Uniform Interpretation of the Rules of International Law Governing Innocent Passage

Among the agreements concluded by the USA and the USSR during Soviet Foreign Minister Eduard Schevardnadze's visit to the USA in the autumn of 1989 was the Joint Statement on a Uniform Interpretation of the Rules of International Law Governing Innocent Passage, signed at Jackson Hole, Wyoming, on 23 September 1989 by Mr. Schevardnadze and US Secretary of State James Baker. The agreement is significant because it constitutes an acknowledgement by the two major naval powers of the existence of a right of innocent passage, without prior authorization or notification, for warships. This right had been a matter of controversy. The USSR entered a reservation to Article 23 of the 1958 Territorial Sea Convention asserting that each coastal State has the right to establish a procedure for authorizing the passage of foreign warships through its territorial waters; and in the 1960 Statute on the State boundary it laid down such a procedure for authorization. Although Soviet Rules for Navigation and Sojourn of Foreign Warships in the Territorial Waters of the USSR adopted in 1983,1 appeared, on one interpretation, to recognize the right of innocent passage for foreign warships,2 the Soviet position was not entirely clear. It was put to the test in March 1986 when two US naval vessels, the cruiser Yorktown and destroyer Caron, sailed through Soviet territorial waters in the Black Sea off the coast of the Crimean Peninsula. Soviet statements made at that time clearly suggested that foreign warships enjoyed no right of innocent passage through Soviet territorial waters except in specially authorized areas announced by the Soviet government, of which there were none in the Black Sea. The USA adhered to its view that warships do enjoy a right of innocent passage.3

The 1989 Agreement and Joint Statement bring the USA and USSR into accord on the matter, explicitly affirming the existence of a right of innocent passage for warships in accordance with the terms set out in Art. 19 of the 1982 UN Convention on the Law of the Sea. It also specifies that the list of criteria of innocence set out in Art. 19 is exhaustive, so giving provisions that have already found their way into the legislation of states such as France a (probably decisive) push into customary law.

The 1989 Agreement and Joint Statement was reprinted in International Legal Materials in November 1989.4 Two related documents were not reproduced there. The first is a Resolution of the Council of Ministers of the USSR dated September

---

1 XXIV ILM 1716 (1985).
3 For detailed accounts see Butler and Franckx (1989), loc. cit. n. 2.
20, 1989 amending the 1983 Soviet Rules and dealing with the implementation of the procedures governing the exercise of innocent passage set out in the 1989 Joint Statement. The second document omitted is a letter from Secretary of State Baker to Foreign Minister Schevardnadze, dated September 23, 1989, in which the USA, while reserving its rights, announced that it had no intention of exercising its right of innocent passage with warships in Soviet territorial waters in the Black Sea. Since the first of these documents adds detail to the 1989 Agreement, and the second sets it in a wider context, it has been thought appropriate to reprint them here.

Vaughan Lowe
Corpus Christi College
Cambridge
UK

Appendix I

Joint Statement by the United States of America and the Union of Soviet Socialist Republics

Since 1986, representatives of the United States of America and the Union of Soviet Socialist Republics have been conducting friendly and constructive discussions of certain international legal aspects of traditional uses of the oceans, in particular, navigation.

The Governments are guided by the provisions of the 1982 United Nations Convention on the Law of the Sea, which, with respect to traditional uses of the oceans, generally constitute international law and practice and balance fairly the interests of all States. They recognize the need to encourage all States to harmonize their internal laws, regulations and practices with those provisions.

The Governments consider it useful to issue the attached Uniform Interpretation of the Rules of International Law Governing Innocent Passage. Both Governments have agreed to take the necessary steps to conform their internal laws, regulations and practices with this understanding of the rules.

FOR THE UNITED STATES OF AMERICA:  
James A. Baker III  
Jackson Hole, Wyoming

FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:  
E.A. Schevardnadze  
September 23, 1989

Uniform Interpretation of Rules of International Law Governing Innocent Passage


2. All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required.

3. Article 19 of the Convention of 1982 sets out in paragraph 2 an exhaustive list of activities