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Government commissions legal opinion on “innocent passage”

The Government has commissioned a legal opinion on the definition of innocent passage given the discussions relating to the procedure which is used at present to categorise the entry into British Gibraltar Territorial Waters of foreign state vessels.

UNCLOS Article 18(1) says that passage includes traversing the territorial sea without entering internal waters, or proceeding to or from internal waters. This passage “shall be continuous and expeditious”.

There are presently three internal categorisations used when Spanish state vessels enter BGTW. These were explained in public by the Minister for Europe David Lidington before the Foreign Affairs Committee of the House of Commons in April of this year.

The most serious Category is A. These incursions constitute both a violation of sovereignty and a deliberate attempt by Spain to show that it is exercising jurisdiction. The example was given at the time of Spanish state survey vessels carrying out official work in BGTW. The second Category is B which are those where there is evidence that a Spanish vessel has been patrolling or perhaps changing its course or speed within BGTW. A Category C incursion is where a Spanish vessel has crossed British Gibraltar waters but is exercising a right of innocent passage.

However, it will be recalled that Article 19 of the United Nations Convention on the Law of the Sea states that passage is not innocent if it is “prejudicial to the peace, good order or security of the coastal State”. A foreign state vessel passing continuously and expeditiously without changing course and maintaining the same speed could still be conducting coastal espionage or patrolling thereby making a sovereignty point. This would be a contravention of UNCLOS and therefore unlawful. Indeed, the records show that between 7.30am and 8.00am practically every day there is an incursion into BGTW which could be classed as a patrol.

Spanish state vessels have entered BGTW 69 times so far in November. This has included the Guardia Civil, Salvamento Maritimo, the Spanish navy, the Servicio de Vigilancia Aduanera, a Fisheries protection vessel and a survey vessel. There was a Class A incursion by the Spanish navy vessel SPS Alboran on Thursday where the vessel

maintained when challenged that it was in Spanish waters. The Alboran (P62) is a 66 metre Chilreu class patrol boat.

The Government now intends to study the Opinion in order to determine what steps to take.