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Naval Missions and the Law of the Sea

MARK W. JANIS*

Navies are some of the most important users of the oceans. *Jane's Fighting Ships* lists 126 national naval forces.¹ Many navies, however, are quite small. Only 47 have a vessel as large as a frigate or a destroyer, and only 14 have at least one cruiser or aircraft carrier.² Among all navies, four stand out not only in terms of size but in terms of capability. The world's four most powerful navies are those of the United States, the Soviet Union, Great Britain, and France. Only these four navies boast the SSBN, nuclear powered submarines armed with ballistic missiles.³ These four navies, more than any others, have the potential for substantial naval operations away from home ports. Such operations include showing the flag, protecting shipping, and intervention ashore.

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1. *JANE'S FIGHTING SHIPS* 1974-1975 (J. Moore ed. 1974).

2. *Id.* at 642-43.

3. It is possible that the People's Republic of China is developing an SSBN, but none is thus far operational. *Id.* at 78.

These two attributes, nuclear deterrent and distant-water capabilities, put these four navies into a class by themselves.

Since both SSBN operations and distant-water activities depend upon the right to navigate outside internal and territorial waters, it might be expected that the naval interests of the United States, the Soviet Union, Great Britain, and France would tend to favor traditional high seas freedoms. It is, in fact, commonly assumed that free transit through international straits and the preservation of liberal navigation rights outside a 12-mile territorial sea would be to the advantage of the four major navies.⁴ It is generally true that the naval operations of the four countries are facilitated by transit rights through straits and navigation rights along coastlines. This paper suggests, however, that the facilitation is greater for some navies and naval missions than for others.

THE SOVIET NAVY

The analysis begins with the navy of the Soviet Union not because the Soviet Navy is the most or least powerful of the four,⁵ but because the interests of the Soviet Navy are those most tied to the preservation of freedom of navigation.

Between 1972 and 1973 the Commander-in-Chief of the Soviet Navy, Admiral S.G. Gorshkov, published an important series of articles, *Navies in War and Peace*, in the Soviet Union's *Naval Digest*. Reserving the first half of the final installment for a consideration of law of the sea questions,⁶ Gorshkov stressed the need to preserve free transit of straits:

[W]ith the adoption of a 12-mile limit for the breadth of the territorial sea, more than 110 straits being used for international shipping will turn out to be closed territorial seas of littoral states. It is evident that this may have a considerable effect on the legal status of those straits which until now have been part of the high

4. CONG. RESEARCH SERV., LIB. OF CONG., *SOVIET OCEAN ACTIVITIES: A PRELIMINARY SURVEY* 75-81 (1975); Debré, *France's Global Strategy*, 49 *FOREIGN AFFAIRS* 395, 402 (1971); Hearn, *The Fourth Dimension of Seapower—Ocean Technology and International Law*, 22 *JAG J.* 23, 25 (1967); O'Connell, *Naval Policy and International Law and International Relations*, in *BRITAIN AND THE SEA* 32 (1973) (Papers and Records of a Conference at the Royal Naval College, Greenwich, Sept. 12-14, 1973).

5. Most observers rank the Soviet Navy as a strong second to the United States Navy. *JANE'S FIGHTING SHIPS 1971-1972* at 80 (R. Blackman ed. 1971).

6. Gorshkov, *Navies in War and Peace*, 100 *U.S. NAV. INST. PROC.* 11, 55-60 (1974) (translated from *MORSKOY SBORNIK 1972-1973*). For a more thorough analysis of the piece see Janis, *The Soviet Navy and Ocean Law*, 26 *NAV. WAR COLL. REV.* 5, 52 (1974).

seas and which have been used for navigation without any sort of limitations. Therefore, in those straits which connect the open seas and are used for international shipping, all transiting ships (and in the wider straits also aircraft flying overhead) must be accorded freedom of transit and overflight.⁷

Gorshkov also noted the need to limit claims to extensive territorial seas:

The key to the solution of this question [claims to 200-mile territorial seas] is the strict establishment of limitations on the breadths of territorial seas Based on existing practice and a sensible combination of interests of coastal states with principles of the freedoms of the high seas, it would seem completely acceptable to limit the breadth of the territorial sea to limits of up to 12 miles.⁸

That these positions advance Soviet naval interests is clear from an examination of Soviet naval missions, capability, and geography. Earlier articles in Admiral Gorshkov's series establish three broad missions for the Soviet Navy: defense of the homeland, sea denial, and naval presence. The defense of the homeland mission includes both strategic deterrence, for which the Soviet Navy provides about 50 SSBNs, and conventional defense, for which the Soviet Navy provides over 300 submarines and a considerable land-based air arm.⁹ The submarine forces join about 200 surface combatants (cruisers, destroyers, frigates) and about 800 other craft to fulfill the other two missions.¹⁰ Gorshkov visualizes Soviet sea denial largely in terms of denying the United States Navy access to foreign theaters such as the Mediterranean, the Mid-East, the Far East, and South Asia.¹¹ There is no doubt that these forces also have the capability to interdict to some extent the West's maritime commerce and lines of communication.¹² The third role, naval presence, is seen both as a prestige symbol and as a demonstration of "the economic and military might of a country beyond its borders during peacetime."¹³

7. Gorshkov, *supra* note 6, at 58.

8. *Id.*

9. JANE'S FIGHTING SHIPS 1974-1975, at 535-38, 639, 642 (J. Moore ed. 1974).

10. *Id.* at 642.

11. Gorshkov, *Navies in War and Peace*, 100 U.S. NAV. INST. PROC. 10, 61-62 (1974) (translated from MORSKEY SBORNIK 1972-1973).

12. B. M. BLECHMAN, *THE CHANGING SOVIET NAVY* 26-29 (1973).

13. Gorshkov, *supra* note 11, at 59.

The Soviet Navy, however, faces important geographical constraints. Of the Soviet Navy's four fleets, only the Northern Fleet based in Murmansk has an ice-free, straits-free route to the open oceans. The Baltic Fleet is not only plagued with ice in the winter but must transit the Danish Straits to reach the North Sea and the Atlantic. The Black Sea Fleet must transit the Turkish Straits to reach the Mediterranean and then the Straits of Gibraltar to reach the Atlantic, or the Suez Canal to reach the Indian Ocean. Most of the Pacific Fleet must pass through the straits of the Sea of Japan to reach the Pacific.

Soviet SSBN forces are based at Murmansk (for the Atlantic) and at Petropavlosk on the Kamchatka Peninsula (for the Pacific) where no narrow straits passages are necessary.¹⁴ A 12-mile territorial sea, however, could affect the passage of Soviet vessels through the Straits of Gibraltar to reach the Atlantic, through some of the straits of the Sea of Japan from Vladivostok to reach the Pacific, and through the Indonesian straits to reach the Indian Ocean. A 200-mile territorial sea would encircle the Soviet Union with territorial seas except in the northwestern Pacific. This, theoretically at least, could endanger Soviet access to the Atlantic from Murmansk through the gaps between Greenland/Iceland and Iceland/United Kingdom and threaten not only surface vessel but submarine operations as well.

These geographical concerns add to the interest of the Soviet Navy in navigation rights. The greater the operating range of SSBNs, the more difficult their location and destruction. In order to challenge the Western navies in the Atlantic, the Mediterranean, the Indian Ocean, and the Pacific, the Soviet Navy needs to exit from internal positions. In order to show a naval presence, the same is true. Admiral Gorshkov's law of the sea positions follow naturally from his statement of Soviet naval missions and from the geographical situation of the Soviet Union.

THE BRITISH NAVY

The Royal Navy follows in the analysis because British naval interests provide the greatest contrast to Soviet naval interests. Although British naval power was foremost in the 19th and early 20th centuries, today the Royal Navy is a distant third to the United States and Soviet navies and is still slipping.¹⁵ When the Royal

14. J. Deaton, *The Significance of International Straits to Soviet Naval Operations*, 31-32, 47-48, 111-12 (1975) (unpublished Naval Postgraduate School Master's thesis, Monterey, Cal.).

15. G. LEE, *SEA POWER: THE ROYAL NAVY* 8 (1973).

Navy was tasked with protecting Britain's far-flung colonies and trade routes, the British naval interest in freedoms of the high seas was clear. A new nature of British naval interests in law of the sea issues can be seen against the background of the changing missions and composition of the Royal Navy.

In the past three decades, there has been a significant reduction in the scope of British naval operations. The Royal Navy, which carried out almost global responsibilities in 1945, today is committed principally to regional duties. The current status of British naval missions can be seen in the British government's *Statement on the Defence Expenditures 1975*.¹⁶ Three roles for the Royal Navy emerge: maintaining Britain's nuclear deterrent, providing the largest part of Britain's and NATO's maritime defense in the Eastern Atlantic Channel areas, and to a much lesser extent protecting British and NATO interests in other regions.

The entire British strategic deterrent is based upon the Royal Navy's four SSBNs: *Renown*, *Repulse*, *Resolution*, and *Revenge*.¹⁷ Because of Britain's position on the Atlantic, no restrictions on navigation rights through straits or along coasts would threaten the access of Britain's SSBNs to the high seas and to relative security in the deep oceans.

The second and third missions of the Royal Navy are the concern of the remainder of the British fleet which includes an aircraft carrier, two helicopter carriers, about 75 surface combatants, about 30 submarines, and about 350 other vessels.¹⁸ The Royal Navy's defensive role in the waters around Britain is seen largely in terms of offsetting the Soviet Navy's strength.

These [the Eastern Atlantic and Channel areas] are the forward sea areas of NATO corresponding to the Central Region on land, in which NATO's maritime forces face the growing power of the Soviet Navy.

All the sea-borne supply and reinforcement routes from North America to Britain and the European mainland pass through these areas. If the balance of maritime power were allowed to shift so far in favour of the Warsaw Pact that it had an evident ability in

16. SECRETARY OF STATE FOR DEFENCE, STATEMENT ON THE DEFENCE EXPENDITURES 1975, CMND. NO. 5976 (1975).

17. JANE'S FIGHTING SHIPS 1974-1975, at 348 (J. Moore ed. 1974).

18. *Id.* at 330, 349-51, 642-43.

a period of tension to isolate Europe by sea, the effect on Allied confidence and political cohesion would be profound.¹⁹

To fulfill this second mission of regional defense, there is again no reason why the Royal Navy must rely on free navigation rights. The Royal Navy has unimpeded access to the Atlantic and to the North Sea. NATO ally Denmark would permit access to the Baltic. If restrictions on naval navigation adversely affected any naval power in this region, it would be the Soviet Navy, the very force the Royal Navy means to counter.

With regard to the third naval mission, the British government has made clear that "commitments outside the NATO area [are] of the lowest priority in strictly military terms."²⁰ It is the British intent, however, to deploy the Navy outside the Eastern Atlantic and Channel areas "from time to time."²¹ It is only to the extent that the Royal Navy operates in more distant waters that it will need to depend on navigation rights. Operations in the Mediterranean, for example, could be restricted by unfavorable regimes controlling the Strait of Gibraltar. But the Royal Navy is withdrawing from a permanent position in the Mediterranean.²² Continuing commitments in Hong Kong, Belize, and the Falkland Islands might call for navigation rights along coasts. Protection of Britain's vital shipping interests might call for distant-water naval operations, although the government admits "the Navy, on its own, would be in no position to defend British merchant shipping outside NATO waters."²³ As Great Britain becomes less interested in and less capable of maritime operations outside of regional waters, the British naval interest in navigation rights becomes less great.

On the whole, then, it does not seem that there are pressing reasons for British naval interests to favor traditional freedoms of the high seas solely for carrying out naval missions. This should not be taken to mean that Britain's maritime interests do not, on the whole, favor navigational freedoms. Shipping, for example, is all too important for Great Britain to permit the United Kingdom to abandon a position of free navigation through straits and free navigation outside 12-mile territorial seas. But the analysis would seem to indicate that questions of mobility for the Royal Navy do not themselves press Great Britain towards favoring navigation rights.

19. SECRETARY OF STATE, *supra* note 16, at 9-10.

20. HOUSE OF COMMONS, SECOND REPORT FROM THE EXPENDITURE COMMITTEE: THE DEFENCE REVIEW PROPOSALS, H.C. 259, ix (1975).

21. SECRETARY OF STATE, *supra* note 16, at 15.

22. *Id.* at 13-15.

23. HOUSE OF COMMONS, *supra* note 20, at xii.

THE UNITED STATES NAVY

United States naval interests are between those of the Soviet Union and of Great Britain; The United States Navy, with the Soviet Navy, shares concerns of access through straits and navigations along foreign shores; The United States Navy, with the British Navy, shares a relatively favorable geographical position.

The importance of navigation rights must be viewed in relation to the four missions of the United States Navy as officially established in 1970 by the Chief of Naval Operations, Admiral Elmo R. Zumwalt, Jr., and as elaborated in an article in 1974 by the President of the Naval War College, Vice Admiral Stansfield Turner.²⁴ The four missions are strategic deterrence, sea control, protection of power ashore, and naval presence.

The United States has some 41 SSBNs. Due to the easy access of the United States to the Atlantic and Pacific and the range of missiles aboard the SSBNs, Professor Robert E. Osgood concludes:

[T]he absence of a provision for free transit of international straits in a law of the sea treaty sanctioning 12 mile territorial sea boundaries, although imposing some hardships on the operations of the U.S. SSBN fleet, would not seriously weaken its contribution to nuclear deterrence.²⁵

The effect of restrictive straits' regimes, however, places more serious limitations on the ability of the Navy to accomplish its three conventional missions. The United States Navy has 15 aircraft carriers (more than all other navies combined), about 200 surface combatants, about 60 amphibious craft, about 70 fleet and patrol submarines, and some 300 other craft.²⁶ In addition, the United States operates a separate Coast Guard with 40 surface combatant-type vessels and about 200 other ships.²⁷ Despite the recent Soviet naval challenge, most observers still rank the United States Navy the most powerful afloat. More than any other navy, the United

24. Turner, *Missions of the U.S. Navy*, 26 NAV. WAR. COLL. REV. 2-17 (1974).

25. Osgood, *U.S. Security Interests in Ocean Law*, 2 OCEAN DEV. & INT'L L.J. 1, 17 (1974).

26. JANE'S FIGHTING SHIPS 1974-1975, at 642-43 (J. Moore ed. 1974). The number of ships in the United States Navy is an often changing figure and often disputed. The figures given were generally accepted when this edition of *Jane's* was published in 1974.

27. *Id.* at 515-26.

States Navy has the potential sea control and the projection of power ashore. The aircraft carrier strength of the United States Navy permits it to protect its own shipping, deny the oceans to others, and to attack shore positions with aircraft. The United States Navy's amphibious capability gives it the possibility of sending troops ashore, while the surface combatant fleet can hit shore positions with naval gunfire.

Adverse straits regimes could most seriously affect the United States Navy in the Mediterranean where it has had a long-standing presence and in the Indian Ocean where a naval build-up between the two superpowers may be beginning.²⁸ The Mediterranean presence depends on access through the straits of Gibraltar. The Indian Ocean presence relies on passage through the Indonesian straits which cuts days off transit time from the Pacific (the alternative routes are north, only with difficulty, and south of Australia).

Restrictions on coastal passage could impair the sea control, projection of power ashore, and naval presence roles, all of which often rely on naval operations off the shores of third states, uninvolved in any dispute. Given the stake which the United States Navy has in these three missions, the naval interest of the United States in maintaining free navigation off foreign shores is clear. Like the Soviet Union, but unlike Great Britain, distant-water operations are important for the United States.

One must note, however, that the United States has a relatively advantageous geographical position when compared with the Soviet Union. Restrictions on passage through straits and along shorelines would be much more detrimental to the Soviet Navy than to the United States Navy. Insofar as such restrictions would affect the relative balance of the two fleets, it might be that the United States Navy would be better off vis-à-vis the Soviet Navy if restrictions were imposed. However, such restrictions would not necessarily aid the United States Navy in accomplishing tasks unrelated to those of the Soviet Navy.

THE FRENCH NAVY

Evaluation of French naval interests in the law of the sea poses a typical problem. In this study, as in other Anglo-American

28. For the Mediterranean, see Dur, *The U.S. Sixth Fleet: Search for Consensus*, 100 U.S. NAV. INST. PROC. 4, 18-23 (1974); for the Indian Ocean, see D. Daniel, *Naval Presence and Naval Interests: The Case of the United States Navy in the Indian Ocean*, March 20, 1975 (Naval Postgraduate School, Monterey, Cal. Paper presented to the Western Political Science Association, Seattle, Wash.).

studies of French foreign policy, there seems to be a difference between the objective interests of France and those interests perceived by the French leaders. Objectively, given the position and capabilities of the French Navy, French naval interests should resemble those of the British. The French, however, view themselves as something of a "mini"-superpower and would align their naval interests alongside those of the Soviet Union and the United States.

The authoritative statement of French naval missions can be found in the *Livre Blanc sur la Défense Nationale* published in two volumes in 1972 and 1973 by France's Ministry of Defense.²⁹ The *Livre Blanc* provides three general objectives for the French armed forces: the territorial security of France, the security of Europe and the Mediterranean, and the fulfillment of France's overseas commitments. The crucial element for all is the maintenance of an independent retaliatory capability.³⁰ There is a three-pronged nuclear potential: airborne, land-based, and SSBN.³¹ There are five French SSBNs: *Le Redoutable*, *Le Terrible*, *Le Foudroyant*, *L'indomptable*, and *Le Tonnant* (not yet operational). The relative importance of the SSBNs will increase in the next decade because France's Mirage IV bombers armed with nuclear weapons will probably be phased out.³² It is generally accepted that the SSBN force is more secure than France's few land-based nuclear missiles.³³ As with the United States and Great Britain, France does not rely on passage through straits to reach the high seas and France's SSBN force would not be adversely affected by restrictions on navigation.

The French Navy's conventional forces consist of two aircraft carriers, about 50 surface combatants, approximately 20 patrol submarines, and about 250 other craft.³⁴ Altogether, the French Navy holds fourth place among the world's navies and it may well be that it will pass the Royal Navy within the decade.³⁵ The conven-

29. I MINISTRE D'ETAT CHARGÉ DE LA DÉFENSE NATIONALE, *LIVRE BLANC SUR LA DÉFENSE NATIONALE* (1972); II *id.* (1973).

30. V. Giscard d'Estaing, Broadcast over French Television, March 25, 1975, at 1-3 (Ambassade de France, Service de Presse et d'Information).

31. I MINISTRE D'ETAT, *supra* note 29, at 12-13.

32. G. BROSSOLLET, *ESSAI SUR LA NON-BATAILLE* 21 (1975).

33. A. SANGUINETTI, *LE FRACAS DES ARMES* 24 (1975).

34. *JANE'S FIGHTING SHIPS 1974-1975*, at 109-32 (J. Moore ed. 1974).

35. Moore, *France and Her Navy*, 79 *NAVY INT'L* 10, 11 (1974).

tional forces are intended to provide a threshold, testing the enemy's seriousness before launching a nuclear attack.³⁶ They are also meant to give France the capability for intervening abroad to protect friendly regimes,³⁷ for defending sealanes and French trade,³⁸ and for projecting a French naval presence.³⁹

In terms of the size of the French Navy and the importance of its strategic deterrent and threshold missions it would seem that French naval interests would be little affected by restrictions on naval passage. SSBN access to the oceans would not be limited and France's position on the Atlantic and the Mediterranean gives it an excellent situation for testing a potential enemy's intents without sending the French Navy through any strait or along any foreign shore. But the distant-water missions of the French Navy—foreign intervention, the protection of trade, showing the flag—are of greater importance than they are for the Royal Navy of roughly the same size and capability. Perhaps the difference in the approaches of these two nations can be explained by the relatively greater reliance which the British place on the Americans and the correspondingly greater need for the French to assume for themselves some of the distant-water operations which the British would leave with the United States. In any event, French naval interests are seen by the French to require free navigation through straits and along coasts.⁴⁰

CONCLUSION

This brief study has not intended to devise a naval policy toward the law of the sea for any of the four navies considered. The purpose of this analysis is merely to suggest that the naval interests of the four principal naval powers in law of the sea issues are not necessarily similar and to suggest some ways in which these naval interests might differ. There is considerably more public debate about naval policy and the law of the sea in Great Britain than in the United States.⁴¹ This may be due to mutual suspicions in both the naval and international legal communities here; the

36. Dabezies, *The Defence of France and the Defence of Europe*, in R.U.S.I. AND BRASSEY'S DEFENCE YEARBOOK 111-12 (1974).

37. I MINISTRE D'ETAT, *supra* note 29, at 22-25.

38. *Id.* at 24-25.

39. *Id.* at 25.

40. SANGUINETTI, *supra* note 33, at 35-36.

41. Hill, *Maritime Power and the Law of the Sea*, 17 SURVIVAL 2, 69 (1975); O'Connell, *supra* note 4; Young, *New Laws for Old Navies: Military Implications of the Law of the Sea*, 16 SURVIVAL 6, 262 (1974). The outstanding exception which proves the rule in the United States is Osgood, *supra* note 25.

naval people worry that international lawyers do not take defense concerns seriously enough and the international lawyers believe naval questions are either too mysterious to be discovered or too trivial to be worthy of analysis. Whatever the reason, the British are to be commended for examining the interrelationship between naval and legal interests; the United States would do well to follow this example.