# U.S. SEAWARD JURISDICTION— PAST, PRESENT, FUTURE

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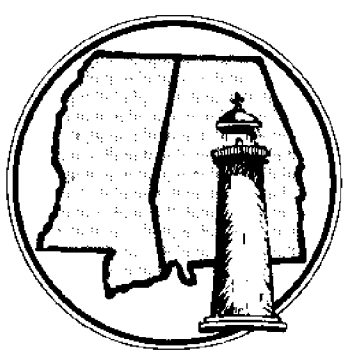

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## FOREWORD

United States seaward jurisdiction has changed over the last few years. The concept of the three mile territorial sea is being expanded and various jurisdictional zones are now encroaching on that area of ocean commonly known as the high seas. This paper is a short analysis of those zones and how the United States is extending its seaward jurisdiction in relation to those zones.

# U.S. SEAWARD JURISDICTION - PAST, PRESENT AND FUTURE

## I. U.S. Jurisdiction in the Territorial Sea.

The term "territorial waters," or "territorial sea," embodies the concept that the sovereignty of a coastal state (nation) extends to a belt of ocean lying beyond its land territory and internal waters. In broad outline the concept is universally accepted as a principle of international law.[1] The United States, as signatory of the 1958 United Nations "Convention on the Territorial Sea and the Contiguous Zone,"[2] formally recognizes the legitimacy of the concept.

### A. Internal Waters.

Territorial waters should be carefully distinguished from internal waters, also called interior or inland waters. The latter consist of a state's harbors, ports and roadsteads and of its internal gulfs and bays, straits, lakes and rivers.[3]

In internal waters, "apart from special conventions, foreign states cannot, as a matter of strict law, demand any rights for their vessels or subjects, although for reasons based on the interests of international commerce and navigation, it may be asserted that an international custom has grown in modern times that the access of foreign vessels to these waters should not be refused except on compelling national grounds."[4] In short, traditionally, no right of innocent passage has been recognized through internal waters, while such a right has been recognized in the case of territorial waters.[5]

### B. Justifications.

Generally, states have justified the extension of their

sovereignty beyond their internal waters by reasoning akin to one or more of the following theories:

> (i) [t]he security of the State demands that it should be able to protect its approaches; (ii) for the purpose of furthering its commercial, fiscal and political interests, a State must be able to supervise all ships entering, leaving or anchoring in its territorial waters; (iii) the exclusive exploitation and enjoyment of the products of the sea within a State's territorial waters is necessary for the existence and welfare of the people on its coasts.[6]

C. Extent.

The territorial sea includes not only the column of waters in the marginal belt, but also the air space above the seabed and subsoil below.[7] In modern times and until very recently coastal states usually have limited their claims to territorial waters to three nautical miles (3.453 land or statute miles) seaward of their coastlines. One authority defines territorial waters as

> . . . that part of the sea which extends from a line running parallel to the shore to a specified distance therefrom, commonly fixed by the majority of maritime states at three marine miles measured from low water mark. All waters outside territorial waters are to be considered as forming part of the high sea.[8]

However, acceptance of the three-mile limit has never been universal. Early authorities put the extent of territorial waters at such distances as two days navigation from shore[9] and at the limit of the range of visual horizon.[10] In modern times claims ranging from four to twelve miles, and even to two hundred miles, have been asserted.[11] The three-mile width, itself, is based upon the archaic cannon shot doctrine,[12] introduced in the eighteenth century when the range of shore batteries was approximately one marine league, or three

marine miles. But the width of the territorial sea, as generally conceived, remained at three miles into modern times despite atrophy of its original rationale.

Modern pressures for widening the territorial sea generally are based on the notion that today three miles is inadequate as a buffer for defense or other legitimate coastal state interests, particularly for fishing and mineral exploitation of the seabed.[13] On the other hand, the strongest persisting argument for adhering to the three mile limit is the traditional doctrine of freedom of the high seas. The high seas are that area of the sea beyond the territorial jurisdiction of any nation and open to the common use of all nations.[14] The high seas would, of course, be diminished to the same extent that the territorial sea, or any lesser claim pertaining to the territorial sea, was broadened.

The three-mile limit underwent its most serious challenge at the recently concluded Third United Nations Conference on the Law of the Sea, a series of multinational deliberations which began in New York in 1973, moved to Caracas in 1974, to Geneva in 1975, and concluded in New York in September, 1976. Although these sessions engendered for the first time on a world-wide scale broad agreement on the issue of extending the territorial sea to a twelve mile coastal margin, the Conference became bogged down in other issues (such as who has the right to exploit the mineral resources of the deep seabed) which prevented the signing of a new international law of the sea treaty. As a consequence, the United States continues to observe the three-mile territorial sea limit (as compared to a 200 mile economic control zone, discussed infra).

D. Delineating the Territorial Sea.

Width is but one element necessary to a physical description of the territorial sea. The baselines from which the width is measured must also be determined. If the coastline is simple and regular, without island fringes or deeply indented harbors, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked by large-scale charts officially recognized by the coastal state.[15]

Colombos, stating the British view, defines the normal baseline more specifically as ". . . the line of mean low-water spring tides, following the sinuosities of the coast and in a line drawn from point to point."[16]

The outer limit of the territorial sea is a line running parallel to the coastal baseline at a distance equal to the width of the territorial sea.[17]

Where the coastline is deeply indented or where islands fringe the coast, the 1958 Convention permits use of "straight baselines" for measuring the breadth of the territorial sea.[18] However, the United States has never recognized the use of straight baselines to separate the territorial sea from inland waters.

Baselines may not be drawn to or from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.[19] Longstanding regional economic interests may be taken into consideration in delineating the baselines.[20]

Also a shoreline indentation may qualify as a bay under Article 7 and therefore inland waters. Article 7 of the 1958 Convention provides for delineation of closing lines across bays (the coast of which belongto

a single state). To qualify as a bay under Article 7, a coastal indentation must have an area at least as large as that of a semi-circle whose diameter is a line drawn across the mouth of the indentation; or where, because of the presence of islands, an indentation has more than one mouth, the semi-circle is drawn on a line as long as the sum total of the lengths of the lines across the different mouths.[21]

Generally, if the mouth of a bay (measured between the low water marks of the natural entrance points) does not exceed twenty-four miles, its waters to the seaward of the closing line are territorial waters.[22] If the mouth is wider than twenty-four miles, a closing line may be drawn within the bay to enclose the maximum area of water with a line of that length.[23]

Should a coastline indentation fail to meet the requirements of the straight baseline method of Article 4 or the definition of a bay under Article 7, the sole remaining method of qualifying as inland waters is by the "historic bay" test. This approach is largely a creature of the courts and is not defined by the 1958 Convention. The United States Supreme Court recently listed three prerequisites for "historic bay" status in U.S. v. Alaska:[24] (1) the claiming nation must have exercised authority over the area; (2) the authority must have been continuous for a long period; (3) foreign states must have acquiesced in the claims.

In U.S. v. Alaska the Supreme Court found insufficient Alaska's claim to the entire waters and underlying mineral resources of Cook Inlet, an arm of the sea reaching 150 miles inland and measuring about forty-seven miles across its mouth. The Unites States brought the

action to prevent Alaska from leasing mineral rights to quiet title in itself. The Court held that Alaska failed to prove any of the three requisite conditions for "historic bay" status.

Further provisions of the Convention on the Territorial Sea and the Contiguous Zone delineate the extent of the territorial sea. The outermost permanent harborworks are considered part of the coastline for purposes of measuring the extent of the territorial sea.[25] Also roadsteads which are normally used for loading and unloading ships and which would otherwise be located in the high seas are given territorial sea status.[26] Islands are defined as naturally-formed areas of land above water at high tide, and they are given their own territorial seas.[27] Naturally formed areas of land visible above water at low tide may be used as part of the baseline for measuring the breadth of the territorial sea if they are within three miles of the mainland, or of an island.[28]

Where two states face one another across a narrow expanse of water, neither state may extend its territorial sea beyond the median line between them unless historic reasons or other special circumstances permit.[29] Finally, if a river flows directly into the sea, the baseline is a line across the river mouth between low-tide points on the banks.[30]

The complex problem of delineating the extent of territorial waters in frozen seas is not dealt with in the 1958 Convention and is beyond the scope of this presentation.

E. Rights and Duties in the Territorial Sea.

Colombos recognizes five types of control which the coastal state properly may exercise within its territorial waters: (1) jurisdiction over foreign ships of war and merchant vessels; (2) police

customs and revenue functions; (3) fishery rights; (4) maritime ceremonial and (5) establishment of defense zones.[31] To this group must be added one other - the right to exploit the mineral resources on and beneath the seabed.

As for the fourth prerogative, maritime ceremonial, it is generally recognized that "a state is entitled to prescribe rules as to the salutes and the showing of flags to be observed by vessels passing through its territorial waters."[32] The fifth prerogative, establishment of defense zones, is beyond the scope of this presentation.

Regarding jurisdiction over shipping, the coastal state may enact reasonable regulations applicable to all ships, national and foreign, on such matters as the rules of the road, pilotage, and the protection of buoys, beacons, lightships, submarine cables and pipelines within its territorial waters.[33]

But jurisdiction over foreign vessels is not absolute since it is subject to their right of innocent passage, which includes the right to stop and to weigh anchor in the ordinary course of navigation, or when forced to do so by storm or damage to the ship. In addition the coastal state is prohibited from levying tolls on the innocent passage of ships through its territorial waters except for special services rendered.[34] Under Article 15 of the 1958 Convention, the coastal state is expressly forbidden to hamper innocent passage through the territorial sea, and in addition has a duty to warn against dangers to navigation. Article 14(4) defines passage as innocent "so long as it is not prejudicial to the peace, good order, or security of the coastal state." Foreign fishing vessels, for example, must

observe all fishing restrictions imposed by the coastal state,[35] and submarines must navigate on the surface and show their flag.[36]

The right of innocent passage of warships is a subject of controversy.[37] The 1958 Convention provides only that such passage is subject to regulation by the coastal state, including the right to require the warship to leave the territorial sea if compliance is not given.[38] Article 16(4) guarantees innocent passage through straits used for international navigation.

As for police functions which the coastal state may legitimately exercise in its territorial sea, Colombos lists the following: "the verification of bills of health, questions of quarantine, medical visits on board vessels, regulations of disinfection, and also the territorial State's right to demand payment for the exercise of these functions."[39]

Customs and revenue laws have long been enforced by coastal states in their territorial waters.[40] In fact, some states traditionally enforced such laws beyond the territorial sea in what is known as the "contiguous zone." The United States by Act of March 2, 1799[41] first claimed that foreign vessels bound for United States ports could be boarded within four leagues of the coast. This claim had a checkered history in the American Courts until passage of the Tariff Act of 1922,[42] which allows the boarding, examination, arrest and forfeiture of vessels at any place in the territorial waters or within four leagues of the American Coast upon commission of any violation of the United States law. Passed mainly for customs and revenue purposes, the Tariff Act is nonetheless of general application.[43]

## II. U.S. Jurisdiction - Exclusive Fishing Zones.

Of much greater practical and political concern is the issue of extending exclusive fishing rights beyond the traditional confinement of the territorial sea. Throughout history nations have attempted to control fisheries deemed important to their economies, whether or not the fisheries lay within three miles of shore. But not until the recent series of United Nations Conferences on the Law of the Sea has the idea of an expanded, exclusive fishing zone taken hold among a wide sector of the world's nations.

Although the United Nations Conference on the Law of the Sea is stalemated on other issues which greatly diminish prospects for a treaty, nonetheless there has been broad agreement among the 150 attending nations that coastal states should be permitted to assert a 200-mile fishing zone of exclusive jurisdiction for regulation and conservation of fishing stocks.

Indeed, many nations, including the United States,[44] some of the Common Market countries, Mexico and the U.S.S.R.[45] have grown impatient and unilaterally declared 200-mile exclusive fishing zones, apparently without formal protest by other nations. At least one commentator has claimed that "the 'freedom of fishing' on the high seas within the 200 mile limit is virtually a thing of the past."[46]

### A. Historical Background.

The United States action was presaged by a long history of assertions of control over fishery stocks. In 1891 the United States Supreme Court held in Manchester v. Massachusetts[47] that United States territorial jurisdiction extended to control over fisheries, whether the fish be free-swimming or confined to a shell on the sea floor. Later on, sedentary and other bottom species

generally were viewed as appertaining to the Continental Shelf.

In Skiriotes v. State of Florida,[48] concerning operation of a sponge fishery beyond the three-mile limit, the Supreme Court held merely that a state may exercise jurisdiction over one of its citizens beyond the three mile limit without reaching the question of whether jurisdiction could have been exercised on grounds of prescriptive or historical claims to fishery control in those waters.

In 1945 President Truman issued two proclamations for fishing rights: the first,[49] establishing but not specifically defining the boundaries of "fishery conservation zones" in high seas fisheries "contiguous to the coasts of the United States;" the second, laying claim to the resources of the Continental Shelf, including bottom dwelling species.[50]

In the latter proclamation United States sovereignty over the seabed was claimed for the full extent of the Continental Shelf measured to a depth of 100 meters, a measurement by which jurisdiction is extended as far as 250 miles from shore at certain points.

It is noteworthy that the former proclamation identified the zones of sovereignty, not by some arbitrary measurement from shore, but by fish population. Also, as shown by the choice of the term, "conservation zone", the extension of sovereignty purportedly was prompted by a need for fishery conservation and management, rather than by mere profit motive. It is this same stated concern for efficient management of fishery resources which shapes the language of the United States Fishery Conservation and Management Act of 1976.

The Truman Proclamations were a bold move. Prior to World War II the worldwide consensus was that fishing limitations in the high seas could be effective only between consenting nations, and had

no effect as to third parties.[51] However, world events prevented the proclamations from being challenged. The proclamation of fishery conservation zones was aimed primarily at protecting the Alaskan salmon fisheries from Japanese competition.[52] But soon after, the Japanese agreed to stop fishing for the salmon and the crisis was past.

In the following years other nations also attempted to establish fishery conservation zones in the high seas. This general effort led to drafting of a new multilateral treaty, the 1958 Convention on the Conservation of the Living Resources of the High Seas.[53] Article 7(1) of the treaty permits the coastal state to adopt unilateral conservation measures if other states fishing in the area refuse to agree jointly on such measures. The Convention does not define the extent of high seas area subject to coastal state control. The 200-mile Fisheries Act is the first significant American policy move expanding and defining fisheries claims since the 1958 Convention. But before examining the new law in detail, it would be well to trace briefly the status of Continental Shelf resources since the 1945 Truman proclamations.

In 1953 the Congress gave substance to the Truman proclamation on the Continental Shelf by passing the Submerged Lands Act[54] and the Outer Continental Shelf Lands Act, which is actually subchapter III of the former law. The Submerged Lands Act was an attempt by Congress after the United States Supreme Court decision in U.S. v. California[55] to restore to the United States coastal states their historically acknowledged sovereignty over submerged lands within the three mile limit, a sovereignty all the United States coastal states presumed on the basis of the Supreme Court's holdings in Pollard's Lessee v. Hagan[56] in 1845, and in Borax Consolidated, Ltd. v. Los Angeles[57] in

1935.

In Pollard's Lessee the Court held that the states owned title to the shores of navigable waters and the soils under them.[58] The Court cautioned, however, that even though the state's territorial limits and thus sovereign power extended into the sea, that power was still subject to federal law and the Constitution.[59] In Borax Consolidated,Ltd. the Court confirmed that the states owned title to the land between the ordinary high and low tide marks.[60] The question of who owned and controlled the seabed was not controversial again until the discovery of offshore oil at the turn of the century, when the federal government began to assert paramount rights. In United States v. California (supra) the Court vindicated these claims and limited the Pollard decision to inland waters. However, as noted above, Congress in 1953 restored the coastal states' rights to the resources of the seabed out to three-mile limit by the Submerged Lands Act in order to bring national policy into line with historic custom and belief.

B. Fisheries Management and Conservation Act.

The recently enacted 200-mile Fisheries Act is an attempt to provide for the same degree of control over fisheries that the Submerged Lands Act and the Convention on the Continental Shelf provided for seabed resources. In fact, the United States law may be viewed as an emergency measure to preserve dwindling fishing stocks until a comprehensive international agreement can be reached.[61]

Fishery conservation, unlike police or revenue functions, cannot be effective if limited to a narrow belt of coastal waters. Fish often range over wide areas of the sea. McDougal and Burke aptly note (albeit in support of limiting fishery jurisdiction) this real problem.

> It is abundantly clear that no effort at control could succeed which asserted exclusive exploitation over only a part of an area within which an exploited species moves, leaving the remainder of the area in which the fish are found open to intensive unregulated use. A rational plan for controlled use could hardly be constructed in such a piecemeal fashion. By itself, therefore, no width of the territorial sea, or exclusive fishing zone, in terms of specific arbitrary distances in miles, can be said to serve a community policy directed at prevention of a waste of resources due to overexploitation.[62]

McDougal and Burke, writing in 1962, clearly framed their conclusion within the three-mile versus twelve-mile controversy, dismissing the thought that a broader area of jurisdiction encompassing the range of fish species could attain legitimacy in international law. As events at the Law of the Sea III have shown, that narrow view of coastal state fishing jurisdiction is becoming a thing of the past.

The United States law establishes (a) a fishery conservation zone within which the United States assumes exclusive fishery management authority over all but highly migratory species, such as tuna; and (b) management authority beyond the zone over anadromous species (such as salmon) and Continental Shelf fishery resources.[63] Section 101 establishes the breadth of the conservation zone at 200 miles. Under the Act foreign fishing vessels are allowed to harvest only that portion of the "optimum yield" (a term whose definition undoubtedly will be the subject of much controversy) which American vessels cannot or care not to harvest.[64] All foreign vessels fishing in the zone must have on board a valid United States fishing permit.[65]

Title III establishes a "National Fishery Management Program" with regional councils[66] to operate the program.[67] The regional plans are subject to approval by the Secretary of Commerce,[68] and if

they fail to meet his approval, they may be supplanted by a federal program.[69]

As in the case of Continental Shelf jurisdiction, this Act does not extend individual states' jurisdiction beyond three miles.[70] Thus state-federal boundaries in the coastal waters are unaffected.

The law carries a civil penalty of up to $25,000 for each violation (each day of continuing violation is considered a separate offense) and a criminal penalty of up to $50,000 with a possibility of six months' imprisonment. Use of a dangerous weapon could bring additional penalties of $100,000 and/or ten years imprisonment.[71] In addition fishing vessels and their catches may be confiscated.[72]

The new law is, then, a significant effort at extending United States fisheries conservation and management control beyond previous limits. The new zone amounts to a "unifunctional" extension of a specific claim once thought to be confined to a three mile territorial sea.

## III. U.S. Jurisdiction - Contiguous Zones and Exclusive Economic Control Zones.

The United Nations failed at its 1958 Geneva Law of the Sea Conference (LOS I) to reach accord on the proper extent of territorial waters, and the best that could be done was to leave the historic three-mile limit intact by implication. Nonetheless, there was much pressure at the Conference for broadening the territorial sea,[73] the effect of which was a compromise provision recognizing the right of coastal states to claim a "contiguous zone" lying no more than twelve miles seaward of the coastline.

The purpose of the contiguous zone, as conceived at Geneva, is to allow the coastal state to prevent and punish infringements of its "customs, fiscal, immigration or sanitary regulations within its territory or territorial sea."[74] It is a strictly limited extension of certain powers traditionally associated with a narrow territorial sea. As such, it is also an internationally sanctioned encroachment on the high seas, one perceived by most nations to be a necessary broadening of coastal state police powers.

The "Convention on the Territorial Sea and the Contiguous Zone" issuing from the 1958 Geneva Conference left unsettled a mounting controversy over whether coastal states may also extend their exclusive fishing rights into the contiguous zone. This problem was postponed for a special United Nations Conference in 1960.[75] But the 1960 Conference also was inconclusive, despite proposals for extension of fishing rights out to the twelve mile limit already established for police powers. A United States-Canadian compromise proposal for a six-mile territorial sea and an additional six mile "exclusive fishing zone" was narrowly defeated.[76]

The proposed, but stalemated, United Nations' Treaty on the Law of the Sea would extend coastal state jurisdiction for exercise of police powers beyond the current twelve mile contiguous zone limit sanctioned by the 1958 Convention to a new limit of twenty-four miles. However, since negotiations on the Treaty are deadlocked over other issues, such as the rights of landlocked nations in the resources of the sea, it is unlikely that this extension, or others recommended by the Treaty drafting committees, will be adopted by multilateral treaty within the near future.

"Exclusive Economic Control Zone" is a concept which gained wide acceptance among the nations participating in LOS III. Since it was not incorporated into a treaty, it is of interest solely for defining a trend in thinking about coastal state jurisdiction. As in the case of the "contiguous zone" and the unifunctional "fishing zone"; the "exclusive economic control zone" is an extension into the high seas of certain coastal state rights and duties formerly confined to a three-mile territorial sea.

As developed in the 1976 draft treaty of LOS III, the zone would extend seaward for 200 miles.[77] In the zone the coastal state would have exclusive control of all natural resources, whether living or non-living.[78] As regards fishing rights, the LOS III draft text closely resembles the recently enacted American law.

One question concerning the economic zone which caused much dissension at LOS III was Article 49 of the draft treaty, dealing with rights to conduct scientific research in the zone. Many coastal states feared spying under the guise of scientific research. The compromise provision would require that the consent of the coastal state be obtained for any research concerning or undertaken in the zone.[79]

Another controversial provision, Article 58, would have given landlocked states the right to fish in the economic zones of adjoining coastal states, but developed, landlocked states would be permitted to fish only if the adjoining state was also developed.

As noted above, although the exclusive economic control zone concept was accepted in broad outline by the majority of the 150 nations attending LOS III, disagreements on specific provisions stalemated the Conference. Thus, the economic zone remains nothing more than an idea for the time being.

## S U M M A R Y

Seaward jurisdiction is in a state of great change and uncertainty. Even though international negotiations on the Law of the Sea appear to be stalemated, unilateral proclamations by coastal nations, including the United States, are changing traditional patterns of ocean use. The old concept of the three-mile territorial sea, although still officially recognized by most nations, is being whittled away as certain types of authority, such as exclusive fishing rights, are extended to include vast areas of the world's oceans.

These changes are most easily understood by extensions of certain rights, duties and powers traditionally associated with the narrow territorial sea. The territorial sea may be described not only by reference to its physical area and boundaries, but also with reference to certain rights, duties and powers. Concepts such as "contiguous zone", "fishing zone" and "exclusive economic control zone" are all extensions of one or more functions of the coastal state in the territorial sea, and as such, represent shrinkage of the freedom of the high seas. Pressures for extension of coastal state jurisdiction in the ocean have been almost entirely economic - prompted by the desire to control natural resources: oil, fish stocks, hard minerals.

## F O O T N O T E S

1. C. J. COLOMBOS, THE INTERNATIONAL LAW OF THE SEA § 95 (6th rev. ed. 1972) [hereinafter cited as COLOMBOS]; M.S. McDOUGAL and W.T. BURKE, THE PUBLIC ORDER OF THE OCEANS, 233-234 [hereinafter cited as McDOUGAL AND BURKE].

2. 1958 Convention on the Territorial Sea and the Contiguous Zone, 15 U.N.T.S. 205 (1958), Art. 1: "The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea."

   The first explicit international recognition of the territorial sea concept is in the records of the 1930 Hague Codification Conference. McDOUGAL and BURKE, pp. 233, 522-526; The Legal Status of the Territorial Sea, Art. 1, Final Act 15, 1930 Hague Codification Conference.

3. COLOMBOS, supra, n. 1 at § 96

4. Id.

5. McDOUGAL and BURKE, supra note 1 at 121.

6. COLOMBOS, supra, note 1 at § 95.

7. Id. § 96.

8. COLOMBOS, supra note 1 at § 97..

9. LOCCENIUS, De jure maritimo l.I, c. IV. No. 6 (quoted in COLOMBOS, supra note 1 § 101).

10. Treaties between Great Britain and Algiers of April 10, 1682, and Great Britain and Holland, December 18, 1691, State Papers, Vol. i, pt. i, p. 356, quoted in COLOMBOS, supra, note 1.

11. COLOMBOS §§ 107, 111, supra, note 1.

12. See, PHILLIP C. JESSUP, THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION 3-9 (G.A. Jennings Co., Inc., N.Y. 1927. Kraus Reprint Co., N.Y. 1970) [hereinafter cited as JESSUP].

13. McDOUGAL and BURKE, supra, note 1 at 71.

14. COLOMBOS § 53, Cf. n. 8, and McDOUGAL and BURKE, supra, note 1, at 44-46. See also, 1958 Convention on the High Seas 450 U.N.T.S. 82, 13 U.S.T. 2312, T.I.A.S. No. 5200. (In force Sept. 30, 1962).

15. Convention on the Territorial Sea and the Contiguous Zone, art. 3, 15 U.S.T. 1606. T.I.A.S. No. 5639.

16. COLOMBOS, supra, note 1 at § 123.

16A. See generally, J. GAMBLE and G. PONTECOMO, LAW OF THE SEA: THE EMERGING REGIME OF THE OCEANS: Proceedings, Law of the Sea Institute, Eighth Annual Conference, 1973. (Lippincott, 1974).

17. Convention of the Territorial Sea and the Contiguous Zone, Art. 6, 15 U.S.T. 1606, T.I.A.S. No. 5639.

18. Convention of the Territorial Sea and the Contiguous Zone, Art 4(1). 15 U.S.T. 1606, T.I.A.S. 5639; United Kingdom v. Norway (1951) I.C.J. 116. Norway was permitted to draw straight baselines connecting some of the thousands of islands along its coast.

19. Convention on the Territorial Sea and the Contiguous Zone, Art. 4(3), 15 U.S.T. 1606, T.I.A.S. No. 5639.

20. Id., Art. 4(4).

21. Id., Art. 7(3).

22. Id., Art. 7(4).

23. Id., Art. 7(5).

24. U.S. v. Alaska, 422 U.S. 184, on remand, 519 F.2d 1376 (1975).

25. Convention on the Territorial Sea and the Contiguous Zone, Art. 8, 15 U.S.T. 1606, T.I.A.S. No. 5639.

26. Id., Art. 9.

27. Id., Art. 10.

28. Id., Art. 11.

29. Id., Art. 12.

30. Id., Art. 13.

31. COLOMBOS, supra, note 1, at § 142.

32. Id., § 170.

33. Id., § 143, McDOUGAL and BURKE 290; Convention on the Territorial Sea and the Contiguous Zone, Art. 17 (1958).

34. COLOMBOS § 144; McDOUGAL and BURKE, supra, note 1 at 290-291; Convention on the Territorial Sea and the Contiguous Zone, Art. 18, 15 U.S.T. 1606, T.I.A.S. No. 5639.

35. Convention on the Territorial Sea and the Contiguous Zone, Art. 14(5), 15 U.S.T. 1606, T.I.A.S. No. 5639.

36. Id., Art. 14(6).

37. COLOMBOS, supra, note 1, at § 145. See also H. GARY KNIGHT, THE LAW OF THE SEA: CASES, DOCUMENTS AND READINGS 789-90 and References 790 (Nautilus Press 1976-1977 ed.) [hereinafter cited as KNIGHT].

38. Convention on the Territorial Sea and the Contiguous Zone, Art. 23, 15 U.S.T. 1606, T.I.A.S. No. 5639.

39. COLOMBOS, supra, note 1 at § 146.

40. Id. § 147; JESSUP, supra, note 12 at 123.

41. 1 Stat. 627, 646.

42. 42 Stat. 858.

43. COLOMBOS, supra, note 1, at § 150; see also §§ 151-156 for discussion of the effect of American Prohibition laws on the concept of coastal state authority beyond the territorial sea.

44. Fishery Conservation and Management Act of 1976, Pub. L. No.94-265 (Ap. 13, 1976).

45. Other nations declaring a 200 mile fishing zone are: Angola, Argentina, Bangladesh, Benin, Brazil, Canada, Chile, Comoros, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Iceland, India, Ireland, Liberia, Maldives, Mozambique, Portugal, Nicaragua, Norway, Pakistan, Panama, Peru, Senegal, Sierre Leone, Somalia, Sri Lanka, and Uruguay. See, National Maritime Claims, Dept. of State (April 1, 1977).

46. D. M. Johnston, The Economic Zone in Northern America, 3 OCEAN DEV. AND INT. L. No. 1, 62 (1975).

47. 139 U.S. 240 (1891).

48. 313 U.S. 69; see also, COLOMBOS, supra, note 1, at § 165 for footnotes.

49. Preisdential Proclamation No. 2667, Sept. 28, 1945, 10 Fed. Reg. 12303, 59 Stat. 884, plus exec. orders.

50. Presidential Proclamation No. 2668, Sept. 28, 1945, 10 Fed. Reg. 12304; 3 CFR, 1943-1948 Comp. P. 68, plus exec. order.

51. McDOUGAL and BURKE, supra, note 1 at 964.

52. Id. 964-65.

53. 17 U.S.T. 138; T.I.A.S. 5969, 55 U.N.T.S. 285 (1958).

54. 43 U.S.C.A. § 1301 et seq. (1970).

55. 332 U.S. 19 (1947).

56. 44 U.S. 212 (1845).

57. 296 U.S. 10 (1935).

58. Pollard's Lessee v. Hagan, 44 U.S. 212, 230 (1845).

59. Id.

60. Borax Consolidated, Ltd. v. Los Angeles 196 U.S. 10, 22, 26 (1935).

61. Fishery Conservation and Management Act of 1976, Pub. L. No. 94-265, § 401: "If the United States ratifies a comprehensive treaty, which includes provisions with respect to fishery conservation and management jurisdiction, resulting from any United Nations Conference on the Law of the Sea, the Secretary, after consultation with the Secretary of State, may promulgate any amendment to the regulations promulgated under this Act if such amendment is necessary and appropriate to conform such regulations to the provisions of such treaty in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to the United States."

62. McDOUGAL and BURKE, supra, note 1, at 502-503.

63. Fisheries Management and Conservation Act of 1976, Pub. L. No. 94-265, § 2(b)(1).

64. Id. § 201(d).

65. Id. § 204.

66. Id. § 302.

67. Id. § 303.

68. Id. § 304(a).

69. Id. § 304(c).

70. Id. § 306(a).

71. Id. § 309.

72. Id. § 310.

73. McDOUGAL and BURKE 537-540, supra, note 1.

74. Convention on the Territorial Sea and the Contiguous Zone, Art. 24, 15 U.S.T. 1606. T.I.A.S. No. 5639.

75. U.N. Doc. No. A/RES/1307 (XIII) (1958), Un.N. Gen. Ass. Off. Rec. 13th Sess. Supp. No. 18 at 54-55, (A/4090) (1958).

76. McDOUGAL and BURKE, supra, note 1, at 540-557.

77. Revised Single Negotiating Text, May 10, 1976, Part II, Art. 45.

78. Id. , Art. 46.

79. Id., Art. 58(1).