

1989 USA-USSR: JOINT STATEMENT WITH ATTACHED UNIFORM INTERPRETATION OF RULES OF INTERNATIONAL LAW GOVERNING INNOCENT PASSAGE

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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.

UNIFORM INTERPRETATION OF RULES OF INTERNATIONAL LAW GOVERNING INNOCENT PASSAGE

1. The relevant rules of international law governing innocent passage of ships in the territorial sea are stated in the 1982 United Nations Convention on the Law of the Sea (Convention of 1982), particularly in Part II, Section 3.
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 that would render passage not innocent. A ship passing through the territorial sea that does not engage in any of those activities is in innocent passage.
4. A coastal State which questions whether the particular passage of a ship through its territorial sea is innocent shall inform the ship of the reason why it questions the innocence of the passage, and provide the ship an opportunity to clarify its intentions or correct its conduct in a reasonably short period of time.

5. Ships exercising the right of innocent passage shall comply with all laws and regulations of the coastal State adopted in conformity with relevant rules of international law as reflected in Articles 21, 22, 23 and 25 of the Convention of 1982. These include the laws and regulations requiring ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may prescribe where needed to protect safety of navigation. In areas where no such sea lanes or traffic separation schemes have been prescribed, ships nevertheless enjoy the right of innocent passage.
6. Such laws and regulations of the coastal State may not have the practical effect of denying or impairing the exercise of the right of innocent passage as set forth in Article 24 of the Convention of 1982.
7. If a warship engages in conduct which violates such laws or regulations or renders its passage not innocent and does not take corrective action upon request, the coastal State may require it to leave the territorial sea, as set forth in Article 30 of the Convention of 1982. In such case the warship shall do so immediately.
8. Without prejudice to the exercise of rights of coastal and flag States, all differences which may arise regarding a particular case of passage of ships through the territorial sea shall be settled through diplomatic channels or other agreed means.