorism and to the institutions and bodies responsible for the tasks of land, maritime and air search and rescue.<sup>32</sup> Article 16 also establishes that the Spanish Navy is tasked with surveying the maritime spaces, as part of State's action in the sea.<sup>33</sup>

## (2) Structure of the Navy

The Spanish Navy's structure has changed over the years according to its missions and the changing nature of armed conflicts. To increase the effectiveness of the Armed Forces in the fulfilment of missions as entrusted to them by the Constitution of 1978, the Organic Law 5/2005 organizes the entire Armed Forces according to criteria that facilitate joint action by the Army, the Navy and the Air Forces. Unlike the previous norms, which attributed particular missions to each branch of the Armed Forces, the Organic Law 5/2005 considers the Armed Forces to be a single entity embodying the different forms of action of its components. This facilitates the ideal employment of its capacities, without diminishing the specific capacities of those components.<sup>34</sup> In what concerns the basic structure of the Spanish Navy, as set forth by the Order DEF/1642/2015, of 30 July 2015 and developed by the Instruction 4/2016 of the Chief Admiral of the Navy,<sup>35</sup> of 15 January 2016, is as follows:<sup>36</sup>



## (3) Operations and missions of the Spanish Navy in the years following the adoption of LOSC

Let's examine the Spanish practice in recent years since the adoption of the LOSC, in order to know whether the Spanish Navy has had to intervene either in the defence of the Spanish territories and interests or in the defence of the interests of the international community, as envisaged in the Organic Law 5/2005 of National Security.

### (a) The defence of the Spanish maritime spaces and interests.

It is important to point out from the outset that there have been no military conflicts compromising

<sup>31</sup> *Ibid.*, Art. 16(b).

<sup>32</sup> *Ibid.*, Art. 16(c).

<sup>33</sup> *Ibid.*, Art. 16(a). For a more extensive exposition of the mission of the Navy see: *Manual de Derecho del Mar*, *supra* n.º 6, at 105-118.

<sup>34</sup> Organic Law 5/2005, 17 November 2005, on National Defense ([BOE No. 276](#), 18 November 2005).

<sup>35</sup> See: Ministerio de Defensa de España, Armada Española, [Structure of the Navy](#).

<sup>36</sup> For a complete explanation of this structure see: *Armada Española* (Escuela superior de las Fuerzas Armadas, 2012), 51-88.



Spain's maritime security and, fortunately, there is no reason to believe that one will occur in the coming years. Nevertheless, the 1995 'halibut crisis' with Canada<sup>37</sup> over the freedom of fishing rights, as enshrined in Article 87 LOSC, and the Spain's dispute with Morocco over Parsley Island<sup>38</sup> in 2002, suggests that military confrontation is not necessarily a thing of the past. In this regard, there are two situations that could worsen and escalate and, eventually, jeopardize Spain's maritime security: a hypothetical conflict with the United Kingdom over the waters of Gibraltar,<sup>39</sup> or an even more hypothetical conflict over an independent Catalonia.

(b) *The defence of the interests of the international community*

In recent years, the defensive or military aspects of maritime security have acquired great relevance in public opinion and accordingly in Spanish politics and law. Indeed, the vast numbers of people attempting to illegally reach Spanish and European coasts in recent years, together with the associated phenomenon of people smuggling; the rebirth of the maritime piracy and its threat to Spanish and other nations' interests in the Gulf of Aden, and the increase in jihadist terrorist attacks we are witnessing, have placed the security issues at the top of the agenda.

In this regard, the Spanish Navy has also taken an active involvement in a number of international naval operations, such as the EU's *Atalanta* and *Sophia* missions against maritime piracy in the Gulf of Aden and human trafficking in the Mediterranean respectively, as well as in other NATO naval operations mentioned above.

(D) CONCLUSION

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<sup>37</sup> On 9 March 1995, the *Estai*, a fishing vessel flying the Spanish flag and manned by a Spanish crew, was intercepted and boarded some 245 miles off the Canadian coast by Canadian Government vessels. The Spanish Government and the EU categorically condemned the act alleging that the Canadian authorities breached the universally accepted norm of customary international law codified in Art. 92 and articles to the same effect of LOSC, according to which ships on the high seas shall be subject to the exclusive jurisdiction of the flag state. Canada replied that the arrest of the *Estai* was necessary in order to put a stop to the overfishing of Greenland halibut by Spanish fishermen. Spain reacted by deploying some patrol boats to protect its country's fishing vessels. In April 1995 Canada and the EU signed an agreement on fisheries in the context of the Northwest Atlantic Fisheries Organization Convention that put an end to the crisis regarding the fisheries issues. Nevertheless, on 28 March 1995, Spain filed an application against Canada before the International Court of Justice asking for reparation for the violation of its rights under international law (see: *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court*, ICJ Reports (1998) 432, at 443-444. By a Judgment of 4 December 1998, the Court found that it had no jurisdiction to adjudicate upon the dispute between Spain and Canada (*ibid.*, at 468).

<sup>38</sup> In fact, it is tiny rocky islet located in the Strait of Gibraltar, some two hundred fifty metres off the Moroccan coast and 13.5 kilometres from the Spanish coast. The islet is around 0.15 square kilometres in size and up to seventy-four metres in height. On 11 July 2002, members of the Moroccan Army occupied the islet, whose sovereignty is disputed between Spain and Morocco. After unsuccessful diplomatic exchanges, on 17 July 2002 Spanish military forces expelled the Moroccan soldiers. Some days later, the Spanish military abandoned the islet, returning the situation back to as it was before the 11 July 2002. In this regard see: Cortes Generales, Diario de Sesiones del Congreso de los Diputados, Comisiones, Año 2002 VII Legislatura Núm. 543, Conjunta de Asuntos Exteriores y Defensa, Sesiones núms. 32 y 28, respectivamente celebrada el miércoles, 17 de julio de 2002, Comparecencia urgente de los señores ministros de Asuntos Exteriores (Palacio Vallelersundi) y de Defensa (Trillo Figueroa y Martínez-Conde), conjuntamente, para informar sobre la evolución de los acontecimientos tras la ocupación de la isla Perejil el día 11 de julio. A solicitud del Gobierno. (Número de expediente 214/000136.)

<sup>39</sup> On this question, see the contribution in this volume by del Valle Gálvez on "[Maritime zones around Gibraltar](#)" and the contribution by López Martín on "[Navigation through the Strait of Gibraltar](#)".

Once the Franco dictatorship came to an end, Spain embarked on a process of integration in international organisations that have had relevant consequences regarding military and security matters. When Spain joined NATO and the EU, it assumed important obligations in defence matters, such as the mutual assistance clause in the event of armed attack, in effect both in NATO and European law. In addition, Spain has extended its agreements for US armed forces to continue using military bases on Spanish territory, such as the Rota naval base, which is of major strategic value to the Mediterranean and the Middle-East. Over the last two decades, membership of those international organisations has seen the modernization of Spanish Navy and new position in a fully multilateral context. Notwithstanding its improved military preparedness, Spain has enjoyed a period of peace and prosperity unknown in previous centuries, a circumstance that is largely owed to its integration in these international organisations. Thus, since the entry into force of LOSC, the Spanish Navy's military activity has been centred on its participation in NATO and EU operations whenever the UN Security Council have called for its assistance.

As we have already underlined, Spain has not been involved in any open armed conflicts in the last two decades, but there have been several extremely tense situations with regard to the defence of the Spanish maritime spaces or interests, such as the clash with Canada over fishing on the high seas in 1995; the dispute with Morocco over Parsley Island in 2002, or the latent conflict with the United Kingdom for the sovereignty over Gibraltar and the projection of its maritime spaces.

In addition to the process of internationalization, new threats and risks to modern societies, such as jihadism, smuggling of migrants by sea, maritime piracy and cyber-attacks, have led its armed forces to move from defence to security, a new concept that requires multidisciplinary approaches and collaboration between the different agencies competences in law enforcement. Spain is no exception, and since 2013 it has been struggling to implement a national maritime security strategy, which would pool the efforts of the many national and regional agencies, with a primary role for the Navy nonetheless.<sup>40</sup> Some legislation has been passed to assure the efficiency of this process and to avoid overlapping functions and actions between the different actors involved. A central place is reserved to the Organic Law 5/2005 of National Security.

In coming years, once the United Kingdom has left the EU, an advance is expected in the European integration of defence matters, which will reinforce the trend to internationalization. Finally, we hope that some present situations of risk, such as the disputes over Gibraltar or the issue of Catalonia, do not develop into military conflicts.

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<sup>40</sup> On this question, see the contribution in this volume by Blázquez Navarro on "[The National Maritime Strategy](#)".