

Extract from:

NWC 1029

THE UNITED STATES NAVAL WAR COLLEGE

Naval Operations Department

LAW OF THE SEA PROBLEMS 1991

PD-6

(cover page)

## LAW OF THE SEA CASE STUDIES

### 1. THE TERRITORIAL SEA

a. You are the commanding officer of an unarmed U.S. Coast Guard training vessel under sail (USCGC EAGLE) with cadets embarked for their annual at-sea training. Your ship recently concluded a port visit in the United Kingdom and is now enroute to an official visit to Leningrad. You are operating independently under the OPCON of Commander, Coast Guard Atlantic Area in New York. CINCUSNAVEUR and CINCLANTFLT are aware of your movements.

On the afternoon of 16 June you transitted The Sound, an international strait between Denmark and Sweden connecting the North and Baltic Seas. During your passage through The Sound you observe ships of many nations apparently in routine transit, including warships of the USSR, Denmark, Sweden and the Federal Republic of Germany.

At 1617L the ship entered the Baltic via a charted traffic separation scheme (TSS), and at 1950L, after rounding the Falsterbo Reef Light, turned into the eastbound lane of the TSS south of Sweden. At 2030L (while still in the TSS), your ship was at its closest point of approach (6.5 NM) to the Swedish coastline. At 2043L you receive a voice radio call on VHF Channel 13 from a station identifying itself as "Malmo [Sweden] Naval Control." The operator informs you that your ship is in Swedish territorial waters and that you are in violation of Swedish law for not having provided prior notification of your intention to enter Swedish waters. You are not asked to leave Swedish waters but are informed that your violation will be "reported to proper authorities."

Sweden is a signatory to the 1982 LOS Convention but, in signing, took exception to the right of innocent passage for warships in territorial seas. Specifically, Sweden requires prior notification for warships intending to pass through Swedish territorial waters.

(1) Is the USCGC EAGLE a warship?

Ref: NWP-9 (Rev. A) LOS art. 29

(2) Are the rules for innocent passage different for warships than for commercial vessels?

Ref: NWP-9 (Rev. A) 2.3.2.1, 2.3.2.2, 2.3.2.4; LOS art. 19

(3) What restrictions may the coastal state impose on passage of ships through straits overlapped by territorial seas?

Ref: NWP-9 (Rev. A) 2.3.3.1; LOS art. 22

(4) Does Compliance with the TSS imply acceptance of Swedish conditions for entering territorial seas?

Ref: NWP-9 (Rev. A) 2.3.3.1; LOS arts. 41, 42, 43

(5) What is the appropriate response to the initial challenge from Malmo Naval Control?

Ref: NWP-9 (Rev. A) 2.3.2, 2.3.2.2, 2.3.3.1, 2.3.4.2; LOS arts. 17-25

(6) If the USCGC were in violation of innocent passage requirements, what would be Sweden's remedy?

Ref: NWP-9 (Rev. A) 2.3.2.4; LOS arts. 30, 31

## 2. INDIAN ADIZ AND FIR

a. A U.S. Carrier Battle Group (CVBG) is transiting from Subic Bay to the North Arabian Sea. Approximately 50 NM off the coast of India the CVBG Commander directs the embarked Air Group to conduct intensive work-up operations. While the CVBG is engaged in launch and recovery operations, simulated combat patrols, and simulated strikes on accompanying escort ships, the Indian government files an informal but strong protest alleging "violations of Indian sovereignty." How would you respond to protests based on each of the following allegations?

(1) That CVBG aircraft are in violation of India's Flight Information Region (FIR) by not filing flight plans and not complying with air traffic control directions.

Ref: NWP-9 (Rev. A) 2.5.2, 2.5.2.1, 2.5.2.2

(2) That CVBG aircraft are violating India's 50NM Air Defense Identification Zone (ADIZ) by declining to identify themselves or their intentions.

Ref: NWP-9 (Rev. A) 2.5.2, 2.5.2.3

(3) That the CVBG, by conducting military operations within India's 200NM Exclusive Economic Zone (EEZ) is violating the 1982 Law of the Sea Convention.

Ref: NWP-9 (Rev. A) 2.4.2

b. An Indian KASHIN II-class destroyer, an Indian NANUCHKA-class corvette and two indian OSA II-class missile patrol boats have been shadowing the CVBG. The Air Group Commander requests permission to take advantage of the rare opportunity to use Soviet made warships as targets by flying simulated airstrikes against these vessels.

(1) Does INCSEA provide any guidance for this request?

Ref: NWP-9 (Rev. A) 2.8,

(2) Does the 1982 LOS Convention provide any guidance?

(3) What would you advise the CVBG Commander?

Ref: See, e.g., NWP-9 (Rev. A) 2.4.4; UN Charter, Art. 51

c. An F-14 has an in-flight emergency precluding safe recovery aboard ship. Electing to BINGO to the nearest Indian airstrip, the pilot is informed by Indian authorities that the military field he proposes to land at is closed to foreign aircraft for security reasons. Furthermore, citing both the Chicago Convention (Article 3(c) thereof provides that state aircraft can't overfly or land in another nation without consent) and U.S. failure to comply with Indian FIR and ADIZ requirements, permission to land anywhere on Indian soil is denied.

(1) May Indian authorities deny permission to land for the reasons stated?

Ref: NWP-9 (Rev. A) 4.4

(2) May Indian authorities deny permission to land at the military airfield if they approve an alternative landing site some 30 miles further inland?

d. Unable to make landfall or to eject safely, the F-14 crew ditches in relatively shallow water 8 miles off the Indian coast. The crew is known to be alive but in distress. Indian authorities order the CVBG commander to remain outside Indian territorial waters, agreeing to mount a SAR effort and return the crew (but not the aircraft) "as soon as possible."

(1)

(a) Is there any authority which would permit the CVBG Commander to order his ships to enter Indian territorial waters despite India's order?

(b) Is there any authority which would permit the commander to order his aircraft to enter Indian airspace?

Ref: NWP-9 (Rev. A) 2.3.2.5, 3.2.1; LOS Art. 98

(2)

(a) Since the F-14 carries highly classified electronics gear and missiles, the CVBG Commander wants to recover the aircraft at the same time as the crew. How would you advise him?

(b) Does international law provide equivalent authority to recover the aircraft as it does to rescue the crew?

Ref: NWP-9 (Rev. A) 3.10

### 3. SOVIET SURFACE ACTION GROUP

You are on the staff of USCINCPAC. This morning's briefing highlights the transit of a Soviet surface action group through waters adjacent to the Hawaiian Islands. The SAG consists of a KIROV-class nuclear powered guided missile cruiser and two SOVREMENNY-class guided missile destroyers. The 3-2 (Intelligence) notes that a Soviet AGI is also active in the area and may be providing intelligence services to the SAG.

a. During the meeting, the Governor of Hawaii calls expressing outrage that the Soviets, by transiting through the 25 NM wide Alenuihaha Channel between the islands of Hawaii and Maui, are trespassing in the Hawaiian archipelago. He states his opinion that the KIROV's launching and recovering of helicopters constitutes a hostile act and that the radiological hazard from the vessels constitutes a threat to the fragile reef ecology of the Islands and to the Hawaiian people. The Governor demands that, in accordance with the law of the sea, the SAG be required to remain outside the territorial sea.

(1) Do the special rules for archipelagic waters apply in Hawaii?

Ref: NWP-9 (Rev. A) 1.4.3; LOS Art. 46

(2)

(a) What portions of the Alenuihaha Channel may the SAG transit without U.S. permission?

(b) May the U.S. restrict the passage of the nuclear-powered cruiser?

Ref: NWP-9 (Rev. A) 2.3.2, 2.3.3; LOS Arts. 18, 38

(3) Where and under what circumstances may the SAG normally launch and recover helicopters?

Ref: NWP-9 (Rev. A) 2.3.3; 2.5; LOS Arts. 19, 38

(4) If the SAG has been launching and recovering helicopters within 12 NM of land during the transit of Alenuihaha Channel, is that activity consonant with the navigational regime established under the 1982 LOS Convention?

Ref: NWP-9 (Rev. A) 2.3.3.1, 2.3.3.2

(5) On what basis, if any would the U.S. have the right to order the SAG to remain outside the territorial sea?

Ref: NWP-9 (Rev. A) 2.1.2, 2.1.2.1, 2.3.2, LOS Art. 23

b. The Governor calls again several hours later, having learned that the AGI is now passing through Hawaiian waters at a distance of 2NM from Pearl Harbor, its radar observed to be in operation. The Governor demands that US naval forces "shoulder" the AGI beyond the territorial sea.

(1)

(a) Under what circumstances may the AGI come within the territorial sea without U.S. permission?

(b) Does it make any difference whether the AGI is considered a warship?

Ref: NWP-9 (Rev. A) 2.3.2.1, 2.3.2.4, 2.3.2.5, 3.2.1

(2) Does operation of its radar within the territorial sea affect the AGI's passage rights?

Ref: NWP-9 (Rev. A) 2.3.2.1; LOS Article 19

(3) What actions may the U.S. take when the AGI comes within the territorial sea?

Ref: NWP-9 (Rev. A) 2.3.2.4; LOS Arts 19, 21

c. The J-3 (Operations) relates that a probable Soviet ECHO-class nuclear-powered submarine has been operating with the SAG.

(1) What restrictions, if any, must the ECHO observe in addition to those already identified for the SAG and AGI?

Ref: NWP-9 (Rev. A) 2.3.2.4; LOS Art 20, 23

(2) If the submarine follows the same track as the SAG, when may it proceed submerged and when must it be on the surface?

