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THESIS

CONTROVERSIAL INNOCENT PASSAGES IN THE BLACK SEA, 1982–2021

by

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September 2022

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How and why has Russia disputed innocent passages by Western warships in the Black Sea since the implementation of the United Nations Convention on the Law of the Sea (UNCLOS III) in 1982, and how has the West justified conducting these passages? This thesis focuses on the historical, geopolitical, and legal context surrounding four instances of innocent passage conducted by USS *Yorktown* and USS *Caron* (1986 and 1988), HMS *Dragon* (2020), and HMS *Defender* (2021) within 12 nautical miles of Crimea, in order to explain the broader implications that these innocent passages have for operations in the disputed waters of the Black Sea and the South China Sea. Whereas the 1986 innocent passage was met with Soviet naval interference and diplomatic protests, the 1988 innocent passage escalated to an infamous shouldering or "bumping incident." A similar pattern of escalation took place after Russia's 2014 annexation of Crimea. In my thesis, I provide a historical context for the innocent passages, and I explore U.S. and UK reasoning for conducting the innocent passages as well as Russia's objections to the passages. Finally, I assess what the disputes suggest for similar maritime disputes with China in the South China Sea and propose a template for Navy-Wide Freedom of Navigation Operations (FONOP) guidance.

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CONTROVERSIAL INNOCENT PASSAGES IN THE BLACK SEA, 1982–2021

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ABSTRACT

How and why has Russia disputed innocent passages by Western warships in the Black Sea since the implementation of the United Nations Convention on the Law of the Sea (UNCLOS III) in 1982, and how has the West justified conducting these passages? This thesis focuses on the historical, geopolitical, and legal context surrounding four instances of innocent passage conducted by USS *Yorktown* and USS *Caron* (1986 and 1988), HMS *Dragon* (2020), and HMS *Defender* (2021) within 12 nautical miles of Crimea, in order to explain the broader implications that these innocent passages have for operations in the disputed waters of the Black Sea and the South China Sea. Whereas the 1986 innocent passage was met with Soviet naval interference and diplomatic protests, the 1988 innocent passage escalated to an infamous shouldering or "bumping incident." A similar pattern of escalation took place after Russia's 2014 annexation of Crimea. In my thesis, I provide a historical context for the innocent passages, and I explore U.S. and UK reasoning for conducting the innocent passages as well as Russia's objections to the passages. Finally, I assess what the disputes suggest for similar maritime disputes with China in the South China Sea and propose a template for Navy-Wide Freedom of Navigation Operations (FONOP) guidance.

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LIST OF ACRONYMS AND ABBREVIATIONS

CNO	Chief of Naval Operations
CONOP	Concept of Operations
CSIS	Center for Strategic and International Studies
FON	Freedom of Navigation
FONOP	Freedom of Navigation Operation
HMS	Her Majesty's Ship
INCSEA	Incidents at Sea Agreement
INF	Intermediate-Range Nuclear Forces
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NWOT	Navy-Wide Operational Task
OPORD	Operational Order
PLAN	Chinese People's Liberation Army Navy
PPR	Pre-Planned Response
PRC	People's Republic of China
SACEUR	Supreme Allied Commander at NATO
SOP	Standard Operating Procedure
UNCLOS	United Nations Convention on the Law of the Sea
USS	United States Ship
USSR	Union of Soviet Socialist Republics

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I. INTRODUCTION

A. MAJOR RESEARCH QUESTION

How and why has Russia disputed innocent passages by Western warships in the Black Sea since the implementation of the United Nations Convention on the Law of the Sea (UNCLOS III) in 1982, and how has the West justified the conduct of these passages? My thesis will focus on the historical, geopolitical, military, and legal context surrounding four instances of innocent passage conducted by USS *Yorktown* and USS *Caron* (1986 and 1988, respectively), HMS *Dragon* (2020), and HMS *Defender* (2021) within 12 nautical miles of Crimea, in order to explain the broader implications that these innocent passages have for operations in the disputed waters of the Black Sea and the South China Sea. Whereas the 1986 innocent passage was met with Soviet naval interference and diplomatic protests, the 1988 innocent passage resulted in an infamous shouldering or "bumping incident"—the most dangerous encounter between U.S. and Soviet warships in the Black Sea during the Cold War, and the last significant hostile interaction between U.S. and Russian surface warships until 2014.[1]

A similar pattern of escalation took place after Russia's 2014 annexation of Crimea. After the Cold War, the West continued to operate in the Black Sea, but those operations did not result in any newsworthy confrontations until Russia's annexation of Crimea. Since 2014, Russia has aggressively confronted Western warships operating in international waters in the Black Sea. In late 2020, HMS *Dragon* conducted the first newsworthy innocent passage of a Western warship within 12 nautical miles of Crimea since the Cold War with little controversy. Conversely, the subsequent 2021 innocent passage by HMS *Defender* drew a much more aggressive Russian response. This thesis provides a historical context for these innocent passages and explores the U.S. and UK rationale for their conduct, as well as Russia's objections.

[1] David F. Winkler, *Incidents at Sea: American Confrontation and Cooperation with Russia and China*, 1945–2016 (Annapolis, MD: Naval Institute Press, 2017), 179–81.

B. SIGNIFICANCE OF THE RESEARCH QUESTION

This thesis will help policy makers and strategists in the United States and its allies and partners better understand how to address the Russian threat in disputed waters. In the current geopolitical environment, a conflict between the United States, the United Kingdom, and Russia in the Black Sea would be costly, could escalate dramatically, and would distract the United States and the United Kingdom from the "pivot" to East Asia at time when they are positioning themselves to counterbalance the rising Chinese military threat. The United States and the United Kingdom, therefore, must have a coherent policy and strategy that efficiently deters the Russian maritime threat. Through examination of how and why military interactions in the Black Sea have evolved, this thesis aims to provide insight for future policy makers and strategists so they can better craft maritime policy and strategy to address the Russian threat in the Black Sea, the Arctic, and the Sea of Japan.

Furthermore, military interactions in the Black Sea between the West and USSR/ Russia can set crucial precedents and lessons learned for the Chinese projection of military power in East Asia. According to Lieutenant General (Retired) Charles Hooper, "the PLA [People's Liberation Army] are careful and meticulous students of modern warfare," and the West should assume that China will adapt its approach to Taiwan based on Russia's successes and failures in Ukraine.[2] Additionally, the incidents from the 1980s represent one of the last precedents for maritime disputes between great powers in the Cold War and can inform policy makers on how to achieve current and future maritime policy objectives in a contest with China. The controversial Freedom of Navigation Operations (FONOPs) in the 2020s, in turn, can help explain the role of allies and media coverage in modern maritime dispute resolution.

In regard to the former, Sinisa Vukovic and Riccardo Alfieri, for example, specifically point to the resolution of the 1988 bumping incident in the Black Sea as a

[2] Evan A. Feigenbaum and Charles Hooper, "What the Chinese Army Is Learning From Russia's Ukraine War," Carnegie Endowment for International Peace, accessed August 6, 2022, https://carnegieendowment.org/2022/07/21/what-chinese-army-is-learning-from-russia-s-ukraine-war-pub-87552.

precedent for future conflict resolutions with China.[3] More broadly, the Chinese have been acutely interested in the Soviet and Russian militaries, and the West should understand the lessons that today's Chinese People's Liberation Army Navy (PLAN) has learned from the Soviet and Russian navies.[4] Although China is not a primary focus of this thesis, this thesis draws parallels between the behavior of the Soviet and Russian navies and the PLAN. In particular, it considers how the experiences from the maritime encounters with the Soviet and Russian navies could be relevant for addressing excessive Chinese maritime claims today.

C. LITERATURE REVIEW

Scholars generally agree that Crimea and the warm waters of the Black Sea have long been strategically crucial objects for Russia's great power ambitions. Since Russia first annexed Crimea in 1783, the peninsula has remained important to Russia's foreign policy and security, giving Russia access to the Mediterranean via the Turkish Straits.[5] To expand its influence in the region, in the 1850s, Russia helped quell uprisings in neighboring states.[6] Where uprisings did not exist, Russia instigated trouble, thereby giving itself an excuse to intervene, as it did to protect Christians in the Balkans in 1852–1853.[7] These actions led to the 1853–1856 Crimean War. Russia's Admiral Gorshkov, Commander-in-Chief of the Soviet Navy from 1956–1985 and one of the most transformative leaders in Russian naval history, stressed the importance of Crimea and the Black Sea to Russia, writing that Russia's defeat at the hands of the English and French in the Crimean War in the 1850s was an "exceptionally important turning-point" for Russia

[3] Riccardo Alfieri and Sinisa Vukovic, "Halting and Reversing Escalation in the South China Sea: A Bargaining Framework," *Global Policy* 11, no. 5 (November 2020): 598–610, https://doi.org/10.1111/1758-5899.12868.

[4] Lyle J. Goldstein, "China's Strange Fascination with the Soviet Navy," National Interest, last modified December 23, 2014, https://nationalinterest.org/feature/china's-strange-fascination-the-soviet-navy-11913.

[5] Richard Pipes, *Russia Under the Old Regime* (New York: Charles Scribner's Sons, 1974), 15; Gorshkov, S. G. Gorshkov, *The Sea Power of the State* (Annapolis, MD: Naval Institute Press, 1979), 81.

[6] Robert Gildea, *Barricades and Borders*, 3rd ed. (New York: Oxford University Press, 2003), 178–79.

[7] Gildea, *Barricades and Borders*, 178–79.

and resulted in a "humiliating ban" on Russian naval forces in the Black Sea that lasted until 1871.[8] Martin Malia concurs with Gorshkov's assessment that the Crimean War represented a turning-point for Russia, writing that the war was the beginning of a "losing streak" for pre-Soviet Russia.[9] The persistent geopolitical tensions between Russia and Western powers in the region have been reflected in the different interpretations of the purpose of the Crimean war. According to Gorshkov, the English and French went to war in Crimea in order to deny Russia access to the Mediterranean Sea.[10] Western observers, on the other hand, have argued that this conflict had a defensive purpose; Robert Gildea, for instance, offers that France and Britain mobilized to counter Russia's expansionist endeavors in the Black Sea region.[11] But what everyone agrees is that the Crimean War has been a landmark in Russia's relationship with the West, highlighting the Black Sea as a key pivot in this relationship.

This outlook persists to this day. A 2020 RAND report sums up the contemporary importance of the Black Sea region to Russia, calling it "an intersection of several core Russian concerns and a critical nexus for defending the Russian homeland, maintaining a sphere of influence, shaping the future of Europe, and projecting power into the Eastern Mediterranean and the Middle East."[12] The report goes on to stress the importance of the region as a market and transportation hub for Russian energy exports.[13] Given these stakes, it should come as no surprise that Russia has guarded the Black Sea jealously.

During the Cold War, the Black Sea remained crucial to Soviet security—so much so that after adopting the 1982 United Nations Convention on the Law of the Sea (UNCLOS III), the USSR took the extreme measure of creating a domestic law in 1983

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[8] Gorshkov, *The Sea Power of the State*, 81.

[9] Martin Malia, *The Soviet Tragedy: A History of Socialism in Russia*, 1917–1991 (New York, NY: The Free Press, 1994), 68.

[10] Gorshkov, *The Sea Power of the State*, 80.

[11] Gildea, *Barricades and Borders*, 178–79.

[12] Anika Binnendijk et al., *Russia, NATO, and Black Sea Security*, RRA357-1 (Santa Monica, CA: RAND, 2020), x, www.rand.org/t/RRA357-1.

[13] Binnendijk et al., *Russia, NATO, and Black Sea Security*, 34–35.

that implicitly prohibited the innocent passage of foreign warships in the Black Sea.[14] The United States responded by conducting a series of innocent passages through Soviet territorial waters in the Black Sea starting in 1984.[15] The Soviet government, in turn, protested these innocent passages in the 1980s, and the 1988 innocent passage that resulted in a bumping incident even received condemnation in the U.S. media.[16] These events have sparked considerable controversy in the West. In a 1987 article, W. E. Butler suggests that it is likely that U.S. warships were collecting intelligence during their 1986 innocent passage, an activity which is not in accordance with UNCLOS.[17] Many Western news media and analyses at the time called the 1988 passage illegal, provocative, and reckless at a time when the Soviets and the United States were negotiating the Intermediate-Range Nuclear Forces (INF) treaty.[18]

This media coverage gives insight into the U.S. national sentiment at the time of the incident and might explain why the United States signed a statement on innocent passage with the USSR the following year.[19] Roach and Smith acknowledge the negative public reaction to the 1988 innocent passage, but argue that the public did not fully understand the exercise and that it was legal.[20] These reactions show that exercising the right of innocent passage not only sets precedents that can be applied to other regions, but it can also impact domestic politics, creating risks for derailing strategic negotiations, or pressures for escalating into a large-scale crisis.

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14 W. E Butler, "Innocent Passage and the 1982 Convention: The Influence of Soviet Law and Policy," The American Journal of International Law 81, no. 2 (April 1987): 339, https://doi.org/10.2307/2202406.

15 Winkler, *Incidents at Sea*, 248–52; J. Ashley Roach, and Robert W. Smith, *International Law Studies 1994 Excessive Maritime Claims,* Volume 66 (Newport, Rhode Island: Naval War College, 1994), 148–68.

16 Halloran, Richard, "2 U.S. Ships Enter Soviet Waters Off Crimea to Gather Intelligence," New York Times, March 19, 1986, CIA; Eugene J. Carroll, "The Black Sea Blackout: Congress Should Ask Who Ordered Our Provocative Naval Mission," The Washington Post, March 6, 1988, 52, ProQuest.

17 Butler, "Innocent Passage and the 1982 Convention," 343–46.

18 Carroll, "The Black Sea Blackout," 52.

19 Roach and Smith, *International Law Studies 1994 Excessive Maritime Claims*, 281–82.

20 Roach and Smith, *International Law Studies 1994 Excessive Maritime Claims*, 148–68.

These incidents also had significant implications for both bilateral and international norms governing conduct and relations in the maritime realm. In 1989, the U.S. and USSR signed a joint statement detailing their shared understanding of the rules governing innocent passage.[21] At the same time, some authors have underlined that the use of UNCLOS to justify U.S. actions might be perceived by other nations as illegitimate, because to this day, the United States has not ratified UNCLOS III. For example, the former U.S. Chief of Naval Operations (CNO) Admiral Greenert argues that remaining outside UNCLOS undermines U.S. authority. While he does not dispute the U.S. right to conduct FONOPS to uphold UNCLOS, he implies that the U.S. position on FONOPS during innocent passage would be stronger if the U.S. were a signatory participant.[22]

From a military standpoint, the roots of the 1988 bumping incident can be traced to the rise of the Soviet Navy, which began between the mid-1950s and the mid-1960s. Brooks, Fedoroff, and Polmar argue that the 1956 Suez crisis and Admiral Gorshkov's appointment as Commander-in-Chief of the Soviet Navy that same year marked the beginning of the Soviet naval build-up. They suggest that although Soviet leader Khruschev initially opposed the construction of large surface warships, the lack of U.S. intervention in the Suez crisis left the Soviets with an impression that there was an opening for the Soviet military to have a greater influence in international affairs.[23]

Brooks et al. also recognize that the 1962 Cuban Missile Crisis is the most widely cited trigger for the beginning of the Soviet naval build-up.[24] Indeed, in a 1973 paper on the Soviet Navy for the Brookings Institute, Barry Blechman argues that the Cuban Missile Crisis "convinced the Soviet Union that strategic nuclear power was not a sufficient basis for attainment of its foreign policy goals, that it also would be necessary to develop general

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[21] Roach and Smith, *International Law Studies 1994 Excessive Maritime Claims*, 281–82.

[22] Jonathan Greenert, "UNCLOS and U.S. Freedom of Navigation," Hampton Roads International Security Quarterly (July 2012): 37, ProQuest.

[23] Thomas A. Brooks, George E. Fedoroff, and Norman Polmar, *Admiral Gorshkov: The Man Who Challenged the U.S. Navy* (Annapolis, MD: Naval Institute Press, 2019), 118; Brooks, Fedoroff, and Polmar, *Admiral Gorshkov*, 154.

[24] Brooks, Fedoroff, and Polmar, *Admiral Gorshkov*, 153.

purpose forces capable of defending its foreign interests."[25] This crisis, according to Blechman, further boosted the ongoing build-up of the Soviet surface fleet.[26] John Herzog writes that limitations of Soviet submarines during the Cuban Missile Crisis suggested to the Soviets that "it would take sophisticated surface ships, with their high visibility, to exert political influence."[27]

Largely under Soviet control during the Cold War, the Black Sea provided a strategically important home for the growing Soviet fleet in Sevastopol. This Black Sea presence, with bases in Crimea at its core, gave the Soviets the ability to quickly project power into the Mediterranean and Suez Canal. This posture amplified the East-West confrontation in the region. As the Soviets grew their surface navy in Sevastopol, the United States increased its operations in the Black Sea to ensure freedom of navigation in the international waters of the Black Sea and prevent the sea from becoming a Soviet lake. In turn, the U.S. operations inside the Black Sea forced the Soviets to change their national security calculus. These actions demonstrated that the U.S. Navy was not limited to trapping the Soviet Black Sea Fleet north of the Bosphorus; instead, it could contest the waters around one of the Soviets' most important naval bases. The Soviet response, as David Winkler chronicles, led to an uptick in the incidents in the Black Sea between U.S. and Soviet naval vessels starting in 1965—indicating that the region was contested throughout much of the Cold War.[28]

The last major incident between Soviet and American surface ships in the Cold War was the 1988 bumping incident off Crimea, which has complex legal, political, and strategic origins.[29] Most maritime law scholars, like James Kraska, Raul Pedrozo, and Ashley Roach, focus their explanations on the underlying legal dispute regarding the right

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[25] Barry Blechman, *The Changing Soviet Navy* (Washington, DC.: The Brookings Institute, 1973), 21.

[26] Blechman, *The Changing Soviet Navy*, 21.

[27] John J. Herzog, "Perspectives On Soviet Naval Development: A Navy To Match National Purposes," in Naval Power in Soviet Policy, ed. Paul J. Murphy (Washington, DC: Studies in Communist Affairs, 1978), 39.

[28] Winkler, *Incidents at Sea*, 225.

[29] John E. Lehman, *Oceans Ventured*: *Winning the Cold War at Sea* (New York: W. W. Norton & Company, 2018), 225.

of innocent passage through Soviet territorial waters.[30] However, it is hard to explain the change in Soviet behavior between 1986 and 1988 from a purely maritime law standpoint. Former U.S. Secretary of the Navy John Lehman and the CIA offer murkier political explanations for the incident. Lehman notes that Gorbachev was in a Crimean dacha during a relatively uneventful U.S. innocent passage off Sevastopol in 1986, and that the Soviets viewed that operation as a deliberate "slap" at Gorbachev—setting the scene for a more aggressive Soviet response to the 1988 U.S. FONOP.[31] Another legal scholar, William J. Aceves, cites a Central Intelligence Agency assessment of the 1988 bumping, which makes a political connection between the incident and Gorbachev's 1987 firing of his Defense Minister for failing to prevent a German teenager from landing his Cessna near Red Square.[32]

Aceves also addresses some of the key strategic explanations behind the 1988 bumping incident. First, he highlights America's dependence on "free and unimpeded passage through the world's oceans," given its "geographic position, the location of its major allies, its dependence on international trade, and the importance of the oceans as sources of" resources.[33] In that sense, foreign excessive maritime claims threaten American prosperity, and ultimately its security, prompting the United States to push back against them. Second, Aceves suggests that the U.S. may have conducted innocent passage off Crimea as a pretext to gather intelligence on the Soviet's defenses.[34] Certainly, the Soviets suspected that the Americans were testing Soviet defenses off Crimea—and that likely factored into the Soviet decision to bump the U.S. warships.[35]

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30 James Kraska and Raul Pedrozo, *The Free Sea: The American Fight for Freedom of Navigation* (Annapolis, MD: Naval Institute Press, 2018), 224–46; J. Ashley Roach, *Excessive Maritime Claims*, 4th ed. (Leiden, The Netherlands: Koninklijke Brill, 2020), 264–65.

31 Lehman, *Oceans Ventured*, 183.

32 William J. Aceves, "Ambiguities in Plurilingual Treaties: A Case Study of Article 22 of the 1982 Law of the Sea Convention," Ocean Development & International Law 27, no. 3 (January 1996): 69, https://doi.org/10.1080/00908329609546081.

33 William J. Aceves, "Diplomacy at Sea: U.S. Freedom of Navigation Operations in the Black Sea," *Naval War College Review*, 46, no. 2 (Spring 1993): 75, https://www.jstor.org/stable/44642450?seq=1.

34 Aceves, "Diplomacy at Sea: U.S. Freedom of Navigation Operations in the Black Sea,"66.

35 Aceves, "Diplomacy at Sea: U.S. Freedom of Navigation Operations in the Black Sea,"66.

After the Cold War, Russia's influence in the Black Sea declined dramatically, threatening Russia's ability to project its maritime power south. In 2004, two Black Sea nations and former Soviet satellite states, Bulgaria and Romania, joined Turkey as NATO members. Black Sea nations Georgia and Ukraine, both former members of the Soviet Union, also pursued NATO membership. Little more than a decade after the Cold War, the geopolitical dynamics of the Black Sea region had inverted from predominately Soviet/ Russian influence to mostly NATO influence.

The roots of the innocent passage incidents in the 2020s could be traced to these geopolitical shifts—particularly the tensions between Russia and Ukraine over Crimea that began shortly after the dissolution of the Soviet Union, and centered around Russia's security concerns regarding Ukrainian control of the critical naval assets in Crimea.[36] Russia's latent ambitions to maintain decisive influence over the former Soviet space—Ukraine in particular—also contributed to these tensions. In a 2004 work, Perepelytsya foreshadows the 2014 Russian invasion of Crimea, writing that Russia's Black Sea Fleet will be tasked with "keeping military control over Crimea in order to keep the Ukrainian domestic and foreign policy in line with Russia's political, military, and foreign-policy interests," and that "for the next ten years Russia will try to extend the presence of its Black Sea Fleet in Crimea beyond…current agreements."[37]

Perepelytsya also describes Putin's 2000 visit to Crimea where he claimed both Ukraine and Russia were committed to keeping Russia's Black Sea Fleet in Sevastopol.[38] Therefore, despite the fact that the majority of international relations scholars polled by Foreign Policy in February 2014 predicted that Russia would not respond with military force to the ongoing political turmoil in Ukraine, there had long been indications that Russia would do just that—feeling compelled to annex Crimea in response to a Ukrainian

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[36] Dmitry Evstafiev et al., *The Evolving Russian Navy: Challenges and Responses*, ed. Sergey Rogov (Moscow, Russia: A paper by the Institute of the USA and Canada sponsored by the Center for Naval Analysis, 1993), 21–28.

[37] Hryhoriy Perepelytsya, "Military and Naval Balance in the Black Sea Region," in *The Black Sea Region: Cooperation and Security Building*, ed. Ivanna Klympush-Tsintsadze and Oleksandr Pavliuk (New York, NY: EastWest Institute, 2004), 198–99.

[38] Perepelytsya, "Military and Naval Balance in the Black Sea Region," 199.

move towards NATO and the EU, and away from Russian influence.[39] Additionally, Russia's justification for supporting separatists in Ukraine's Donbas region share parallels with Russia's expansionism before the Crimean War—in the 1850s Russia claimed to protect Christians, today it is supposedly protecting ethnic Russians.

Another crucial development for Black Sea geopolitics emphasized in the literature was that shortly after the Cold War, Ukraine ceded its Soviet-era nuclear arsenal in exchange for security guarantees from Russia and the West. According to Boris Toucas, of the Center for Strategic and International Studies (CSIS), in the 1994 Budapest Memorandum, "Ukraine agreed to the removal of its nuclear weapons in exchange for security guarantees by Russia, the United States, and the United Kingdom (supported by France and China) to protect its territorial integrity."[40] However, the multilateral relationships that sustained this commitment soured prior to 2014, when Russia's sense of insecurity in the Black Sea became so strong that it violated the security guarantees it had offered Ukraine.

Admiral Stavridis, the Supreme Allied Commander at NATO (SACEUR) from 2009–2013, writes that the West's relationship with Russia degraded drastically in the years preceding Russia's 2014 invasion of Crimea. He writes that despite some promising security and anti-piracy cooperation with NATO, Russia's relationship with the West soured due to disagreements over the wars in Georgia, Libya, Syria, the defection of Edward Snowden, and the development of NATO's missile defense system.[41] Confirming Russia's desire to control states in the former Soviet Union like Ukraine, the 2018 U.S. National Defense Strategy argued that "Russia seeks to veto authority over nations on its periphery in terms of their governmental, economic, and diplomatic decisions, to shatter the North Atlantic Treaty Organization and change European and Middle East security and

[39] Daniel Maliniak et al., "Snap Poll: The View from the Ivory Tower: Nearly a thousand scholars weigh in on Ukraine vs. Russia, trusting Syria, and how the Pentagon manages its money," FP, last modified March 7, 2014, https://foreignpolicy.com/2014/03/07/snap-poll-the-view-from-the-ivory-tower/.

[40] Boris Toucas, "The Geostrategic Importance of the Black Sea Region: A Brief History," CSIS, last modified February 2, 2017, https://www.csis.org/analysis/geostrategic-importance-black-sea-region-brief-history.

[41] James Stavridis, *The Accidental Admiral* (Annapolis, MD: Naval Institute Press, 2014), 97–105.

economic structures to its favor."[42] These writings help to explain the broader context behind the hostile Russian reactions to Western naval operations in vicinity of Crimea.

The existing literature also stresses that the Russian assertiveness in the Black Sea area is not driven by geopolitical concerns alone, but also by domestic politics. Under Vladimir Putin, the Kremlin has increasingly seen the narrative regarding its control of the Russian periphery as vital to Russian national identity and the survival of the Putin regime. In 2018, Marlene Laruelle writes that Aleksandr Dugin, a Russian political scientist and politically influential voice in the wake of the Crimea annexation, promoted the concept of *Novorossiya* to justify Russian expansion. The concept appeals to Russian romantic nationalism and the reclamation of territory, like Crimea.[43] Melino and Conley, write that Putin uses a similar narrative to appeal to modern Russian nationalism in the Arctic, describing Russians dominating the northern frontier.[44]

Appealing to Russian nationalism is the Kremlin's key tool for controlling the Russian citizenry. As Oscar Jonsson writes, the Kremlin believes that the West is waging a "new-generation war" against Russia, one that uses information campaigns to inspire "color" revolutions—mass revolts against unpopular authoritarian governments—and turn Russians against the Kremlin.[45] Putin himself singled out the color revolution threat when he rose to power in 1999, warning that Russia could not withstand another "radical break-up" like the collapse of the Soviet Union, prompted by different populist movements.[46] The vulnerability of the semi-authoritarian Russian regime to this sort of threat has compelled the Kremlin to resort to aggressive nationalism and fear-mongering,

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[42] Department of Defense, *Summary of the 2018 National Defense Strategy* (Washington, DC: Department of Defense, 2018), https://permanent.fdlp.gov/gpo91947/2018-National-Defense-Strategy-Summary.pdf.

[43] Marlene Laruelle, *Russian Nationalism: Imaginaries, Doctrines, and Political Battlefields* (London: Routledge, 2018), 198–99.

[44] Heather A. Conley, and Matthew Melino, "The Ice Curtain: Russia's Arctic Military Presence," CSIS, accessed December 1, 2021, https://www.csis.org/features/ice-curtain-russias-arctic-military-presence.

[45] Oscar Jonsson, *The Russian Way of War*, Washington (DC: Georgetown University Press, 2019), 12.

[46] Vladimir Putin, "Russia at the Turn of the Millennium," University of Oregon, accessed December 06, 2021, https://pages.uoregon.edu/kimball/Putin.htm.

emphasizing domestic and external security threats as a way to demobilize popular dissatisfaction.[47] So far, this strategy has yielded impressive results for the Kremlin. Russians rallied behind Putin after the invasion of Chechnya in 1999, Russia's 2014 annexation of Crimea, and Russia's 2022 invasion of Ukraine (see Figure 1).[48] The 2014 annexation, for example, gave Russians a sense of "national self-affirmation," and improved the Kremlin's approval rating.[49] Even the 2022 invasion of Ukraine has catapulted Putin's ratings above 80 percent, in spite of Russia's faltering offensive, massive losses, and punishing sanctions.[50]

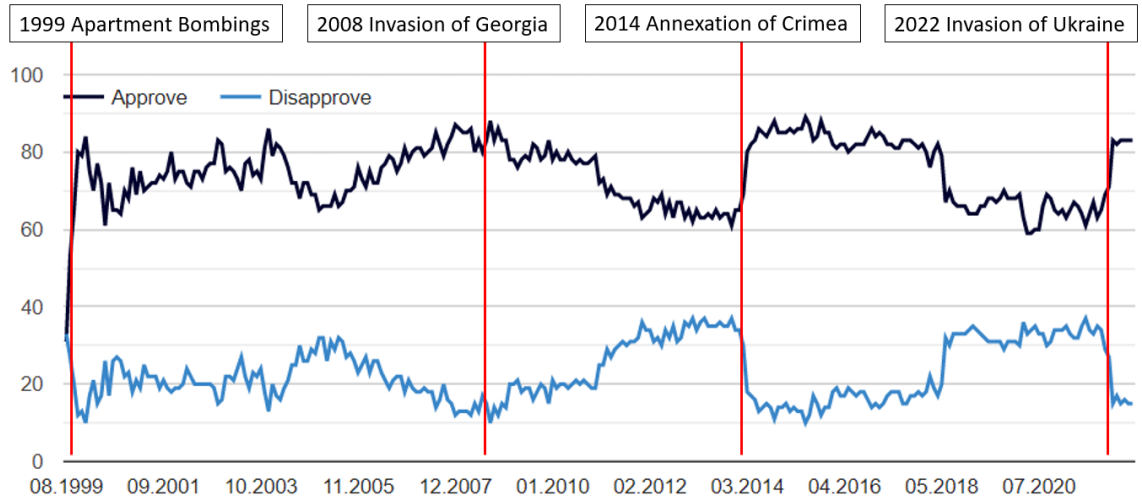

Figure 1. Putin's Approval Rating.[51]

The Putin regime's focus on information campaigns, spurred by the fear of domestic popular revolt, might explain the difference between the Russian reactions to the

47 Walter Russell Mead, "Playing Putin's Game," *The American Interest* (blog), April 15, 2014, https://www.the-american-interest.com/2014/04/15/playing-putins-game/.

48 Aleksandar Matovski, "The Logic of Vladimir Putin's Popular Appeal," Ch. 9 in Koesel, Karrie, Valerie Bunce, and Jessica Weiss, eds. *Citizens and the State in Authoritarian Regimes* (Oxford University Press, 2020), 217–49, https://doi.org/10.1093/oso/9780190093488.003.0009.

49 Lilia Shevtsova, "The Kremlin Is Winning," *Brookings* (blog), February 12, 2015, https://www.brookings.edu/articles/the-kremlin-is-winning/.

50 Levada Center, "Indicators," accessed August 21, 2022, https://www.levada.ru/en/ratings/.

51 Adapted from Levada Center, "Indicators," accessed August 21, 2022, https://www.levada.ru/en/ratings/.

West's innocent passages in the 1980s, which resulted in physical contact but a limited information campaign, and the 2020s, which resulted in a Russian information campaign but no physical contact. Jonsson credits military analysts, like Thornton and Adamsky, for recognizing that because of the Kremlin's fear of a popular revolt, modern Russian strategy has become far more focused on information warfare and shaping public perceptions.[52] Thus, during the innocent passages in the 2020s, it is unclear whether the West backed Russia into a corner, caught the Russian forces off-guard, or if Moscow's response was preplanned to focus on the information campaign.

D. RELEVANT INTERNATIONAL RELATIONS THEORIES

The postures and naval interaction between Russia and the West in the Black Sea can also be analyzed from the standpoint of theories of international relations and crises. Graham Allison offers three models to describe and assess government actions in crisis situations: (1) the Rational Actor Model; (2) the Organizational Behavior Model; and (3) the Governmental Politics Model.[53] The Rational Actor Model assesses the options available to a government, and assumes that the government will act as a unified entity to logically achieve its objectives. The other two models supplement the first and recognize the multiple entities within a nation that influence a government's decision making. The Organizational Model uses government and military structure and procedures to further explain behavior. The Governmental Politics Model considers how politicians jockey for power within a government and in the public realm, and how their maneuvers impact a government's actions.[54]

Allison's models are applicable to the innocent passages studied in this thesis because the incidents could be understood as mini-crises that could have easily escalated into a large-scale conflict, and thus benefit from multi-layered analysis. Applying these models to the Black Sea incidents, the initial decisions by the United States and its allies

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[52] Jonsson, *The Russian Way of War*, 13.

[53] Graham Allison and Philip Zelikow, *The Essence of Decision, 2nd ed.* (New York: Longman, 1999), 4–7.

[54] Graham Allison and Philip Zelikow, *The Essence of Decision,* 4–7.

to conduct innocent passages can be described by Allison's Rational Actor and Governmental Politics Models. Subsequent innocent passage exercises, however, once they became routinized, might be better explained by his Organizational Behavior Model.

In particular, the Soviet/Russian efforts to deny the territorial waters of Crimea to foreign warships can be viewed through the lenses of Allison's Rational Actor Model as the protection of a valuable asset, the Sevastopol naval base, from which the Russian Navy projects power throughout the Black Sea and into the Mediterranean. The Organizational Behavior Model might explain Soviet shouldering tactics during the 1988 bumping incident as a Standard Operating Procedure (SOP) or as a response to a perceived U.S. SOP. The Governmental Politics Model might explain the Soviet bumping tactic as a way for the military to cater to Gorbachev's expectations or Russia's manipulation of the narrative in the HMS *Defender* incident as catering to Putin's domestic audience to strengthen his legitimacy.

In conjunction with Allison's models, Kenneth Waltz's interpretation of structural realism and David Baldwin's interpretation of neoliberalism can help shed additional light on the incidents in the Black Sea.[55] Within the confines of the Rational Actor Model, structural realism may argue that Western policy makers increased naval activity in the Black Sea to contain the USSR/Russia and stem the growth of its relative power. Conversely, the USSR/Russia could be seen as rationally acting to protect its territory and platform for power projection in the Black Sea from foreign encroachment. Also, from the standpoint of the Rational Actor Model, adherents of neoliberal paradigm of international relations might argue in favor of exercising innocent passage rights in order to enforce international institutions and laws like UNCLOS III, and the Soviet legal challenges could be seen as efforts to safeguard its interests within the normative framework.

Allison's Organizational Behavior and Governmental Politics Models can also explain crucial aspects of the motives and behaviors behind the Black Sea incidents. The

[55] Kenneth Waltz, *Man, the State, and War: A Theoretical Analysis* (New York: Columbia University Press, 1959), 159; David A. Baldwin, "Neoliberalism, Neorealism, and World Politics," in *Neorealism and Neoliberalism: The Contemporary Debate*, ed. David A. Baldwin, 3–24 (New York: Columbia University Press, 1993), 5–9.

Organizational Behavior Model would suggest that U.S. decisionmakers in 1988 likely reused the same innocent passage plan from 1986, without adequately modifying it for the evolving geopolitical environment. The Governmental politics model, in turn, seemed to capture the core drivers of the Soviet response. Between the innocent passages of 1986 and 1988, for example, the Soviet Defense Minister Sokolov was fired for allowing a German teenager to violate Soviet territory—indicating that the Soviet leadership was becoming increasingly unwilling to tolerate humiliating foreign encroachments and putting pressure on the military to respond more forcefully.

The Governmental Politics Model can also accommodate Beth Fischer's argument that Reagan's Secretary of Defense, Caspar Weinberger, desired tensions between the USSR and United States to remain high to justify his historically large defense budget.[56] In other words, the Governmental Politics Model suggests the Secretary of Defense had a budgetary motive to push for provocative innocent passages in the Black Sea to keep Cold War tensions high. This behavior was also in line with the broader popular image of the Reagan administration of being "tough" on the Soviets.[57] Applying the Governmental Politics Model to modern Russia, in turn, may suggest that Putin's 2014 invasion of Crimea aided him domestically—changing Russians' perspective of their government from a "menace, to a historic narrative where the state is a source of Russia's greatness."[58] Thus, Putin may portray himself as the strong leader who can protect Russia from its encroaching foreign enemies.

Because of the distinct geopolitics of the Black Sea, the innocent passage incidents there also necessarily involve many allies of the parties involved, as well as third parties.

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[56] Beth A. Fischer, *The Reagan Reversal: Foreign Policy and the End of the Cold War* (Columbia: University of Missouri Press), 85–86.

[57] Peter Schweizer, *Reagan's War: The Epic Story of His Forty Year Struggle and Final Triumph Over Communism* (New York: Anchor Books, 2003), 12.

[58] "A Strategy Of Spectacle: His Willingness And Ability To Act Abroad Gives Vladimir Putin a Big Boost At Home," Economist, March 19, 2016, https://www.economist.com/briefing/2016/03/19/a-strategy-of-spectacle.

To understand this aspect, certain insights from the works on alliance theory are useful.[59] Snyder's concepts of alliance dependence and avoiding abandonment might explain the increased U.S. naval presence in the Black Sea after the Cuban Missile Crisis and the subsequent removal of Jupiter missiles from Turkey in 1963 as an effort to reassure Turkey that the United States would protect it from Soviet aggression. The West's commitment to Turkey could also be viewed from the standpoint of Crawford's wedging strategy, which would suggest that the West allied with Turkey to prevent it from allying with the USSR/ Russia and denying Western powers access to the Black Sea.[60]

Both of these mechanisms could help account for the pressures that may have driven the United States to engage in the Black Sea innocent passage operations as demonstrations of allied commitment. Today, Walt's concept of seeking allies to balance against the near threat can help explain Ukraine's attempts to join NATO in the face of Russian aggression. Snyder's concept of entrapment, whereby countries are reluctant to enter alliances with exposed states for fear of being drawn into unwanted wars, might, in turn, explain why the West has been reluctant to allow Ukraine to join NATO.[61]

These alliance models can be employed to better understand the Western powers' increased naval presence in the Black Sea since 2014, as it may be seen as a "lighter" form of commitment, designed to help Ukraine balance the Russian threat without entrapping NATO members in a war with Russia. Furthermore, U.S. allies were at the forefront of the innocent passage incidents in the 2020s, as all these operations were performed by the UK, rather than U.S. vessels. In light of Snyder's Alliance Management Theory, the UK innocent passages could be seen as a way for America's European allies to demonstrate

[59] Glenn Herald Snyder, 1997, "Alliances in a Multipolar International System," in *Alliance Politics* (Ithaca, NY: Cornell University Press), 39; Stephen Walt, *The Origins of Alliances*, (Ithaca, NY: Cornell University Press, 1987), 32; Timothy W. Crawford, 2008, "Wedge Strategy, Balancing, and the Deviant Case of Spain, 1940–41," *Security Studies* 17(1): 1.

[60] Crawford, "Wedge Strategy, Balancing, and the Deviant Case of Spain, 1940–41," 1.

[61] Walt, *The Origins of Alliances*, 32; Snyder, "Theory: Alliance Management," in *Alliance Politics* (Ithaca, NY: Cornell University Press), 185.

their commitment to burden-sharing in the defense of Europe, and to show resolve and deter further Russian aggression in Europe without the United States in the leading role.[62]

E. POTENTIAL EXPLANATIONS AND HYPOTHESES

Through the application of these theoretical perspectives on the Black Sea innocent passage operations, my thesis will test the following hypotheses:

1. The initial decision to conduct innocent passage operations in the 1980s and 2020s is consistent with Allison's Rational Actor Model, whereby the United States and its allies carried out these operations in an effort to contain the USSR/Russia. But follow-on innocent passage operations in those time periods became standard operating procedures, and therefore align better with Allison's Organizational Behavior Model.

2. Soviet/Russian challenges to Black Sea innocent passages can be described by Allison's Rational Actor and Governmental Politics Models—as response to threats of foreign encroachment in the region, and as efforts to boost the regime's domestic legitimacy by seeming to guard against this threat.

3. The evolution of Soviet/Russian response between the 1980s and the 2020s is best explained by changes in both Russia's governmental politics and the organizational structure of Russian military and its doctrine. In particular, while the USSR relied on physical contact as a deterrent in the 1980s, Russia's response to the more recent incidents involved a much wider array of methods, to include an aggressive media campaign to dominate the domestic narrative.

4. General periods following major crises and tension between the West and USSR/Russia led to more frequent—and more serious—innocent passage

[62] Terri Moon Cronk, "DOD Official Says Concept of Integrated Deterrence Is Call to Action," DOD, last modified September 28, 2021, https://www.defense.gov/News/News-Stories/Article/Article/2791589/dod-official-says-concept-of-integrated-deterrence-is-call-to-action/; Snyder, "Theory: Alliance Management," 194.

incidents in the Black Sea as the United States and its allies undertook such operations to demonstrate commitment to its allies and partners in the region, and the USSR/Russia felt compelled to push back against such encroachments.

F. RESEARCH DESIGN

This thesis examines the above hypotheses using process tracing to develop a step-by-step analysis of specific incidents and to isolate the key causal factors that determined how they unfolded. To analyze the patterns and evolution of these interactions, the thesis relies on academic studies, policy analyses, international legal documents, speeches and public releases by government officials, and media reports on Soviet/Russian interactions with the West in the maritime domain. It uses the lessons learned from the Black Sea incidents to examine similar disputes between China and the West in the South China Sea.

G. THESIS OVERVIEW AND CHAPTER OUTLINE

Chapter II includes a review of the history of Soviet-U.S. maritime interactions leading up to the 1980s case studies to include the Soviet naval build-up under Admiral Gorshkov, the 1972 U.S.-USSR Incidents at Sea (INCSEA) agreement, and the 1936 Montreux Convention. Additionally, Chapter II reviews U.S. Freedom of Navigation operations in the Black Sea prior to UNCLOS III, the differing U.S. and Soviet interpretations of UNCLOS III, and Soviet domestic laws that attempted to unilaterally limit the innocent passage of warships. Chapter III describes the 1980s innocent passages and the U.S. and Soviet reactions to the passages to include concern from U.S. media that the innocent passages were reckless and threatened the INF Treaty. It also reviews the 1989 Joint Statement by the United States and Soviet Union, with Uniform Interpretation of Rules of International Law Governing Innocent Passage, which was used to resolve the differing interpretations of innocent passage in UNCLOS III.[63]

The second part of the thesis focuses on controversial innocent passages conducted by the West in the past decade and their broader implications. For context, Chapter IV

[63] Roach and Smith, *International Law Studies 1994 Excessive Maritime Claims*, Volume 66, 281–82.

reviews Russia's post-Soviet relationship with Ukraine, focusing primarily on Russia's desire to control Crimea and its naval station in Sevastopol. Then, it explores the Western reaction to Russia's annexation of Crimea and ongoing conflict in Ukraine. Next, it briefly reviews the spike in naval incidents between Russian and Western militaries in the Black Sea since Russia's annexation of Crimea. Finally, it describes the innocent passages conducted by the UK during the 2020s, including the different narratives released by Russia and the West. The Conclusions and Implications chapter compares and contrasts the 1980s and 2020s Black Sea case studies with U.S. freedom of navigation operations in the South China Sea, and explores how the lessons learned from innocent passages in the Black Sea could be applied to future Black Sea operations and similar operations in the South China Sea.

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II. THE COLD WAR CONTEXT

A. THE BLACK SEA AND INTERNATIONAL AGREEMENTS

Throughout the twentieth century, the Black Sea was of strategic economic importance for Russia and the Soviet Union. Not only did the sea facilitate trade along its own coast, it gave the Soviet Union direct access to the Mediterranean. Important rivers, like the Danube, Dnieper, and Don (via the Sea of Azov), allowed the USSR to carry goods from the Black Sea deep into the Soviet Union and Warsaw Pact countries. Furthermore, via the Suez Canal, the Black Sea provided the Soviet Union with a relatively short maritime route to project power into the Persian Gulf—cutting the transit nearly in half.[64] The Black Sea was an economic gem for the Soviets.

From a military perspective, the Black Sea allowed the Soviet Union to extend its defenses. The Soviet Navy's Black Sea Fleet had the potential to quickly sortie into the Mediterranean to monitor and harass NATO warships or project Soviet power abroad. The Turkish Straits, in turn, acted as a drawbridge for the Black Sea—allowing foreign warships only one avenue of approach. In peacetime, that strategic accessway facilitated the Soviets' ability to monitor NATO warships operating in the Black Sea. In the event of a war, the Soviets could have used it to keep foreign warships hundreds of miles from the Soviet Black Sea coast.

At the same time, the Black Sea was also a critical vulnerability to Russian/Soviet security because Soviet access to the Black Sea was controlled by Turkey, Russia's perennial adversary and NATO member since 1952. In the event of a hot war with NATO, the Turkish Straits could easily have trapped the Soviet Black Sea fleet in, or out of, the Black Sea. As a member of NATO, Turkey would have been obligated to assist Western powers in a fight with the USSR. NATO airbases in Turkey could have denied the approaches to the Bosphorus to Soviet warships—allowing NATO warships to enter the

[64] From the Black Sea, the transit to the Persian Gulf is approximately 4,000 miles and 14 days. Russia's next shortest maritime route, from the Baltic, is almost 8,000 and 25 days. Transits calculated with a speed of 13 knots. "Online Freight Shipping & Transit Time Calculator at Searates.Com," Sea Rates by DP World, accessed June 6, 2022, https://www.searates.com/services/distances-time/.

Black Sea unimpeded (provided the Soviets did not mine the waters north of Istanbul).[65] Once inside the Black Sea, foreign invaders would have had a direct avenue of approach into the soft underbelly of the USSR.

Since the USSR did not control the Turkish Straits, the next best place from which to secure a commanding position in the Black Sea has been Crimea. The peninsula is centrally located in the Black Sea, giving the Soviets an unsinkable aircraft carrier, which they could use to protect their fleet in Sevastopol and deny much of the Black Sea to NATO. Dimitry Gorenburg says that from Sevastopol, a navy "can pretty much control all approaches and dominate the region vis-a-vis Turkey."[66] Given the importance of Crimea to controlling the Black Sea, it is no surprise that the USSR wanted to keep NATO warships far from the peninsula—especially the southern tip, where the Sevastopol naval base is located.

In order to limit foreign access to the Black Sea and guarantee Russian passage through the Turkish Straits, Russia agreed to the 1936 Montreux Convention, which has been a double-edged sword ever since. On one hand, non-Black Sea navies must announce their passage 15 days prior to transiting into the Black Sea, spend no more than 21 consecutive days in the Black Sea, and abide by strict limits on ship size and class.[67] On the other hand, Black Sea countries, like Russia, have more favorable terms under Montreux. But they too face some impediments. In particular, Turkey can use Montreux to close the Straits to warships in the event of a war in the Black Sea region—which it did after the start of the Russian invasion of Ukraine in February 2022.[68]

Turning to the broader international legal framework that governs interactions between warships on the high seas, a key document is the Incidents at Sea Agreement,

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[65] Department of Defense, *Soviet Military Power: An Assessment of the Threat*, 1988 (Washington, DC: Department of Defense, 1988), 108, https://apps.dtic.mil/sti/pdfs/ADA196828.pdf.

[66] The Moscow Times, "Black Sea Rising: Rebirth of a Russian Fleet," March 17, 2016, https://www.themoscowtimes.com/2016/03/17/black-sea-rising-rebirth-of-a-russian-fleet-a52191.

[67] Aron Lund, "An Unconventional Canal: Will Turkey Rewrite the Rules for Black Sea Access?" Project No: A12113, (Stockholm, Sweden: Swedish Defence Research Agency, 2021), 4, www.foi.se.

[68] "Turkey Closes Bosphorus, Dardanelles Straits to Warships," USNI News, March 1, 2022, https://news.usni.org/2022/02/28/turkey-closes-bosphorus-dardanelles-straits-to-warships.

drafted in 1972 to reduce dangerous maritime encounters between U.S. and Soviet forces. As the Soviet surface navy grew in the 1960s, incidents at sea between U.S. and Soviet warships became more frequent—notably, in 1967, USS *Walker* and Soviet warship *Besslednyy* collided in the Sea of Japan.[69] The Incidents at Sea Agreement established rules for interactions between U.S. and Soviet warships, and it was designed to reduce the chances that maritime harassment would accidentally escalate into a more serious conflict between the United States and USSR.[70]

Despite the Incidents at Sea Agreement, Soviet or Russian warships have often maneuvered hazardously in close proximity to U.S. warships. In 1983, there was an accidental collision between USS *Fife* and Soviet warship *Razyashchiy*, which was the result of hazardous maneuvering.[71] After the Cold War, in 2019, a Russian warship nearly collided with USS *Chancellorsville*, a maneuver that the acting U.S. Secretary of Defense deemed as "unsafe and unprofessional."[72] In 2020, a Russian destroyer threatened to "use a ramming maneuver" to force the USS *McCain* out of Peter the Great Gulf.[73]

However, the 1988 bumping incident marked an important inflection point in U.S.-Soviet/Russian naval interactions. Although the Incidents at Sea Agreement was written for interactions on the high seas, and the Soviet ships bumped U.S. warships that were conducting innocent passage through Soviet territorial waters, the 1988 bumping violated the spirit of the Incidents at Sea Agreement. The USS *Caron* even reported the bumping as an "INCSEA violation," and the U.S. Navy used the Incidents at Sea Agreement to

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69 Winkler, *Incidents at Sea*, 63–67.

70 "Incidents at Sea Agreement," U.S. Department of State, May 25, 1972, https://2009-2017.state.gov/t/isn/4791.htm.

71 The New York Times, "U.S. and Soviet Ships Collide; Navy Says Accident is Minor," November 18, 1983, https://www.nytimes.com/1983/11/18/world/us-and-soviet-ships-collide-navy-says-accident-is-minor.html.

72 The Washington Post, "USS Chancellorsville and Russian Warship Nearly Collide in Pacific," June 7, 2019, https://www.washingtonpost.com/world/asia_pacific/near-collision-between-us-and-russian-warships-in-pacific-require-emergency-maneuvers/2019/06/07/fa4d036e-890e-11e9-a870-b9c411dc4312_story.html.

73 "Russia Claims It Chased a U.S. Warship out of Disputed Waters with a 'Ramming' Threat," November 24, 2020, https://www.cbsnews.com/news/russia-us-warship-uss-john-mccain-ramming-threat-us-navy-freedom-of-navigation-operation/.

protest the bumping.[74] Since the signing of the Incidents at Sea Agreement, the only time a Soviet or Russian warship has threatened to collide with a U.S. warship, before proceeding to ram the U.S. vessel, was in that 1988 bumping incident.[75]

Another relevant international agreement for this incident is the 1982 United Nations Convention on the Law of the Sea (UNCLOS III), which governs the right of innocent passage through territorial waters. UNCLOS III article 17 gives "ships of all States…the right of innocent passage through the territorial sea."[76] During the UNCLOS III negotiations from 1973–1982, some states disputed that right. Butler writes that, during the debates for UNCLOS III, states with weak navies, like Morocco, proposed a rule "requiring prior authorization or notification for a warship to enter the territorial waters of another state."[77] However, major maritime powers, like the United States and USSR, opposed such restrictions.[78] Kraska and Pedrozo write that the Soviet Union, given its inconvenient access to the high seas, "was even more dependent upon freedom of navigation than the United States."[79] Furthermore, the USSR pushed for fewer navigation restrictions on warships during the UNCLOS III negotiations because it had become a major maritime power by the end of the 1970s.[80] Ultimately, Ambassador Koh, who presided over the UNCLOS III negotiations, confirmed at the end of the discussions that warships have the right of innocent passage and that there is no requirement for them to provide notification or seek prior authorization.[81] That outcome is consistent with the 1949

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74 Aceves, "Ambiguities in Plurilingual Treaties: A Case Study of Article 22 of the 1982 Law of the Sea Convention," 198; Aceves, "Diplomacy at Sea: U.S. Freedom of Navigation Operations in the Black Sea," 198.

75 Winkler, *Incidents at Sea*, 231–59.

76 United Nations Convention on the Law of the Sea, 1982 (UNCLOS III), Article 17, https://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

77 Butler, "Innocent Passage and the 1982 Convention," 334.

78 Kraska and Pedrozo, *The Free Sea*, 230.

79 Kraska and Pedrozo, *The Free Sea*, 230.

80 George V. Galdorisi and Kevin R. Vienna, *Beyond the Law of the Sea: New Directions for U.S. Oceans Policy* (Westport, CT: Praeger Publishers, 1997), 31–32.

81 Kraska and Pedrozo, *The Free Sea*, 232.

Corfu Channel Case, which ruled that warships enjoy a customary right of innocent passage.[82]

Although a requirement for prior authorization or notification for a warship to conduct innocent passage did not make it into UNCLOS III, many states have attempted to impose one. Crucially, despite advocating for greater navigational freedom for warships and signing UNCLOS III in 1982, the USSR subsequently implemented unilateral restrictions on innocent passage for foreign warships, which will be discussed in more detail below. In turn, the United States has since 1982 challenged the innocent passage requirements of at least 47 different countries through diplomatic protests and by physically asserting its right to conduct innocent passage without prior notification or authorization.[83] The USSR was one of those countries, and the United States repeatedly challenged its excessive maritime claims throughout the 1980s.

But despite its primary purpose to ensure freedom of navigation, UNCLOS III limits the activities in which a warship can engage during an innocent passage transit. According to article 19, prohibited activities are "prejudicial to the peace, good order or security of the coastal State" and include military activities like weapons exercises and "any threat or use of force against…the coastal State."[84] Of issue during the Black Sea innocent passages in 1988 was article 19's prohibition of "collecting information."[85] As discussed in section III of this chapter, the Soviets were suspicious that the *Caron* was using its special intelligence gathering equipment to spy on the Sevastopol naval base.

A further point of contention is article 22 of UNCLOS III, which allows the coastal State, under limited circumstances, to require ships conducting innocent passage to use "sea lanes and traffic separation schemes in the territorial sea."[86] In August 1988, a

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[82] Cameron Moore, *Freedom of Navigation and the Law of the Sea: Warships, States and the Use of Force* (New York: Routledge, 2021), 65.

[83] J. Ashley Roach, *Excessive Maritime Claims*, 4th ed. (Leiden, The Netherlands: Koninklijke Brill, 2020), 276–77.

[84] UNCLOS III, Article 19.

[85] UNCLOS III, Article 19.

[86] UNCLOS III, Article 22.

negotiator working for the U.S. State Department discovered that the English and Russian translations of article 22 differed in a key way.[87] The English version says that:

> The coastal State may, *where necessary having regard to the safety of navigation*, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships. [emphasis added][88]

Instead of saying "where necessary having regard to the safety of navigation," the Russian translation of article 22 said "in the event of necessity and with regard to the safety of navigation."[89] This slight difference in translation had a major legal impact. The Russian translation allowed coastal States to use any "event of necessity" as justification to require ships conducting innocent passage to use sea lanes and traffic separation schemes. The English translation only allowed coastal States to require sea lanes and traffic separation schemes for safety of navigation. Of the six translations of UNCLOS, the English, Chinese, and Arabic translations of article 22 matched, and the Russian, Spanish, and French translations all differed in unique ways.[90]

This difference in translation led to a dispute between the United States and the USSR over a 1983 Soviet domestic law, which limited the innocent passage of foreign warships through Soviet territorial waters to a handful of traffic separation schemes, which could only be found in the Baltic Sea, Sea of Okhotsk, and the Sea of Japan.[91] The Soviet law, titled Law on the State Boundary of the U.S.S.R., had no traffic separation schemes in the Black Sea. This made the innocent passage of foreign warships through Soviet territorial waters in the Black Sea illegal, according to Soviet law. The United States viewed the Soviet law as a violation of UNLCOS III and protested by repeatedly

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[87] Aceves, "Ambiguities in Plurilingual Treaties: A Case Study of Article 22 of the 1982 Law of the Sea Convention," 203.

[88] UNCLOS III, Article 22.

[89] Aceves, "Ambiguities in Plurilingual Treaties," 203.

[90] Aceves, "Ambiguities in Plurilingual Treaties," 203.

[91] Aceves, "Ambiguities in Plurilingual Treaties," 196.

conducting innocent passage through Soviet territorial waters without using designated Soviet traffic separation schemes.

B. COLD WAR OUTSIDE THE BLACK SEA

Taking office in 1981, Reagan's administration increased U.S. pressure towards the USSR and heightened the Soviet sense of vulnerability. After a brief détente during the Carter administration, Russo-American relations took a turn for the worse during the early years of the Reagan administration. In March of 1983, Reagan, a staunch anti-communist, labeled the Soviet Union an "Evil Empire"—a characterization that Reagan continued to support as late as 1987.[92]

In 1983, the U.S. Navy held FleetEx-83, the largest maritime exercise in the Pacific since WWII.[93] The exercise included operations in the Sea of Okhotsk, which the Soviets attempted to control vis-à-vis the Kuril Island chain.[94] Upon exiting the Sea of Okhotsk, U.S. Navy warplanes flew over one of the Kuril Islands and, according to Morra, "practiced mock bomb runs on Soviet military facilities in the Kuril Island chain."[95] The Soviet Union purged some of its military leaders for their lackluster response to the American overflights.[96] Soviet anxiety from FleetEx-83 likely contributed to the Soviet military misidentifying Korean commercial airliner KAL 007 as an American warplane and shooting it down, resulting in the death of 269 civilians.[97] FleetEx-83 and the downing of KAL 007 further inflamed Russo-American relations.

In 1986, the Reagan administration publicized its *Maritime Strategy*, which called for the U.S. Navy to aggressively defend U.S. maritime interests and conduct offensive

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92 Lehman, *Oceans Ventured*, 235.

93 Michael Morell and Brian Morra, "Nuclear Confrontations with Moscow: Author Brian Morra," accessed June 6, 2022, in Intelligence Matters, produced by CBS News, podcast, MP3 audio, 11:27-11:43, https://podcasts.apple.com/us/podcast/nuclear-confrontations-with-moscow-author-brian-morra/id1286906615?i=1000554949037.

94 Morell and Morra, "Nuclear Confrontations with Moscow: Author Brian Morra," 11:10-15:05.

95 Morell and Morra, "Nuclear Confrontations with Moscow: Author Brian Morra," 13:13-13:28.

96 Morell and Morra, "Nuclear Confrontations with Moscow: Author Brian Morra," 14:10-14:22.

97 William Taubman, *Gorbachev* (New York: W.W. Norton & Company, 2017), 190; Morell and Morra, "Nuclear Confrontations with Moscow: Author Brian Morra," 15:05-20:05.

naval operations against the Soviets in time of war—a stance that the Soviets viewed as threatening.[98] In 1981, U.S. Secretary of the Navy Lehman had published his *Strategic Review*, which envisioned a U.S. Navy that was "visibly offensive in orientation…global in reach."[99] Lehman had intended to create a navy that would force the USSR "to concentrate more resources on homeland defense—and possibly less on interdiction of U.S. sea lanes."[100] His *Strategic Review* morphed into the publicized 1986 Maritime Strategy.[101] Crucially, that strategy also called for the U.S. Navy to put pressure on the USSR by operating near Soviet waters.[102] Implementing the strategy in June 1986, the USS *Francis Hammond,* a Knox-class destroyer escort, transited through Soviet territorial waters off the Kuril Islands, ignoring the Soviet corridor designated for innocent passage; the Soviets responded with a diplomatic protest, claiming that the ship violated Soviet territorial waters.[103] On 17 May 1987, the USS *Arkansas*, a nuclear-powered cruiser, operated near the Kamchatka Peninsula, in waters claimed by the Soviets.[104] Predictably, the Soviets perceived the U.S. Maritime Strategy as unduly aggressive.[105]

By 1987, the assertive U.S. maritime strategy was in stark contrast to the new Soviet defensive doctrine, augmenting the sense of vulnerability in the Soviet Navy and the Soviet state on the whole. While Reagan used the *Maritime Strategy* to increase pressure on the Soviets, Gorbachev looked for ways to de-escalate Cold War tensions with the United States. In May 1987, the Soviets announced a fundamental change to their military

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98 James D. Watkins, *The Maritime Strategy* (Annapolis, MD: U.S. Naval Institute, January, 1986), 8.

99 Lehman, *Oceans Ventured*, 102.

100 Lehman, *Oceans Ventured*, 102.

101 Lehman, *Oceans Ventured*, 102.

102 Watkins, The Maritime Strategy, 8.

103 Winkler, *Incidents at Sea*, 251; USS Francis Hammond (DE-1067/FF-1067)," accessed August 7, 2022, http://public2.nhhcaws.local/our-collections/photography/us-navy-ships/alphabetical-listing/f/uss-francis-hammond--de-1067-ff-1067-0.html.

104 Winkler, *Incidents at Sea*, 251; Naval History and Heritage Command, "Arkansas IV (CGN-41)," June 18, 2015, https://www.history.navy.mil/research/histories/ship-histories/danfs/a/arkansas-cgn-41-iv.html.

105 Lehman, *Oceans Ventured*, 212.

policy—a shift from offensive to defensive doctrine.[106] The shift was part of Gorbachev's *perestroika* reforms; it was intended to reduce the Soviet military budget, and pull the USSR out of the arms race with the United States.[107] According to Kotkin, the Soviet Union was spending too much on its military, and not enough on consumer products.[108] When Gorbachev became general secretary, 20–30 percent of the Soviet budget was spent on military expenditures.[109] The announcement of the shift in Soviet military doctrine coincided with INF treaty negotiations, which also demonstrated that the Soviets were attempting to ease Cold War tensions.[110]

Gorbachev faced additional pressures in 1986, which contributed to the weakness and vulnerability of the USSR. First, oil prices fell from over $30 a barrel in 1985 to $10 a barrel in 1986.[111] Second, the drop in oil prices coincided with a shortage of grain, and the USSR no longer had the revenue from oil exports to import grain.[112] Third, the government mismanaged the Chernobyl nuclear accident, undermining the faith of Soviet citizens in their government.[113] Finally, the USSR began its withdrawal from Afghanistan—an international display of military weakness.

As Gorbachev dealt with these challenges, a West German teenager publicly exposed the vulnerability of Soviet air defenses. On 28 May 1987, eleven days after the USS *Arkansas* operated off the Kamchatka Peninsula, German teenage amateur pilot Mathias Rust piloted a Cessna across the Iron Curtain—evading Soviet air defenses and landing near Red Square in Moscow. Rust says he flew to Moscow for "peace," but his

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106 Stephen Kotkin, *Armageddon Averted: The Soviet Collapse 1970–2000* (New York: Oxford University Press, 2008), 61; Vojtech Mastny and Malcolm Byrne, eds., *A Cardboard Castle? An inside History of the Warsaw Pact, 1955–1991*, National Security Archive Cold War Readers (New York: Central European University Press, 2005), xlvi.

107 Mastny and Byrne, *Cardboard Castle*, 259.

108 Kotkin, *Armageddon Averted*, 61–65.

109 Kotkin, *Armageddon Averted*, 61.

110 Taubman, *Gorbachev*, 393.

111 Taubman, *Gorbachev*, 238.

112 Taubman, *Gorbachev*, 238.

113 Taubman, *Gorbachev*, 238–41.

unauthorized landing infuriated Gorbachev.[114] The stunt made the nightly news in the Soviet Union and across the world. Inside the Kremlin, the Cessna affair cast doubt on the Soviet military's ability to defend its borders. Gorbachev fired Defense Minister Sokolov two days later. Although Gorbachev likely used the Cessna affair as a convenient excuse to fire Sokolov, who was mildly defiant of Gorbachev's new defensive military doctrine and, thus, a political rival, the firing sent a clear warning to other Soviet leaders not to permit embarrassing violations of Soviet territory.[115]

The ramifications of the Cessna affair, along with the 1986 U.S. FONOP off Crimea, can be interpreted through Allison's conceptual models to assess how they likely contributed to the Soviet decision to bump U.S. warships in 1988. The firing of Sokolov, for example, aligns with Allison's Governmental Politics Model: Soviet leaders jockeying for more power within the Soviet system would have jeopardized their positions if they had defied Gorbachev or allowed another violation of Soviet territory to go unchallenged in the wake of Sokolov's firing. The Rational Actor Model also applies, since the Soviets had clear reasons to push back against any further foreign encroachments in order to preserve the legitimacy and territoriality of the Soviet regime. Finally, the 1988 U.S. innocent passage appeared to follow the same procedure as the one in 1986. The Soviets may have perceived that U.S. freedom of navigations operations were beginning to follow a well-established routine, which could be challenged with more predictable results and without undue risks of escalation.

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[114] DW News, *Kremlin Caper: Mathias Rust's Landing on Red Square*, 2012, https://www.youtube.com/watch?v=Wue02Y0lS38; Mastny and Byrne, *Cardboard Castle*, 62.

[115] Anatoly S. Chernyaev, *My Six Years with Gorbachev* (University Park, PA: The Pennsylvania State University Press, 2000), 119.

III. COLD WAR INNOCENT PASSAGES OFF CRIMEA

A. THE U.S. NAVY CONDUCT OF INNOCENT PASSAGE IN THE 1980s

The Reagan administration used the Freedom of Navigation (FON) program to sail U.S. warships in and around Soviet territorial waters in the 1980s, thereby increasing tensions between the two superpowers.[116] The FON program was inaugurated by the Carter administration in 1979, amidst the UNCLOS III negotiations, in order to challenge excessive maritime claims.[117] It is important to clarify that "freedom of navigation operations" and "innocent passage" are different concepts. Many freedom of navigation operations occur outside of territorial waters and do not challenge restrictions on innocent passage. Conversely, warships can exercise the right of innocent passage, as defined in UNCLOS III, without the intention of conducting a freedom of navigation operation.

In a March 1983 statement on the United States Oceans Policy, the Reagan administration reiterated the purpose of the FON program by announcing that the United States would "exercise and assert its navigation…rights and freedoms on a worldwide basis" and would not "acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation."[118] The next month, the USSR ratified the domestic law mentioned previously, which severely limited innocent passage in Soviet territorial waters, and effectively banned it in the Black Sea—violating the English language version of UNCLOS III.[119] Starting in 1984, the United States, in turn, challenged the Soviet prohibition by conducting a series of freedom of navigation operations in the Black Sea—an action that the Soviets viewed as a threat to their security.[120]

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116 Lehman, *Oceans Ventured*, 223–25.

117 Department of Defense, *Freedom of Navigation (FON) Program* (Washington, DC: Office of the Under Secretary of Defense, 2017), 1, https://policy.defense.gov/Portals/11/DOD%20FON%20Program%20Summary%2016.pdf?ver=2017-03-03-141350-380.

118 "Statement on United States Oceans Policy," Ronald Reagan, March 10, 1983, https://www.reaganlibrary.gov/archives/speech/statement-united-states-oceans-policy.

119 Roach, *Excessive Maritime Claims*, 253 n33.

120 Lehman, *Oceans Ventured*, 223–25.

The Soviets believed that the U.S. Black Sea FONOPS had the ulterior motives of testing Soviet defenses, and gathering intelligence.[121] After the USS *Yorktown* and USS *Caron* conducted the 1986 innocent passage off Sevastopol, the Soviets protested diplomatically and accused the United States of spying. Lending credibility to the Soviet accusations, Aceves asserts that the USS *Caron* had special intelligence collecting equipment, which the ship used "off the coast of Nicaragua in 1982 and Lebanon in 1983–1984."[122] If the U.S. warships did collect intelligence while in Soviet territorial waters, they would have violated UNCLOS III article 19, which prohibits such activities.[123] Validating Soviet paranoia during testimony at the Senate Armed Services Committee, Admiral Crowe, Chairman of the Joint Chiefs of Staff 1985–1989, argued that warships could not "do anything unusual in order to gather intelligence" while conducting innocent passage, but "if you gather intelligence in the process, all right."[124]

By 1988, U.S. provocations and Rust's Cessna landing in Moscow had pushed the USSR's sense of vulnerability to a breaking point. Winkler quotes Soviet Rear Admiral Khumbarov, who, in response to American incursions into Soviet territorial waters, exclaimed that "any foreign ships violating [Soviet] sovereignty in the future should be destroyed," at a public lecture in January 1988.[125] In February, when *Yorktown* and *Caron* conducted another innocent passage off the coast of Crimea (route shown in Figure 2), the Soviets decided to bump the U.S. warships. Although the USSR used the bumping to send a message to the United States by performing an act of gunboat diplomacy, the incident did not immediately expel the U.S. warships from Soviet territorial waters. Both U.S. warships transited over a nautical mile into Soviet territorial waters before the Soviets

121 Aceves, "Diplomacy at Sea," 59–79.

122 Aceves, "Diplomacy at Sea," 78 n38.

123 UNCLOS III, Article 19.

124 Aceves, "Diplomacy at Sea," 70; "Admiral William James Crowe, Jr.," Joint Chiefs of Staff, accessed June 6, 2022, https://www.jcs.mil/About/The-Joint-Staff/Chairman/Admiral-William-James-Crowe-Jr/.

125 Winkler, *Incidents at Sea*, 179.

bumped them, and both warships continued to transit inside Soviet territorial waters for at least an hour and a half after the bumping.[126]

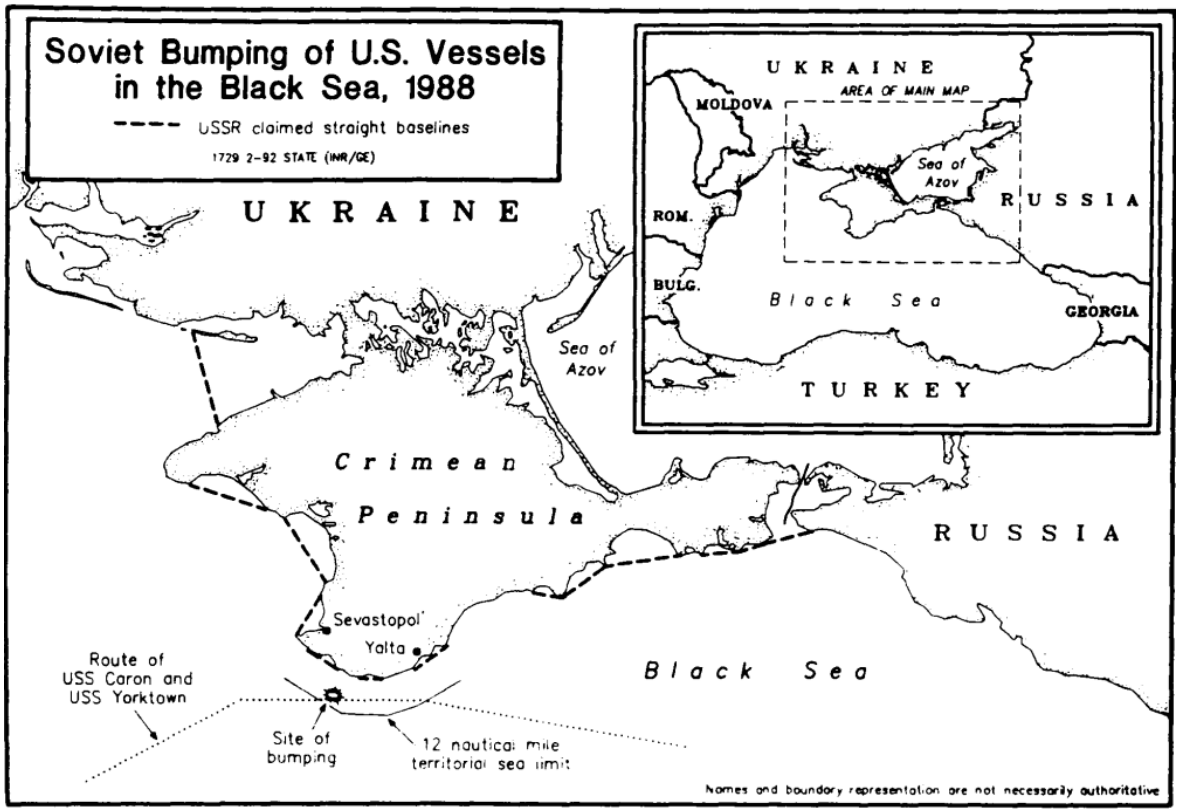

Figure 2. Black Sea Bumping Incident, 12 February 1988.[127]

Although the bumping was clearly no accident, it is unclear when, and at what level of government, the Soviets initially made the decision that to bump the U.S. warships was the appropriate response to American operations within Soviet territorial waters. Ptichkin reports that the decision to bump was made by senior Soviet leadership, including Gorbachev, in the summer of 1986.[128] In 2012, Ivanovich, who served on the *Bezzaventnyy*

126 Kraska and Pedrozo, *The Free Sea*, 235.

127 Source: *Limits in the Seas: United States Responses to Excessive National Maritime Claims*, https://www.state.gov/wp-content/uploads/2019/12/LIS-112.pdf, 58.

128 Sergey Ptichkin, "26 Years Ago, Soviet and American Ships Collided near Crimea," Rossiyskaya Gazeta, April 10, 2014, https://web.archive.org/web/20140908203738/http://www.rg.ru/2014/04/10/korabli.html.

during the bumping incident, recounts that the Soviet Navy had indeed been preparing to respond to another violation of Soviet territorial waters since *Yorktown* and *Caron's* 1986 innocent passage. He also emphasizes that the "insulting incident" with Mathias Rust was still fresh in Soviet minds and argues that the USSR would not be taken seriously if it allowed another violation of its territorial waters.[129] This evidence supports the hypothesis that Allison's Rational Actor explains the Soviet responses to the U.S. innocent passages off Crimea. As Rational Actors, the Soviets realized that they had to increase the cost on the U.S. Navy to prevent American warships from conducting further innocent passages off Crimea.

In addition, strong evidence in support of Allison's Governmental Politics Model comes from a conversation between U.S. Vice Admiral Mustin and Soviet Admiral Makarov in the wake of the 1988 bumping incident. Winkler writes that Makarov said to Mustin, "I'm getting calls from the commissars and politicians saying that we spend hundreds of millions of rubles on the Soviet Navy so that the Soviet Navy can protect us from the U.S. Navy and you can't protect us!"[130] Admiral Makarov continued, predicting that the Soviet officials were "going to cut his budget," writes Winker.[131] Even in a communist system, less funding meant less importance and less influence. Even though this evidence shows Makarov's actions after the bumping incident, it shows Soviet flag officers had to jockey for budgetary power in the 1980s.

A CIA analysis, written the day after the bumping, largely concurs the Ivanovich's claims. The assessment notes that the decision to bump was probably "decided at the highest political level."[132] The assessment also stresses the impact of the Rust incident, stating that the bumping was probably "designed to demonstrate a resolve to defend Soviet borders after such failures as the Cessna landing."[133] Lastly, the assessment also states that

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129 "The Empire Strikes the Final Blow," Komsomolskaya Pravda, February 16, 2012, https://web.archive.org/web/20140907174215/http://www.kp.ru/daily/25836.3/2809165/.

130 Winkler, *Incidents at Sea*, 183.

131 Winkler, *Incidents at Sea*, 183.

132 Aceves, "Ambiguities in Plurilingual Treaties," 223 n99.

133 Aceves, "Ambiguities in Plurilingual Treaties," 223 n99.

the Soviets "may have reasoned that minor collisions would be viewed as a firm but measured response" to protect their territorial waters.[134] The CIA analysis suggests that the Soviets made a calculated decision to push back against foreign encroachments.

One important calculation in the bumping decision was the disparity in displacement between the U.S. and Soviet warships in the 1988 bumping incident—the Soviets chose to ram with relatively small ships, thereby mitigating the damage they did to the U.S. warships. The Soviet Krivak I-class frigate *Bezzaventnyy* displaced 3,700 tons, had a top speed of 32 knots, and rammed the *Yorktown*, which weighed 9,600 tons (see Figure 3).[135] The Soviet Mirka-class patrol frigate SKR-6 weighed 1,150 tons, had a top speed of 34 knots, and rammed the *Caron*, which weighed 7,800 tons (see Figure 4).[136] The *Yorktown* displaced two and a half times more than the *Bezzaventnyy*, and the *Caron* displaced nearly seven times more than the SKR-6.

It is possible that the Soviets did not have larger ships available to ram the *Yorktown* and *Caron*, however, that seems unlikely. U.S. National Intelligence Estimates from December 1984 and January 1989 put the Soviet Black Sea Fleet between 9–10 cruisers, 17–20 destroyers, and 48–49 frigates.[137] Depending on ship class, Soviet cruisers displaced at least 4,400 tons, with top speeds of at least 32 knots, and Soviet destroyers displaced between 2,600-8,200 tons, with top speeds of at least 34 knots.[138] Moreover, as the *Yorktown* and *Caron* approached Sevastopol in 1988, Kraska and Pedrozo write that "a

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[134] Aceves, "Ambiguities in Plurilingual Treaties," 223 n99.

[135] Winkler, *Incidents at Sea*, 179; Norman Polmar, *Guide to the Soviet Navy*, 4th ed. (Annapolis, MD: Naval Institute Press, 1986), 219; "2 Soviet Vessels Bump U.S. Navy Warships in Black Sea," Los Angeles Times," February 13, 1988, https://www.latimes.com/archives/la-xpm-1988-02-13-mn-10863-story.html.

[136] Winkler, *Incidents at Sea*, 180; Polmar, *Guide to Soviet Navy*, 227; Los Angeles Times, "2 Soviet Vessels Bump U.S. Navy Warships in Black Sea."

[137] Central Intelligence Agency, *Soviet Naval Strategy and Programs Through the 1990s (National Intelligence Estimate)*, Report No. NIE 11–15-84/D (21 December 1984), 8; Central Intelligence Agency, *Soviet Naval Strategy and Programs Toward the 21st Century (National Intelligence Estimate)*, Report No. NIE 11–15-89 (March 1990), 11.

[138] Polmar, *Guide to the Soviet Navy*, 172–216.

flotilla of eighteen Soviet naval and Border Guard vessels positioned to surround the U.S. warships."[139]

Figure 3. Soviet Frigate *Bezzavetnyy* Strikes USS *Yorktown* in the Black Sea, 12 February 1988.[140]

[139] Kraska and Pedrozo, *The Free Sea*, 235.

[140] Source: Christopher Woody, "What a 'Bumping' Incident 33 Years Ago Says About the U.S. Navy's Future Showdowns With Russia And China," Business Insider Nederland, February 16, 2021, https://www.businessinsider.nl/what-a-bumping-incident-33-years-ago-says-about-the-us-navys-future-showdowns-with-russia-and-china/.

Figure 4. Soviet Frigate SKR-6 Strikes USS *Caron* in the Black Sea, 12 February 1988.[141]

Although it is nearly impossible to know the status of all the surface combatants during February 1988 (some were probably deployed outside the Black Sea, and some were probably undergoing maintenance), it seems likely that the Soviets could have used larger ships to ram the *Yorktown* and *Caron*—especially if we assume that they received the 15-day Montreux Convention notification that the non-Black Sea state warships were planning to enter the Black Sea. Indeed, *Bezzaventnyy*, SKR-6 and a Soviet intelligence ship began shadowing the U.S. warships as soon as they entered the Black Sea on 10 February 1988.[142] Assuming that the Soviets had larger ships at their disposal, yet chose to ram with small ships, it seems that they wanted to limit the damage done to U.S. warships during the bumping incident. This suggests that the Soviets purposefully used enough force to grab media and diplomatic attention, without sinking U.S. warships and risking a war. This evidence further supports the hypothesis that Allison's Rational Actor Model explains much of Soviet decision making, suggesting that the Soviets made a calculated decision to bump the U.S. warships.

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[141] Source: Woody, "What a 'Bumping' Incident 33 Years Ago Says About the U.S. Navy's Future Showdowns With Russia And China."

[142] Kraska and Pedrozo, *The Free Sea*, 235.

B. STRATEGIC CONSEQUENCES

The bumping incident did not escalate into a larger conflict, but both sides realized that it could have and took steps to remedy their disagreements. The incident served as an impetus for the Agreement on the Prevention of Dangerous Military Activities (PDMA), signed in June 1989. For example, U.S. Secretary of Defense Carlucci referred to the bumping incident when advocating for the PDMA.[143] Although the agreement does not address innocent passage, U.S. Secretary of the Navy Lehman writes that it commits the United States and USSR to peacefully resolve any unintended "violations of national territory."[144]

Also in 1989, the USSR signed incident at sea agreements with France, Great Britain, Canada, Italy. These agreements were similar to the 1972 Incidents at Sea Agreement between the United States and USSR and showed that the USSR was not in a position to dominate the maritime domain and that it still wanted to deescalate with the West.[145] This example of Soviet de-escalation supports both of Allison's Rational Actor and Governmental Politics Models. Military de-escalation allowed the Soviets, as rational actors, to decrease their military budget, which they could no longer afford. Similarly, the military de-escalation allowed Soviet military spending to be redirected in support of Gorbachev's reforms.

The bumping incident pressured the USSR to acquiesce to the U.S. position on innocent passage in order to prevent additional provocative FONOPS in Soviet territorial waters. In September 1989, the United States and USSR signed the Uniform Interpretation of the Rules of International Law Governing Innocent Passage, which states that "all ships, including warships…enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required."[146] In effect, the USSR agreed to the English translation of UNCLOS III article

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143 Aceves, "Diplomacy at Sea," 71.

144 Lehman, *Oceans Ventured*, 251.

145 Roach, *Excessive Maritime Claims*, LVI-LVII.

146 Roach, *Excessive Maritime Claims*, 281.

22, and invalidated the Soviet internal law regulating innocent passage. By the end of the Cold War, it appeared that the United States had achieved its strategic objective regarding freedom of navigation—setting a precedent that diplomats can point to when debating current maritime disputes with countries like China.[147]

Informally, however, the Soviet's gunboat diplomacy succeeded in keeping the United States out of Soviet territorial waters. Since the bumping incident, the United States stopped conducting innocent passage through Russian territorial waters. After the USSR acquiesced to the U.S. position regarding article 22, Secretary of State Baker informed the State Department that the United States no longer needed to conduct innocent passage in Russian waters.[148] If the United States had been conducting innocent passage through Soviet waters to collect intelligence and test Soviet defenses, it could no longer do so under the pretext of FONOPS. In fact, the United States refrained from conducting any FON challenges to Russian excessive maritime claims until FY2019 and FY2021, when U.S. warships challenged Russian claims to Peter the Great Bay near Vladivostok.[149] Although Russia claims that U.S. warships violated Russian territorial waters by entering Peter the Great Bay, the FONOPS cannot be considered innocent passage because the United States does not recognize Peter the Great Bay as Russian territorial waters. In 2020 and 2021, British warships, not American ones, conducted innocent passage off Crimea in support of Ukrainian claims to the peninsula. Paradoxically, by allowing U.S. warships to conduct innocent passage through Russian territorial waters since 1989, the Russians have kept the United States from conducting innocent passage through Russian territorial waters.

C. REVIEW OF COLD WAR INNOCENT PASSAGES OFF CRIMEA

By 1988, the Soviet Union's growing vulnerability and sense of insecurity forced it to lash out against the pressure that the more assertive U.S. administration was putting

147 Zou Keyuan, "Innocent Passage for Warships: The Chinese Doctrine and Practice," Ocean Development & International Law 29, no. 3 (January 1998): 15, https://doi.org/10.1080/00908329809546124.

148 Lehman, *Oceans Ventured*, 255.

149 "Annual Freedom of Navigation Reports," Department of Defense, accessed 04 September, 2022, https://policy.defense.gov/OUSDP-Offices/FON/.

against it in the maritime domain of the Black Sea. Although the USSR still had a large navy, it did not have the economy to maintain it, or to continue the Cold War arms race with the United States. Gorbachev's *perestroika* and his shift to a defensive military doctrine were meant to eventually strengthen the Soviet Union by reducing the USSR's unsustainable military spending.[150] However, Gorbachev's policies coincided with increased maritime aggression from the United States. While the United States worked with the USSR to deescalate Cold War tensions in some areas, like INF, the U.S. Maritime Strategy and FON program threatened a vulnerable Soviet navy at one of its most important naval bases. The Soviet Navy could retreat no further without compromising its core geopolitical interests and putting unacceptable domestic pressure on Gorbachev.

In this context, both the United States and the USSR relied on gunboat diplomacy to influence each other's postures. By conducting FON challenges against the Soviet Union in particularly sensitive areas of the Black Sea, the United States exerted its naval power to guarantee the right of innocent passage and uphold the U.S. interpretation of UNCLOS III. The Soviet Union countered by conducting its own gunboat diplomacy against the United States. Their prime method was to bump U.S. warships, and thereby defend Soviet territorial waters, while momentarily upholding the integrity of Soviet law concerning innocent passage. In the wake of the Cessna affair, the bumping may have also been a political face-saving measure for Gorbachev domestically. The bumping also served Gorbachev's key foreign policy objectives, as it forced both superpowers to the negotiating table, and resulted in multiple international agreements to reduce future incidents at sea.

The Soviet assent to the English translation of UNCLOS III article 22 set an important strategic precedent in favor of the United States. The Soviet domestic law limiting the innocent passage of foreign warships threatened the United States—a maritime power. If the Soviet domestic law had remained unchallenged, it is likely that other states would have eventually enacted similar laws to limit the innocent passage of foreign warships through their waters. Such a scenario would have greatly diminished the ability of the United States to operate and project its maritime power abroad.

150 Taubman, *Gorbachev*, 400.

IV. INNOCENT PASSAGES AFTER RUSSIA'S ANNEXATION OF CRIMEA

> NATO allies are conducting unscheduled, I want to underline it, unscheduled drills in the waters of the Black Sea…our Defence Ministry also proposed to hold its own unplanned exercises in the same area. But I believe this is not appropriate and there is no need to further escalate the situation there.
>
> —Vladimir Putin, November 2021[151]

In 1954, Soviet Premier Nikita Khrushchev transferred the Crimean peninsula to Ukraine. At the time, ownership of the peninsula was somewhat trivial, given that both Russia and Ukraine were part of the Soviet Union. However, that transfer became problematic for Russia after the fall of the Soviet Union, given the strategic importance of Crimea in controlling the Black Sea region. In particular, the strategic Crimean port of Sevastopol is the home of Russia's Black Sea Fleet. For two decades, Russia maintained its base in Sevastopol via precarious lease agreements with Ukraine.[152] In 2014, however, Russia saw Ukraine's move toward the West as unacceptable and annexed Crimea. The West, in turn, does not recognize Russia's annexation of Crimea, and therefore disputes Russia's claims to the territorial waters surrounding Ukraine. Since Russia's annexation of Crimea, Western navies have reinforced this point by increasing operations in the Black Sea. Most notably, the British Navy conducted innocent passages off the coast of Crimea in 2020 and 2021.

First, this chapter will review Russia's post-Soviet relationship with Ukraine, focusing primarily on Russia's desire to control Crimea and its naval station in Sevastopol. Second, it will explore the contemporary relationship between the West and Russia, and the reactions of Western countries to Russia's annexation of Crimea and the ongoing conflict in Ukraine. Third, it will briefly review the spike in naval incidents between

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151 Evgeny Mikhaylov, "Putin: NATO Challenges Russia by Staging Unscheduled War Games in Black Sea Region," Sputnik International, https://sputniknews.com/20211113/putin-nato-using-strategic-air-force-in-black-sea-drills-is-challenging-russia-1090702861.html.

152 Ahmed Hashim and Vladimir Lehovich, *Issues for the U.S. Navy in the Black Sea Region: Country Profiles and Recommendations*, CRM D0000572.A2 (Alexandria, VA: CNA, 2000), 26.

Russian and Western militaries in the Black Sea since Russia's annexation of Crimea. Finally, it will describe the innocent passages conducted by the UK during the 2020s, including the different accounts released by Russia and the West.

A. RUSSIA'S RELATIONSHIP WITH UKRAINE AFTER THE SOVIET COLLAPSE

Since the fall of the Soviet Union, Ukraine has moved towards the West, most notably by attempting to join NATO and the EU, much to the chagrin of Russia.[153] Today, one prominent Russian narrative is that NATO is encroaching upon Russia's traditional sphere of influence and eliminating any buffer between Russia and NATO.[154] This narrative resonates strongly with the Russian official posture vis-à-vis Ukraine.[155] Although Ukraine is not a member of NATO, the alliance has declared that Ukraine could someday become one.[156] Even Ukraine's desire to join the EU was threatening to Russia—indeed, it was Ukraine's 2014 bid to join the EU that triggered Russia's annexation of Crimea.[157]

Moscow has long viewed Ukraine as a part of its sphere of influence, a sentiment that justified open aggression since the annexation of Crimea in 2014. In the wake of these events, official circles in Russia have publicly stated they consider much of Ukraine to belong to the territory of *Novorossiya* (or "New Russia), an ancient ethnic Russian land.[158] The roots of this schism trace back to Nikita Khrushchev's decision to transfer Crimea to Ukraine in 1954—a decision that was lamented in Russia since the collapse of the Soviet Union. Framing the transfer of Crimea to Ukraine as a mistaken political stunt, the Russian

153 Kathryn E. Stoner, *Russia: Its Power and Purpose in a New Global Order* (New York: Oxford University Press, 2021), 31.

154 Stoner, *Russia*, 37.

155 Stoner, *Russia*, 43–49.

156 Dimitar Bechev, *Rival Power: Russia in Southeast Europe* (New Haven: Yale University Press, 2017), 101.

157 Stoner, *Russia*, 44–45.

158 Stoner, *Russia*, 48.

parliament declared in 1992 that Khrushchev's actions had no legal force.[159] More recently, President Putin has posited that the political entity of Ukraine was a mistaken invention of the Soviet period, claiming that Ukraine has always lacked "real statehood."[160]

In a military sense, control of Crimea is crucial for Russia's ability to project its power in the region. From Crimea, Russia can use its weaponry to contest access to much of the Black Sea. By stationing advanced anti-ship missiles in Crimea, like the P-800 Oniks (SS-N-26), which has a range of 300 kilometers, Russian missiles could reach the coasts of Turkey or Romania and blockade Georgia or Ukraine without even leaving port.[161] Since Russia began its full-scale invasion of Ukraine in 2022, it has blockaded Ukrainian ports and, for example, prevented them from exporting wheat. In fact, it has successfully used older technologies, like artillery shells and rockets, to damage commercial maritime shipping in the Black Sea—doing enough damage to dissuade some maritime insurers from covering trips to Ukraine.[162] From Crimea and mainland Russia, Russia's new S-400 anti-air weapon systems, with a range of up to 400 kilometers, can deny all but the southwest corner of the Black Sea to NATO warplanes.[163] Stationing the S-400 in Crimea is also vital to protecting Russia from NATO's cruise missiles.[164]

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159 Lost Angeles Times, "Giving Crimea to Ukraine Was Illegal, Russians Rule: Commonwealth: Parliament's Vote Brings Tensions between the Two Powers Close to the Boiling Point.," Los Angeles Times, May 22, 1992, https://www.latimes.com/archives/la-xpm-1992-05-22-mn-278-story.html.

160 "What Putin Gets Wrong About Ukraine's Statehood," Time, February 22, 2022, https://time.com/6150046/ukraine-statehood-russia-history-putin/.

161 "P-800 Oniks/Yakhont/Bastion (SS-N-26 Strobile)," CSIS, August 12, 2021, https://missilethreat.csis.org/missile/ss-n-26/.

162 "Ships Shelled in Black Sea as Invasion Sparks Maritime Chaos," Bloomberg, February 25, 2022, https://www.bloomberg.com/news/articles/2022-02-25/ships-shelled-in-black-sea-as-invasion-sparks-maritime-chaos.

163 "S-400 Triumf," CSIS, July 6, 2021, https://missilethreat.csis.org/defsys/s-400-triumf/.

164 "S-400 Triumf," CSIS, July 6, 2021, https://missilethreat.csis.org/defsys/s-400-triumf/.

B. THE WEST'S RELATIONSHIP WITH RUSSIA, AND ITS REACTION TO RUSSIA'S ANNEXATION OF CRIMEA AND THE ONGOING CONFLICT IN UKRAINE

Russians have long been skeptical of the North Atlantic Treaty Organization (NATO). To justify their uneasiness, Russians can point to the words of Lord Ismay, NATO's first secretary-general, who said that one of the three core goals of NATO is "to keep the Russians out" of Europe.[165] After the fall Soviet Union, NATO's continued existence and its eastward expansion troubled Russian leaders. Russian President Yeltsin, for example, raised concerns about NATO expansion in 1993; he wanted assurances that NATO's nascent Partnership for Peace did not mean membership in NATO for "participating Central European states."[166] Stent writes that, despite Western assurances to Yeltsin in 1993, NATO added three former Warsaw Pact states in 1997; NATO now has 30 members, nearly triple its original size.[167]

NATO's expansion has taken the organization to Russia's doorstep. Poland, Estonia, Latvia, and Lithuania, all former members of the Soviet Union, have joined NATO. Bordering Russia, these countries are shielded by the U.S. nuclear weapons umbrella and are thus less vulnerable to Russian influence. Seeking similar protection, Ukraine and Georgia have continued to pursue NATO membership. Defying Russian protests, in 2008, NATO promised Ukraine and Georgia the opportunity to join NATO. In 2019, the pursuit of NATO and EU membership was even added to the Ukrainian constitution.[168] Although Robert Person and Michael McFaul argue that a "flourishing Ukrainian democracy" terrifies Putin—not NATO—the alliance enables democracies to

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165 Timothy Sayle, *Enduring Alliance: a History of NATO and the Postwar Global Order* (Ithaca: Cornell University Press, 2019), 3.

166 Angela Stent, *Putin's World: Russia Against the West and with the Rest* (New York: Twelve, 2019), 119.

167 Stent, *Putin's World*, 118–20; NATO, "Member Countries," NATO, accessed March 20, 2022, https://www.nato.int/cps/en/natohq/nato_countries.htm.

168 "Ukraine President Signs Constitutional Amendment On NATO, EU Membership," Radio Free Europe/Radio Liberty, 20:08:46Z, sec. Ukraine, https://www.rferl.org/a/ukraine-president-signs-constitutional-amendment-on-nato-eu-membership/29779430.html.

flourish without fear of Russian blackmail.[169] Even though NATO may never invade Russia, the organization's eastward expansion undermines Russia's control over its neighbors.

Further undermining Russia's influence, the eastward expansion of the European Union threatens Russia's economic interests. By expanding its trading bloc, the EU gains growing trading leverage over Russia and pulls Russia's neighbors out of its orbit. For example, in 2013, Ukraine rejected a trade deal from Russia and, instead, made a bid to join the EU.[170] John Mearsheimer has recognized the threatening nature of EU expansion for Russia.[171] Beyond economics, the EU challenge promotes a liberal ideology, which runs contrary to, and threatens to undermine, the political system promoted by the Kremlin.[172]

Throughout the first two post-Cold War decades, the West's relationship with Russia was rocky, yet sometimes promising; however, that relationship began to deteriorate rapidly in the wake of the "color revolutions"—popular revolts against corrupt autocracies akin to Putin's regime in Russia. This antagonism worsened in the wake of the Arab Spring—especially after NATO intervened in Libya in 2011. Oscar Jonsson describes how Russian leaders believed that Western support for the Arab Spring was a precursor to a Western plot to change the regime in the Kremlin.[173] Russian leaders believed that, in Libya in 2011, Western countries controlled the international narrative and supported non-governmental organizations (NGOs) to make it appear as though opposition to Qaddafi grew organically out of Libya during a color revolution.[174] Then NATO gave weapons to

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169 Robert Person and Michael McFaul, "What Putin Fears Most," Journal of Democracy, February 22, 2022, https://www.journalofdemocracy.org/what-putin-fears-most/.

170 Shaun Walker, "Ukraine Set to Sign EU Pact That Sparked Revolution," *The Guardian*, June 26, 2014, https://www.theguardian.com/world/2014/jun/26/ukraine-european-union-trade-pact.

171 John Mearsheimer, "Defining a New Security Architecture for Europe that Brings Russia in from the Cold," *Military Review*, May-June 2016. https://www.mearsheimer.com/wp-content/uploads/2019/06/Military-Review.pdf.

172 European Union, "Aims and Values," accessed March 20, 2022, https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values_en.

173 Jonsson, *The Russian Understanding of War*, 132.

174 Jonsson, *The Russian Understanding of War*, 77.

Libyans and led a military operation to kill Libya's longtime dictator, Muhammar Qaddafi.[175] The Russians viewed this as New Generation Warfare; the West, in turn, attributed similar grey-zone tactics to Russians—what Mark Galeotti dubbed as the "Gerasimov Doctrine."[176]

In Europe, one tactic that the Kremlin fears, and attributes to a Western plot to instigate color revolutions, is support for democracy.[177] For example, the Kremlin fears Western democratization efforts in Ukraine would ultimately threaten Putin's regime in Russia. Person and McFaul argue that a successful democracy in Ukraine—especially if it were economically prosperous—would undermine "the Kremlin's own regime stability and proposed rationale for autocratic state leadership."[178] Furthermore, Russian military doctrine has evolved to counter the threat of color revolutions to the Putin regime.[179] Putin cannot afford for Russians to see a democratic alternative flourish on Russia's border because it might inspire Russians to overthrow him in a color revolution.

Fearing a color revolution in Russia, Putin needs a perceived external threat, like far-right extremists in Ukraine or a NATO invasion, which he can use to rally Russians behind him. Putin's anti-Ukraine or anti-NATO rhetoric can be interpreted through Allison's Governmental Politics Model. Putin uses external threats to stoke Russian nationalism and stay in power. Ironically, by acting as Putin's scapegoat, NATO may help Putin stay in power.

C. NAVAL INCIDENTS IN THE BLACK SEA SINCE RUSSIA'S ANNEXATION OF CRIMEA

The United States responded to the annexation of Crimea by increasing its operations in the Black Sea to show its commitment to Ukrainian sovereignty. In solidarity with Ukraine, the United States first sent the USS *Donald Cook* to the Black Sea within a

175 Jonsson, *The Russian Understanding of War*, 131–32.

176 Jonsson, *The Russian Understanding of War*, 14.

177 Jonsson, *The Russian Understanding of War*, 127.

178 Person and McFaul, "What Putin Fears Most."

179 Jonsson, *The Russian Understanding of War*, 15.

month of the annexation.[180] A Russian *Krivak-class* frigate and two Su-24 Fencers intercepted the *Donald Cook*.[181] Other Rota-based U.S. destroyers, like the USS *Ross* and USS *Carney*, also operated in the Black Sea after the Russian annexation of Crimea. None of the U.S. destroyers entered territorial waters off Crimea.

Since 1997, NATO ships have conducted an annual military exercise with the Ukrainians called Sea Breeze. In response to Russia's 2014 invasion of Ukraine, the exercise has grown, and has, therefore, become increasingly threatening to Russia. By July 2021, according to USNI News, the exercise had grown to "5,000 troops, 32 ships, 40 aircraft, and 18 special operations and dive teams."[182] Russia finds the exercise provocative and closely monitors NATO operations in the Black Sea. Russia claims to have invaded Ukraine to stop NATO expansion as it threatens Russia; however, this has had an opposite effect. NATO's unity and presence in Eastern Europe have demonstrably increased in step with Russia's foreign aggression. From a Rational Actor Model perspective, by invading Ukraine, Russia appears to be working against its proclaimed interests. This suggests that the Governmental Politics Model might better explain its rationale and behavior. As Person and McFaul argue, Putin might not be worried about NATO presence in Ukraine, but the security of his regime.[183] From this perspective, NATO's increased presence in the region gives the Putin regime fuel to stoke Russian nationalism and justify Putin's autocratic, strongman rule.

D. INNOCENT PASSAGES CONDUCTED BY NATO MEMBERS DURING THE 2020s

Despite operating extensively in the Black Sea after Russia's 2014 annexation of Crimea, NATO warships refrained from conducting innocent passages through Crimean waters until 2020. The British destroyer HMS *Dragon* steamed through territorial waters

180 Winkler, *Incidents at Sea*, 9–11.

181 Winkler, *Incidents at Sea*, 9–11.

182 "U.S., Ukraine Begin Sea Breeze 2021 Exercise with 30 Other Countries," USNI News (blog), June 28, 2021, https://news.usni.org/2021/06/28/u-s-ukraine-begin-sea-breeze-2021-exercise-with-30-other-countries.

183 Person and McFaul, "What Putin Fears Most."

off the coast of Crimea on 13 October 2020, claiming the right of innocent passage under UNLCOS article 17.[184] Russian claimed its warships and warplanes forced HMS *Dragon* to return to international waters.[185] The HMS *Dragon*'s transit resembled the 1986 American FONOP that preceded the "bumping incident" between U.S. and Soviet warships in 1988.[186]

Relatedly, a month after the HMS *Dragon* exercised its right of innocent passage off Crimea, the U.S. Navy conducted a similar FONOP challenging excessive Russian maritime claims near the Sea of Japan. Russia claims that Peter the Great Bay constitutes Russian territorial waters, as shown in Figure 5. On 24 November 2020, the USS *John S. McCain* entered Peter the Great Bay—the home of Russia's Pacific Fleet.[187] Again, the Russian military claimed to have expelled the foreign warship, although the West disputes that the *John S. McCain* was forced out of the bay.[188]

184 *United Nations Convention on the Law of the Sea III, 1982*, Article 17, https://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

185 "Russia Says It Expelled British Warship from Waters near Crimea," Aljazeera, May 27, 2021, https://www.aljazeera.com/news/2021/5/27/russia-says-it-expelled-british-warship-from-waters-near-crimea.

186 Winkler, *Incidents at Sea*, 179–82.

187 "Russian, U.S. Destroyers Face off during Sea of Japan FONOP," Defense Brief (blog), November 24, 2020, https://defbrief.com/2020/11/24/russian-us-destroyers-face-off-during-sea-of-japan-fonop/.

188 "Navy Denies Russian Claims of Expelling U.S. Destroyer From Territorial Waters In Sea of Japan," USNI News, October 15, 2021, https://news.usni.org/2021/10/15/navy-denies-russian-claims-of-expelling-u-s-destroyer-from-territorial-waters-in-sea-of-japan.

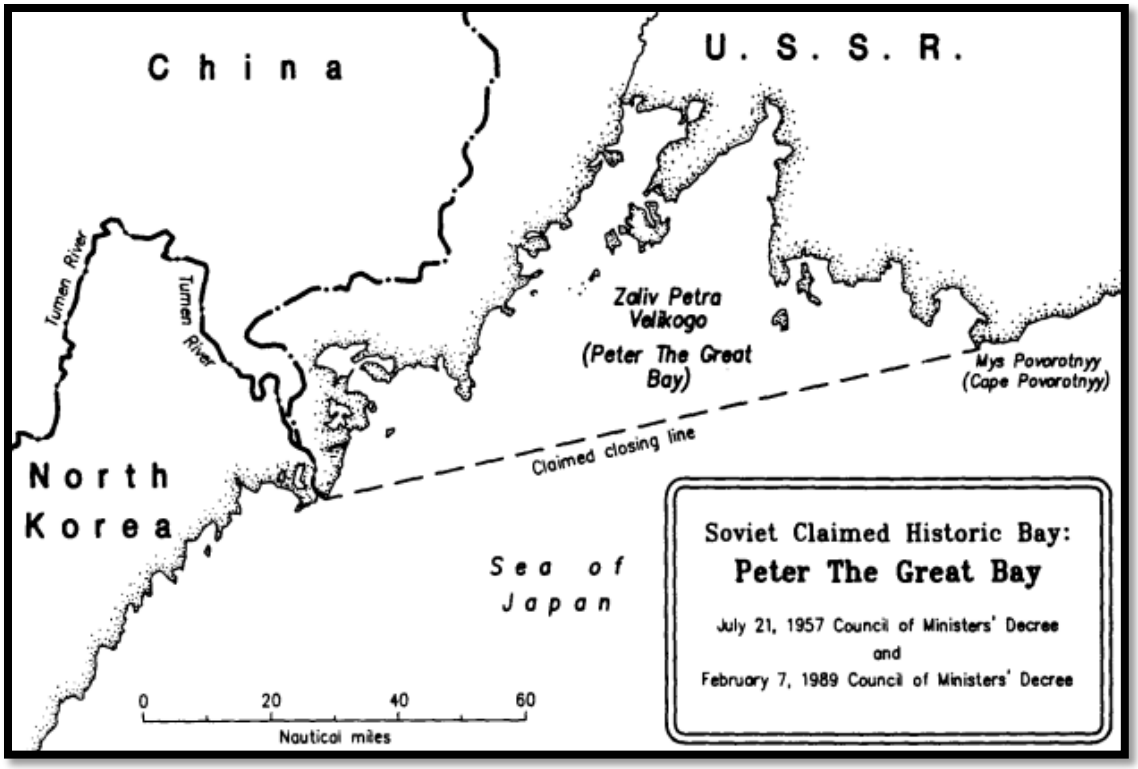

Figure 5. Russia Maintains Soviet Claims to Peter the Great Bay.[189]

Less than a year later, the British returned to territorial waters off Crimea (see Figure 6). On 23 June 2021, HMS *Defender* entered Ukrainian territorial waters off the coast of Crimea (now claimed by Russia), but this time the Russians attempted to use UNCLOS to justify closing the territorial waters off Crimea. UNCLOS article 25 gives coastal states the right to "suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having

189 Source: Office of Ocean Affairs Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas: United States Responses to Excessive National Maritime Claims*, Report No. 112 (Washington, DC: United States Department of State, 1992), 20, https://www.state.gov/wp-content/uploads/2019/12/LIS-112.pdf; the U.S. Department of Defense's Annual Freedom of Navigation Report for Fiscal Year 2019 describes the U.S. challenge to Russia's excessive maritime claim in the Sea of Japan as "Straight baseline claims (including a claim that Peter the Great Bay is an historical bay). [U.S.S.R. Declaration 4604, Feb. 7, 1984; Federal Act on Internal Maritime Waters, Territorial Sea and Contiguous Zone of the Russian Federation, July 17, 1998.]," Department of Defense, Annual Freedom of Navigation Report (7-C40800E) (Washington, DC: Department of Defense, 2020), 5, https://policy.defense.gov/Portals/11/Documents/FY19%20DoD%20FON%20Report%20FINAL.pdf?ver=2020-07-14-140514-643&timestamp=1594749943344.

been duly published."[190] The Russian Defense Ministry's closure of territorial waters off the coast of Crimea (as depicted in Figure 7) from 24 April to 31 October 2021 was published by RIA and subsequently by Reuters on 16 April 2021.[191] The British operation challenged Russia's authority to close the territorial waters off of Crimea.

Figure 6. HMS *Defender*'s Innocent Passage Route.[192]

[190] *United Nations Convention on the Law of the Sea III, 1982*, Article 25, https://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

[191] Reuters, "Russia's Plan to Restrict Foreign Warships near Crimea Will Keep Kerch Strait Open - RIA," Reuters, April 16, 2021, sec. Europe, https://www.reuters.com/world/europe/russias-plan-restrict-foreign-warships-near-crimea-will-keep-kerch-strait-open-2021-04-16/.

[192] Source: Economist. "Russian and British Forces Square off in the Black Sea," June 24, 2021 https://www.economist.com/europe/2021/06/24/russian-and-british-forces-square-off-in-the-black-sea.

The West views Russia's 2014 annexation of Crimea as illegitimate, and the UK used the HMS *Defender*'s innocent passage to challenge Russia's claim to the peninsula and the corresponding territorial waters.[193] For example, the British Secretary of State for Defence, Ben Wallace, released a statement on 24 June 2021 claiming that "the United Kingdom does not recognise any Russian claim to these waters, nor do we recognise the assertion from the Russian Ministry of Defence that HMS Defender was in violation of the UN convention on the law of the sea (UNCLOS)."[194] He went on to say that HMS *Defender* had transited "Ukrainian [not Russian] territorial waters."[195] Since the West views Russia's 2014 annexation of Crimea as illegitimate, Russia lacks the legal authority to close the waters in accordance with UNCLOS article 25.

Furthermore, Russia's closure of the waters off Crimea in 2021 was illegitimate as it did not comply with the provisions of UNCLOS article 25.[196] The subparagraph of article 25, which gives coastal states the right to temporarily close their waters to foreign ships is written as follows:

> The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.[197]

Since Russia specified in its announcement that the waters would be closed to foreign warships and other state ships, Parmley and Pedrozo argue that Russia nullified its right to close its waters under article 25, because the article does not allow states to discriminate "in form or fact among foreign ships."[198] Furthermore, Parmley and Pedrozo argue that Russia's limited six-month ban does not qualify as temporary, and that a coastal

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193 "Exercises in the Black Sea," UK Parliament," June 24, 2021, https://hansard.parliament.uk//commons/2021-06-24/debates/21062452000011/ExercisesInTheBlackSea.

194 UK Parliament.

195 UK Parliament.

196 "Russia's Illegal Restriction of Navigation in the Black Sea," Lawfare, April 27, 2021, https://www.lawfareblog.com/russias-illegal-restriction-navigation-black-sea.

197 UNCLOS III, Article 25.

198 Lawfare, "Russia's Illegal Restriction of Navigation in the Black Sea."

state must announce exactly why it is closing its waters in order to justify that the suspension of innocent passage is "essential for the security of the coastal state."[199]

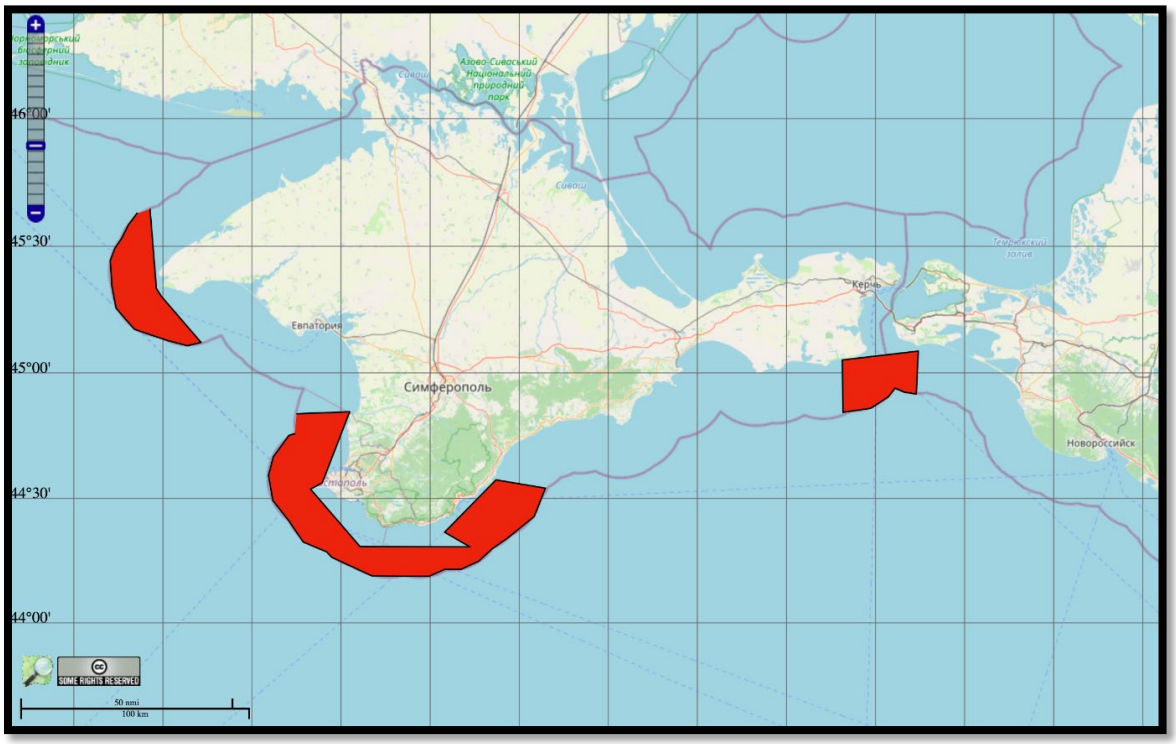

Figure 7. Approximations of Maritime Zones Closed to Foreign Vessels by Russia, 24 April to 31 October 2021.[200]

The Russian military claimed to have forced the HMS *Defender* out of Russian territorial waters with air and maritime forces. More than 20 Russian aircraft overflew the HMS *Defender*, and one warplane reportedly dropped bombs in the path of the British warship.[201] A Russian Coast Guard vessel intercepted *Defender* and, after using the bridge-to-bridge radio to warn the British warship to exit Russian waters, the Coast Guard

199 Lawfare, "Russia's Illegal Restriction of Navigation in the Black Sea."

200 Source: Anders Puck Nielsen, "Russia Challenges International Law with Black Sea Prohibition Zones," Romeo Squared (blog), April 26, 2021, https://romeosquared.eu/2021/04/26/russia-challenges-international-law-with-black-sea-prohibition-zones/.

201 "HMS Defender: Russian Jets and Ships Shadow British Warship," BBC, June 23, 2021, sec. Europe, https://www.bbc.com/news/world-europe-57583363.

vessel fired its guns in the vicinity of the HMS *Defender*.[202] Figure 8 shows the position of HMS *Defender* when the Coast Guard vessel fired its guns. The Russians claimed that the Coast Guard vessel's gunfire represented warning shots, but the British dispute that classification.[203]

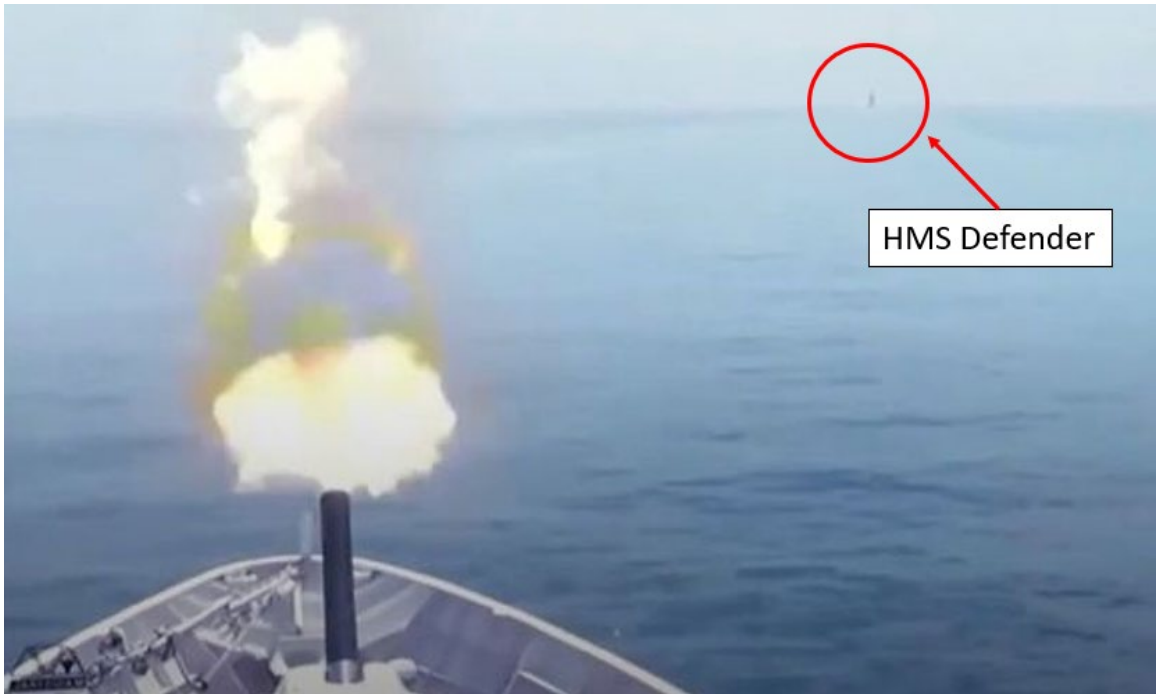

Figure 8. Russia's Claimed Warning Shots in Vicinity of HMS *Defender*.[204]

One of the key characteristics of the HMS *Defender* Freedom of Navigation Operation was that it became an instrument in the battle for global public opinion right from the outset. The HMS *Defender* had prepared to conduct its FONOP off Crimea by embarking a BBC correspondent onboard, who reported on the innocent passage.[205] The

[202] BBC, "HMS Defender: Russian Jets and Ships Shadow British Warship."

[203] BBC, "HMS Defender: Russian Jets and Ships Shadow British Warship."

[204] Adapted from Tim McNulty, "Moment Russian Warship Fires 'Warning Shots' in Tense Encounter with Royal Navy – VIDEO," Express.co.uk, June 25, 2021, https://www.express.co.uk/news/world/1454663/russia-video-warning-shots-fired-HMS-Defender-royal-navy-black-sea-crimea-latest-update-vn.

[205] BBC, "HMS Defender: Russian Jets and Ships Shadow British Warship."

BBC correspondent's footage captured the so-called warning shots fired by the Russian Coast Guard vessel, but the British government interpreted the gunfire as part of a routine gunnery exercise—despite the preceding warnings in English over the radio that the Russians would fire if HMS *Defender* did not leave Russian territorial waters.[206] The British government also disputed that Russian warplanes dropped bombs in the path of HMS *Defender*.[207]

The Russian government, on the other hand, contested the British claims through social media and official news outlets, and turned the incident into fodder for its propaganda. Through social media, the Russian embassy in Britain wrote that "HMS Defender turns HMS Provocateur and violates Russian border. Not exactly a 'routine' transit, is it?"[208] The Russian news agency TASS reported that "the [British] destroyer was warned about the use of force but did not react. A border guard ship fired warning shots, while a SU-24M bomber had to drop warning bombs ahead of the destroyer before the ship turned back and left the Russian waters."[209] Even with video footage of the encounter, British and Russian accounts of the incident differ significantly.

The 2021 British FONOP in the Black Sea was followed by another U.S. FONOP near the Sea of Japan.[210] On 15 October 2021, the U.S. destroyer USS *Chafee* interfered in a Russian naval gunnery exercise, which had been announced via a Notice to Mariners, and then attempted to cross into Peter the Great Bay.[211] Russian sources alleged that the

206 BBC, "HMS Defender: Russian Jets and Ships Shadow British Warship."

207 UK Parliament, "Exercises in the Black Sea"

208 Russian Embassy, UK (@RussianEmbassy), "HMS Defender Turns HMS Provocateur and Violates Russian Border. Not Exactly a 'Routine' Transit, Is It?.," Twitter, June 23, 2021, 8:53 a.m., https://twitter.com/RussianEmbassy/status/1407728344913829889.

209 "Russia Views HMS Defender's Actions as Violation of UN Sea Law Convention—Statement," TASS, accessed March 20, 2022, https://tass.com/defense/1306375?utm_source=search.yahoo.com&utm_medium=organic&utm_campaign=search.yahoo.com&utm_referrer=search.yahoo.com.

210 "US Navy Denies Russian Claim It Pushed Destroyer Chafee from Its Territorial Waters," Navy Times, accessed March 20, 2022, https://www.navytimes.com/news/your-navy/2021/10/15/us-navy-denies-russian-claim-it-pushed-destroyer-chafee-from-its-territorial-waters/.

211 "US Warship Chafee operated in Sea of Japan in line with international law—US Navy," TASS, accessed March 20, 2022, https://tass.com/world/1350341.

anti-submarine warfare ship *Admiral Tributs* chased the U.S. destroyer out of the area, but the United States disputes this claim.[212]

This incident highlights the key geopolitical background of the U.S. innocent passage and freedom of navigation operations against the USSR/Russia. The United States routinely challenged the excessive maritime claims by the USSR in the Peter the Great Bay during the Cold War. But after the 1988 bumping incident, it refrained from challenging excessive Soviet/Russian maritime claims until after Russia's 2014 annexation of Crimea. Although the U.S. Department of Defense Freedom of Navigation (FON) Program supposedly challenges "excessive maritime claims based on principle rather than identity of the coastal State asserting the claim," the resumption of U.S. challenges to Russian claims post-2014 seems to be tied to Russia's broader posture and behavior, not the principle of Russia's claim.[213] As such, the United States may be using FONOPs in East Asia to demonstrate its opposition to the Putin regime's behavior in Europe.

For its part, the Kremlin under Putin's rule not only works to discredit U.S. FONOPs on the international stage, it uses U.S. FONOPs as opportunities to show its strength to the Russian people. Broadly speaking, the legitimacy of Russian or Soviet governments throughout history has been tied to the governments' ability to win in foreign confrontations. The Russian people questioned the legitimacy of their government after significant military losses in the Crimean War, Russo-Japanese War, WWI, and Afghanistan. Threatened by the potential for a Russian color revolution, today's Kremlin is acutely aware of Putin's domestic popularity. As Jonsson demonstrates, the media plays an important role in Russian New Generation Warfare by helping the government rally the nation against foreign challenges to perceived Russian sovereignty.[214] The reporting by Russian state media, may therefore, be evidence of Allison's Organizational Behavior Model in Russian maritime confrontations. The reporting may also be evidence of the

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[212] Navy Times, "Navy Denies Russian Claims of Expelling U.S. Destroyer From Territorial Waters In Sea of Japan."

[213] Department of Defense, *Freedom of Navigation (FON) Program* (Washington, DC: Office of the Under Secretary of Defense, 2017), 1, https://policy.defense.gov/Portals/11/DOD%20FON%20Program%20Summary%2016.pdf?ver=2017-03-03-141350-380.

[214] Jonsson, *The Russian Way of War*, 158.

Governmental Politics Model, since the purpose of Russian state media is to bolster the Putin regime. From this standpoint, today's Russian naval operations to deter Western innocent passage and freedom of navigation operations may be just as concerned about good camera angles and a favorable media narrative as with physically removing Western warships from Russian waters.

V. CONCLUSIONS AND IMPLICATIONS

This thesis assessed two key sets of innocent passages, which Western navies conducted as freedom of navigation operations to challenge excessive Soviet/Russian maritime claims around Crimea. These cases provide unique analytic leverage to capture the long-term trends and underlying drivers of these kinds of operations, as well as the Russian responses. The theoretical framework developed in this thesis on the basis of these cases can also provide crucial insights about innocent passage and freedom of navigation operations against major power adversaries and regions, most notably China in in the South China Sea. This concluding chapter summarizes the key findings from the study of the Black Sea innocent passage, and discusses the implications for controversial freedom of navigation operations in the South China Sea. It also advocates for a consolidated Navy-wide guidance on freedom of navigation operations, an example of which is provided in Annex A.

A. SUMMARY OF CASE STUDIES

A key finding of this thesis is that the case studies of Western freedom of navigation operations against Soviet/Russian excessive maritime claims in the 1980s and 2020s examined in this thesis appear to have a lot in common based on their location, frequency, and pattern of escalation. Strikingly, both sets of freedom of navigation operations exercised the right of innocent passage within 12 NM of Sevastopol, following an easterly course along a traditional shipping lane south of Crimea. Both sets occurred within two years. Finally, both culminated with provocative escalations by the Soviets/Russians. These similarities warrant their comparison in this thesis and can be used to trace important continuity in the triggers of aggressive Soviet/Russian behavior in the Black Sea and beyond.

There are also notable differences between these case studies, which reveal important adaptations by the parties involved in these incidents, as well as how these operations are shaped by changing geopolitical circumstances. First, the fact that the British conducted the 2020s innocent passages instead of the U.S. Navy may shed light on the

legacy of the 1988 bumping incident. The U.S. Navy may have been reluctant to conduct the 2020s FONOPs itself because of the experience of the 1988 incident. Second, the freedom of navigation operations in the 1980s challenged Soviet legal restrictions on innocent passage that contradicted the provisions of UNCLOS III article 17. In contrast, the freedom of navigation operations in the 2020s disputed Russia's claim to Crimea—a product of the first land grab by a major power since World War II—and supported Ukrainian sovereignty over the peninsula. Had Russia not challenged this fundamental principle of the inviolability of national borders in Crimea, the British likely would not have challenged Russian closures of waters around the peninsula under UNCLOS III article 25.

Furthermore, there are important differences between the two sets of case studies based on how and why the Soviets/Russians reacted. The Soviet reaction in 1988 relied mostly on the physical bumping of U.S. warships and neglected to conduct a significant subsequent media and influence campaign at home and abroad. The Soviet messaging in the 1988 incident appeared to be targeted exclusively at the U.S. government. In contrast, the Russians significantly hyped up the 2021 incidents in their media outlets, claiming to fire warning shots and drop bombs to chase the HMS *Defender* away from Crimea. Although the supposed Russian warning shots and bombs did not truly endanger the *Defender*, nor chase the warship away from Crimea, Russian state media promoted a captivating media campaign to the contrary. The Russian reaction in 2021 appears to have been targeted at the Russian public, not the British government. This points to a shift in Russian messaging toward domestic audiences—intended to boost the legitimacy of the Putin regime and its confrontational stance toward the West—in addition to the deterrent signals that the Kremlin aimed at its Western adversaries. It also underscores the importance of visual information and the ability of Western warships to accurately portray interactions at sea in the subsequent struggle to control the narrative in the information domain.

B. ASSESSMENT OF HYPOTHESES

Applying Graham Allison's theoretical perspectives to the Black Sea innocent passage operations, this thesis provides significant evidence in support of the Rational Actor and Governmental Politics Models, which explain the Soviet/Russian response to controversial innocent passages as reactions to threats of foreign encroachment in the region, as well as efforts to boost the regime's domestic legitimacy by seeming to guard against this threat.

These hypotheses seem to most accurately align with the Soviet/Russian behavior in the events studied in this thesis. First, prior to the 1988 bumping incident, the Governmental Politics Model best captures the Soviet military leaders' increasing aggressiveness towards perceived territorial violations, motivated by their desire to preserve their jobs and budgets in the wake of Gorbachev's reforms and the humiliating breach of Soviet airspace by an amateur Cessna pilot. Against this backdrop, the Soviets appear to have made a calculated decision to bump the U.S. warships with relatively small ships. The purpose of these actions was to impose costs and deter further provocations by the U.S. government, but not to inflict too much damage so as to risk sinking a U.S. warship and cause a dangerous escalation.

The 1989 Soviet incident at sea agreements with France, Great Britain, Canada, and Italy further support this interpretation and demonstrated Soviet commitment to de-escalation. In the context of the *Perestroika* era, maritime de-escalation allowed the Soviets to decrease their unaffordable military budget and redirect money in support of Gorbachev's reforms.

Further in line with the Rational Actor Model, the empirical analysis in the thesis suggests that the Soviets bumped the USS *Yorktown* and USS *Caron* in 1988 not just because of their increased vulnerability, but also because the USSR was still a strong naval power that could challenge the United States—especially when U.S. warships entered Soviet territorial waters. Even though Gorbachev was reducing military spending and looking for ways to reduce Cold War tensions, the USSR still had thousands of nuclear

missiles to deter the U.S. from retaliating for dented warships.[215] If U.S. warships had conducted innocent passage off the coast of a weaker adversary, it is unlikely it would have been met with such determined and aggressive reaction.

At the same time, the USSR had a nuanced approach to deterrence, taking care to avoid a too strong of a response that could have led to dangerous escalation. In both cases, the USSR did not bump the foreign warships the moment they entered its territorial waters—and allowed them to continue transiting through Soviet territorial waters for another hour and a half after the bumping. Also, even though the USSR had a strong navy, backed by thousands of nuclear weapons, it did not react in the same aggressive fashion when U.S. warships entered Soviet territorial waters in 1986–1987. This behavior suggests that the Soviets rationally chose to employ limited aggression to deter further foreign encroachments to preserve the legitimacy of the Soviet regime, while still avoiding dangerous standoffs.

The Russian reactions to the 2020 innocent passages, in turn, were driven more by domestic considerations and less so by geopolitical imperatives. They occurred against the backdrop of a weakened Putin regime, which feared a color revolution in Russia, and exploited the nationalist sentiments and animosity triggered by the British freedom of navigation operations as a propaganda tool to boost its domestic legitimacy. Additionally, Putin did not inflict any physical damage to the HMS *Defender* or impose any real cost to the British. As a result, the Russian reaction to the 2021 innocent passage appears to have served domestic political purposes more than foreign policy objectives.

In addition to the greater role of domestic politics, the evolution of Soviet/Russian response between the 1980s and the 2020s was also driven by changes and adaptations in the organizational structure of the Russian military and its doctrine, captured in hypothesis 3 of this thesis. In particular, while the USSR relied on physical contact as a deterrent in the 1980s, Russia's response to the more recent incidents involved a much wider array of methods, to include an aggressive media campaign to dominate the narrative.

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215 Peter Schweizer, *Reagan's War: The Epic Story of His Forty-Year Struggle and Final Triumph Over Communism* (New York: Doubleday, 2002), 75.

This thesis provides evidence to support a dramatic shift in Soviet/Russian military doctrine between the 1980s and 2020s. This shift, captured by Oscar Jonsson's work on Russian New Generation Warfare, is underscored by the Putin regime's reliance on aggressive information campaigns, coupled with indirect, asymmetric methods for confronting the West. The Putin regime's efforts have been geared towards manipulation of the narrative inside Russia to bolster Putin's hold on power, at least as much as to signal determination to its Western adversaries. While the Putin regime's rhetoric has been very aggressive toward the West, Russia's kinetic responses against the purported Western encroachment have been limited to former Soviet states. This behavior was reflected in the 2021 innocent passage incident.

Turning to the U.S. rationale for conducting innocent passages in the 1980s and 2020s the initial decisions to conduct these operations are consistent with Allison's Rational Actor Model, whereby the United States and its allies carried out these operations in an effort to contain the USSR/Russia. The case studies find no evidence to support hypothesis two of the thesis, which argues that follow-on innocent passage operations become codified into standard operating procedures, following the Organizational Behavior Model. This could be a consequence of the fact that this thesis focused exclusively on controversial innocent passages—a subset of freedom of navigation operations most likely to illicit an intervention, especially when conducted against a peer or near-peer naval power. In these cases, it appears that each freedom of navigation operation is individually planned, scrutinized, and approved at the highest levels of government, and adjusted to the geopolitical context. This thesis found no evidence that the Western powers studied in this thesis allowed these higher-profile freedom of navigation operations to become routine operations of lower echelons of government. Nevertheless, the repetitive nature of these operations has led to a development of patterns along which they are executed, allowing the Soviet/Russian adversary to predict Western behavior and become more confident and determined to challenge it.

This thesis finds little evidence that the 1980s innocent passage encounters were conducted in line with hypothesis four, which holds that periods following major crises and tension between the West and USSR/Russia led to more frequent—and more serious—

such incidents in the Black Sea, as the United States and its allies undertake such operations to demonstrate commitment to its allies and partners in the region, compelling USSR/ Russia to push back against such encroachments.

In particular, this hypothesis does not explain the freedom of navigation operations in the late 1980s, when tensions between the superpowers were relatively low. Also, even though the 1986 U.S. Maritime Strategy emphasized support for "U.S. alliances and friendships," there is little evidence that the 1980s innocent passages were executed in support of NATO members, such as Turkey.[216] Instead, it appears that the 1980s freedom of navigation operations were primarily designed to uphold the right of innocent passage under UNCLOS III, and to deter the USSR, as stipulated in Phase I of the 1986 U.S. Maritime Strategy, which called for "exerting global pressure on the Soviet Union."[217]

In contrast, the 2020s innocent passages, which occurred after Russia's initial invasion of Ukraine, do support hypothesis four that the United States and its allies carried out these operations to support key allies and partners. Russia's illegal 2014 annexation of Crimea triggered a prolonged period of adversarial naval and other military encounters between Russia and the West in the Black Sea area. The HMS *Defender's* June 2021 innocent passage occurred after the spring 2021 build-up of Russian troops along the Ukrainian border. Furthermore, *Defender'*s innocent passage was in support of Ukrainian sovereignty over Crimea, not a challenge of Russia's interpretation of UNCLOS III. Thus, while there is little evidence that the United States conducted the 1980s innocent passages to support allies and partners in times of increased Russian aggression, the British operations in the 2020s did have this purpose.

C. IMPLICATIONS FOR THE SOUTH CHINA SEA

Some lessons from the Black Sea controversial innocent passage cases appear to be highly applicable to the current maritime competition in the South China Sea. First, freedom of navigation operations remain very relevant to international maritime law and

216 Watkins, *The Maritime Strategy*, 8.

217 Watkins, *The Maritime Strategy*, 9–10.

diplomacy in the wake of the unprecedented challenges to the current global order by resurgent China. A country which ceases to operate in waters illegally claimed by another still risks ceding those waters by setting a precedence of absence. However, in today's era of great power competition, a large portion of which occurs in the highly contested information domain, it is no longer enough to simply operate a warship in disputed waters. The media narrative surrounding an operation is also increasingly critical to the success of these operations. For this reason, it is vital that the U.S. Navy ensure detailed and accurate audio and visual records of its freedom of navigation operations are promptly disseminated to media outlets so that an adversary's (often misleading) narrative does not prevail. This is not a secret to the U.S. Navy, which assigns naval Visual Information Personnel (VIPER) teams to ships involved in these operations to capture interactions at sea.[218] But the evolving threat and media environment suggests that it is useful to support freedom of navigation transits with multiple recording platforms, and perhaps with embedded journalists and camera crews from reputable outlets whose products resonate in target countries. These measures may allow for redundancy and versatility, and improve the chances to accurately capture and portray critical events.

The three perspectives derived from Allison's models that this thesis applied to assess Russian behavior in the controversial innocent passage encounters in the Black Sea also apply to the People's Republic of China (PRC) and the People's Liberation Army Navy (PLAN). The Rational Actor Model provides a useful baseline model of PRC actions, as it would explain PRC behavior without having to look inside the "black box" of PRC politics and organizational behavior.

On a more fundamental level, the domestic politics captured by the Governmental Politics Model also appear to be a persistent driver of PRC actions, although these internal political dynamics may be mostly opaque to outside observers and operational planners of freedom of navigation operations—just as they were for the Soviet Union. For instance, as this thesis demonstrated, Mathias Rust's landing of a Cessna near Red Square in 1987 created significant political pressures inside the Soviet government and military, and drove

218 "OPTASK-VI," accessed September 3, 2022, https://allhands.navy.mil/Media/OPTASK-VI/.

the Soviet decision to bump U.S. warships in 1988. It is unclear, however, if the broader implications of this dynamic were fully appreciated by U.S. Navy planners prior to the 1988 freedom of navigation operation. More to the point, there is no indication that the commanding officers of the *Yorktown* and *Caron* knew of the potential impact of the Mathias Rust affair on their 1988 innocent passage.

A twenty-first century Mathias Rust may not land a Cessna in the Forbidden City, but a similarly embarrassing incident might drastically change the PRC's calculus at sea. As with the Cessna affair, such an incident may appear unrelated to maritime claims but still create pressures for the Chinese political and military leadership to be assertive in the maritime domain. Navy planners must, therefore, keep a pulse on the PRC and Chinese domestic affairs—however difficult that may be—and factor Chinese political turmoil into freedom of navigation plans.

Still, such politically relevant developments should not necessarily preclude a freedom of navigation operation in the region. In fact, a tumultuous Chinese political situation might be precisely the environment in which to conduct a freedom of navigation operation, especially if it is conducted with political purposes beyond the routine support of UNCLOS III. U.S. Navy freedom of navigation operations in the Taiwan Strait conducted in the wake of Congresswoman Pelosi's 2022 visit to Taiwan is an example of a successful operation during a political crisis. Much like the *Defender* operation near Crimea in 2021, the United States sent warships through the Taiwan Strait to demonstrate support for Taiwanese sovereignty—not just to exercise freedom of navigation. As the experience of the Black Sea incidents has demonstrated, the calculated risks involved in such naval actions may occasionally pay dividends and lead to favorable political agreements.

Nevertheless, we cannot assume that freedom of navigation operations are appropriate in every crisis. Admiral Stavridis and Elliot Ackerman's *2034: a Novel of the Next World War* begins with a freedom of navigation operation in the South China Sea that

escalates into a war between the United States and China.[219] Freedom of navigation operations may often seem trivial, but prominent thinkers can envision scenarios where they lead to war between nuclear superpowers.

The Organizational Behavior Model also appears to be relevant to some crucial specifics of operations in the South China Sea, such as the PLAN's maritime militia, which frequently uses grey zone tactics to achieve political objectives. For example, in 2014, Chinese fishermen, likely in coordination with the PLAN and Chinese Coast Guard, protected an illegal Chinese oil platform in the Vietnamese exclusive economic zone.[220] China also manipulates the narrative surrounding U.S. freedom of navigation operations in the South China Sea.[221] This mirrors Russia's use of grey zone tactics during the *Defender*'s innocent passage, centered on manipulation of the media narrative surrounding warning shots and bombs. As in Russia, the use of grey zone maritime operations and media manipulation have begun to evolve into standard operating procedures, which require adaptation on the part of the U.S. and allied navies.

When considering the case studies in this thesis, it is also important to remember the differences between the Black Sea in 1988 and the South China Sea in 2022. First, the South China Sea is much larger than the Black Sea, and it has no equivalents to the Montreux convention limiting warship access. In the Black Sea, these limitations have made it difficult for the U.S. to surprise the Russians with a freedom of navigation operation—a constraint that does not exist in the South China Sea. This difference could enable warships to sneak past PLAN defenses and catch China off guard during a freedom of navigation operation. Second, the U.S. has many more allies to reassure in the South China Sea than it had in the Black Sea. In this sense, freedom of navigation operations

219 Elliot Ackerman and James Stavridis, *2034: A Novel of the Next World War* (New York: Penguin Press, 2021), 2–40.

220 Zack Cooper, Jake Douglas, Michael Green, Kathleen Hicks, and John Schaus "Counter-Coercion Series: China-Vietnam Oil Rig Standoff," Asia Maritime Transparency Initiative and Center for Strategic and International Studies, June 12, 2017, https://amti.csis.org/counter-co-oil-rig-standoff/.

221 Michael Fabey, *Crashback: The Power Clash Between the U.S. and China in the Pacific* (New York: Scribner, 2017), 152, 233.

challenging the PRC's excessive maritime claims are an important way for the United States to demonstrate its commitment and support to its allies in the South China Sea.

D. RECOMMENDATIONS FOR NAVY-WIDE FONOPS GUIDANCE

This thesis demonstrates that U.S. and allied freedom of navigation operations against great power adversaries involve complex strategic, political, and operational considerations, which hold significant potential for escalation, and must be properly integrated in the planning and training for these operations. To facilitate this, the Navy's freedom of navigation guidance should be consolidated into a "FONOPs Bill" or navy-wide operational task (NWOT) for freedom of navigation operations (NWOT-FONOPs). Such a project would compile each fleet's freedom of navigation guidance from the fleet operational orders (OPORD), assess FONOPs concept of operations (CONOPs) briefs, relevant deck logs, and freedom of navigation operations lessons learned. This document would help the entire navy train to freedom of navigation challenges. It would also complement the Navy's existing OPTASK Visual Information, which provides guidance on how to document interactions at sea.

Given the growing prominence of grey zone tactics, Navy-wide guidance must also be promulgated to share emerging threats between fleets. Currently, each fleet is a silo of FONOPs guidance, which shares information tailored to the specific needs of its area of responsibility. Before grey zone tactics reached such prominence, such an approach made sense; there were few surprising ways to counter a freedom of navigation operation. Today, however, grey zone tactics employed by the Russia in the Black Sea or Iran in the Persian Gulf, might be adapted by the China in the South China Sea. In some cases, the adoption of emerging grey zone tactics from other theaters might become a distinct possibility. Countries like China, Iran, and Russia may be developing, implementing, and secretly sharing grey zone tactics. One way for the U.S. Navy to counter these shared adversarial tactics would be to create and periodically update a navy-wide "FONOPs Bill" or "NWOT-FONOPs."

The NWOT-FONOPs would begin with an overview of the FONOPs program and the UNCLOS definitions of the rights and responsibilities of warships operating on the

high seas or while exercising the right of innocent passage, transit passage, or archipelagic sea lanes passage. Next, it would categorize FONOPs based on anticipated risk and provide a menu of considerations that lower echelons can use to evaluate future operations. The appendix provides an example of the topics such a document might address. The example breaks freedom of navigation operations into three categories based on risk—low, medium, and high. Then, for each risk category, it describes the corresponding excessive maritime claimant's characteristics and the claimant's anticipated reaction to a U.S. freedom of navigation operation. Next, it offers a menu of recommended precautions ships should consider before conducting a freedom of navigation operation. Finally, there is a section for pre-planned responses that ships should prepare for prior to conducting a freedom of navigation operation. To customize this template to specific contexts, further considerations would be incorporated based on the kind of excessive maritime claim that the warship is going to challenge. For example, it may be beneficial for a warship to launch a helicopter while conducting a freedom of navigation operation on the high seas, but such an operation would be prohibited under UNCLOS III while conducting innocent passage.

Finally, this proposed navy-wide guidance would promulgate the ways that our adversaries have attempted to prevent ships from exercising their rights under UNCLOS III. Although this section would prioritize tactics used against U.S. warships, it would also include relevant tactics used against any ship. Additionally, this section would provide suggestions for countering each tactic.

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APPENDIX. EXAMPLE OF POTENTIAL FONOPS BILL OR NWOT-FONOPS GUIDANCE

The following table is the author's own view and does not represent U.S. Navy policy.

	Freedom of Navigation Operations Categories		
	CAT I – Low Risk	CAT II – Medium Risk	CAT III – High Risk
Characteristics of Excessive Maritime Claimant			
Domestic Politics	Stable	Stable	Unstable
Foreign Policy vis-à-vis the United States	Friendly	Neutral	Adversarial
Military Capability	Non-threatening	Advanced	Near-Peer
Recent Maritime Interactions with the United States	Friendly	Non-threatening	Adversarial
Reaction to previous U.S. FONOPs	Non-threatening	Safe and Professional	Aggressive, Excessive, Unsafe and/or Unprofessional
Anticipated Reaction of Excessive Maritime Claimant			
Media Coverage	None	Routine, Professional	Manipulative, Unprofessional
Political	Démarche	Démarche	Aggressive
Military	None	Routine, Safe and Professional	Excessive, Unsafe and/or Unprofessional
Grey Zone Tactics	None	None	Yes
Economic	None	None	Possible
Recommendations			
Precautions	- Brief - Visual Information Personnel (VIPER) Team	- Brief - Visual Information Personnel (VIPER) Team - Modified Zebra	- Brief - Visual Information Personnel (VIPER) Team - Modified Zebra - COND II DC - Fenders - Steering Checks

			- Intelligence Collection Opportunities or Vulnerabilities
Go/No Go Criteria Considerations	- Sea State - Visibility - Communications - Plant Status	- Sea State - Visibility - Communications - Engineering Plant - Watchstander Proficiency	- Sea State - Visibility - Communications - Engineering Plant - Watchstander Proficiency - Interpreters - Combat Systems - Political Environment
Pre-Planned Responses (PPRs)	- Queries and Warnings - Additional PPRs for situations that warships are likely to encounter in low-risk operations.	- Queries and Warnings - Additional PPRs for situations that warships are likely to encounter in medium-risk operations.	- Queries and Warnings - Additional PPRs for situations that warships are likely to encounter in high-risk operations.

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