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THE BREADTH OF THE TERRITORIAL SEA AND ITS IMPLICATIONS FOR UNR--ETC(U)
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UNITED STATES NAVAL WAR COLLEGE

COLLEGE OF NAVAL COMMAND AND STAFF

RESEARCH PAPER

THE BREADTH OF THE TERRITORIAL SEA AND ITS IMPLICATIONS FOR UNRESTRICTED U.S. NAVAL OPERATIONS (U)

by

J. P. MARNANE
LCDR USN

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THE BREADTH OF THE TERRITORIAL SEA AND ITS IMPLICATIONS FOR UNRESTRICTED U. S. NAVAL OPERATIONS

by

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A Thesis submitted to the faculty of the Naval War College and the School of International Service of the American University in Partial satisfaction of the requirements for the degree of Master of Arts in International Service.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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19 June 1972

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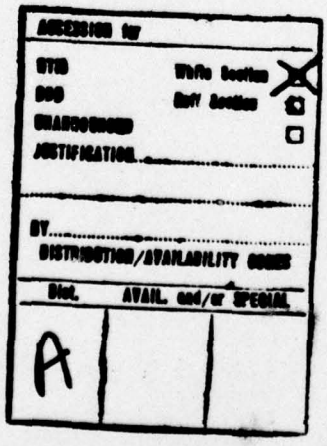

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Abstract of

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Since 1945, the traditional three-mile territorial sea has been under repeated attack. Postwar advances in techniques for fishing, undersea mining and drilling have given offshore waters considerable economic importance, resulting in a twelve-mile territorial sea claim or greater as a majority position today. The implications of this expansion for the U. S. Navy are enormous. The right of innocent passage, which has never existed for submerged submarine transits or aircraft overflight, is now being subjected to increasingly restrictive interpretations for surface ships. This paper briefly traces the question of freedom of the seas, and international efforts which have sought agreement on the breadth of the territorial seas. Problems associated with unilateral claims, international straits, and naval mobility are examined in the context of an enlarged territorial sea. A U. S. position for a future Law of the Sea Conference is proposed and includes a framework for international regulatory machinery.

PREFACE

"From all time the sea has been calling to the land and the land has not heeded. From Phoenicia to England, from Tyre of the Bahrein Islands to London, Liverpool, and Glasgow of the British Islands; from Salamis and Actium to the Invinciable Armada and Trafalgar, the sea has shown itself superior to the land--if only the landsman could be made to understand how to use the seaman. The lesson of all history is that whether in peace for trading or in war for fighting, the sea has always dominated the land; that in war most especially, navies are more potent than armies, the Trident a mightier weapon than the Sword."[1]

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[1]Thomas Gibson Bowles, Sea Law and Sea Power (London: John Murray, 1910), p. 4.

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Chapter 1

INTRODUCTION

THE PROBLEM AND DEFINITION OF TERMS USED

Statement of the Problem

The problem involved in this study is the breadth of the territorial sea and the implications of an enlarged regime of the territorial sea upon U. S. naval operations. Because of the complexity of the problem, the issue of the breadth of the territorial sea will not be viewed in isolation, but rather it will be examined in context with other problems directly affecting the law of the sea.

Purpose of the Study

For centuries, conflict has arisen as a result of various widths of the territorial sea adopted by nations. The author will briefly trace the sources of this conflict and analyze and describe the various interests within the United States vitally concerned with the breadth of the territorial sea. The implications of an enlarged territorial sea upon U. S. naval operations are examined in detail. A proposal for a United States position at the 1973 Law of the Sea Conference is made and accompanied by a brief description of the framework for an international organization to control the exploitation of the oceans. It is the author's contention that only through such an international

organization will the oceans remain as an area for international collaboration rather than an arena for conflict. The author has endeavored therefore to enlighten the naval community to this problem area and at the same time seek to identify areas where international cooperation may be possible.

Definition of Terms

Baseline. The baseline referred to in international law is the point from which the distance of territorial water is to be measured. The 1958 Geneva Convention on the law of the sea gives the following method to be used in establishing a baseline: ". . . the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast . . . ."[1]

Traditionally, the outer boundary of territorial waters had been determined by following the low-tide mark along the contours of the coast at whatever distance had been fixed for the territorial waters. An increasingly large number of states claimed that the baseline from which the territorial sea was measured should not necessarily be the actual coastline, but might be a system of straight lines drawn from points on or near the shore.

Territorial Waters. Territorial waters are those waters beyond the internal waters and the low water mark

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[1]Convention on the Territorial Sea and the Contiguous Zone (U.N. Doc. A/CONF.13/L. 52), Article 3.

of the coast if the coast is used as a baseline. Waters to the landward side of the baseline of the territorial sea are considered as internal waters of the coastal state.[2] "The outer limit of the territorial sea is the line, every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea."[3]

Contiguous Zone. The Contiguous Zone is the area of water beyond the territorial sea, but it ". . . may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured."[4] In cases of adjacent or opposite states, neither state may claim its contiguous zone beyond the median line equidistant from the baselines from which the breadth of the territorial seas of the two states is measured.[5]

High Seas. The term high seas refers, in international law, to those waters which are outside the exclusive control of any state or group of states; that is to say ". . . all parts of the sea which are not included in the territorial sea or in the internal waters of a State."[6]

Continental Shelf. The Geneva Convention on the Law of the Sea in 1958 defined the continental shelf as follows:

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[2]Ibid., Articles 3, 4.

[3]Ibid., Article 6.

[4]Ibid., Article 24.

[5]Ibid.

[6]Convention on the High Seas (U.N. Doc. A/CONF.13/L. 53), Article 1.

> . . . Continental shelf is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond the limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.[7]

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[7] Convention on the Continental Shelf (U.N. Doc. A/CONF.13/L.55), Article 1.

Chapter 2

A NEW ERA

The first half of this century witnessed an extraordinary development of ocean liners, of enormous freighters, of dreadnoughts, destroyers and submarines, but the pace of change quickened. Just as steam challenged the sail, so the advancing technology of the airplane has challenged much of our ocean transport. The heavy battleship which once commanded the seas has been rendered obsolete. Recently, we have seen the magnificent "Queen Mary" ignominiously retired to serve as a dockside tourist attraction, and later, the "Queen Elizabeth" suffer a raging fire and sink in the mud of Hong Kong Harbor.

Yet in this very moment that we are observing the demise of one epoch, a new one is in the making. There can hardly be a shadow of a doubt that a wholly new era in the use of the seas lies immediately before us. New materials of construction, new means of propulsion, new instruments of observation, of navigation and of communication will very shortly make it possible for men to explore and exploit the fullest depths of the oceans. An area ". . . some 140 million square miles, or 71 percent of the earth's surface."[1]

Man has turned increasingly to the oceans for sustenance and security on a scale commensurate with the

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[1]Roger Revelle, "Man and the Sea," Scientific American, 211:3, September 1969, p. 4.

expansion of his needs and the growth of his technical ability to use the seas. Yet, at the same time that man's unending quest for food or treasure reaches for the deep waters, the security of the surface is being affected by expanding claims of sovereignty over the oceans and by changes in the relative strengths of great naval powers.

The future course of ocean technology is now relatively easy to foretell. But the economic, political, and social implications of these projected developments are infinitely complex. The limits of sovereignty on, under, and over the oceans is a major problem confronting us today. How shall we make the oceans a domain for international collaboration rather than an arena for conflict? And what prudent steps must be taken by the United States Navy in order to guard the security of our country? The care with which we as a nation plot this course and the effectiveness with which we pursue it over the coming decade will affect not only the people of our country but those of the world as well.

Chapter 3

HISTORICAL DEVELOPMENT OF THE FREEDOM OF THE SEAS

Since ancient times, man has used the oceans of the world for fishing, commerce, and as a base of military power. Recognition of the common right of all men to the free use of the seas has been traced to the laws of the Roman Empire with one of the first attempts at codification in the Sixth Century in the Code of Justinian.[1] The Romans were largely unchallenged in their free use of the seas probably because of their domination of the known world, and the fact that uses of the sea were limited at that time.

With the emergence of the nation-state, jurists attempted to apply the prescriptions of territorial sovereignty to the sea. Many theories and tests were formulated during medieval times to support assertions of extensive authority over large ocean areas by the developing sea powers.[2] The transition from an initial concept of freedom of the seas to efforts at subjecting the seas to sovereignty has continued to the present day. The sovereignty concept has been advanced by virtually every major naval power.

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[1]Percy T. Fenn, "Justinian and the Freedom of the Seas," American Journal of International Law, XIX (1925), p. 716.

[2]Sayre A. Suartztrauber, "The Three Miles Limit of Territorial Seas: A Brief History," (Unpublished Doctor's dissertation, the American University, 1970),pp. 20ff.

SOVEREIGNTY OVER THE SEAS

As early as 1493, Pope Alexander VI issued a bull establishing a papal demarcation line which divided the world's oceans between Spain and Portugal along a longitudinal meridian located 100 leagues west of the Cape Verdi Islands.[3]

Such claims of total sovereignty over the oceans did not prove practical because they were unenforceable and were once again replaced by the concept of freedom of the seas as expounded in 1609 by the Dutch jurist, publicist, and statesman, Hugo Grotius.

Mare Liberum v. Mare Clausum

Grotius and his contemporaries were motivated by practical considerations, unlike the early Roman jurists who had dealt principally with theoretical concept. In his classic, Mare Liberum, Grotius upheld Dutch trading and navigation rights in the Indies and challenged Portuguese claims and the Papal right to grant title to the sea.

The central thesis of Grotius was that the sea was free for all, and that no one could gain ownership of a property by possession without occupation. The implication is that if the ocean cannot be occupied effectively, it is

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[3]John P. Craven, "The Challenge of Ocean Technology to the Law of the Sea," JAG Journal (U. S. Navy Department) (Sept/Oct/Nov 1967), p. 31-32.

res communis, it "belongs to no one and open equally to all."[4] Yet he excepted the belt of sea "visible from shore" from the compelling arguments by which he established the doctrine of "Freedom of the Seas."

Since he expressed a minority view, Grotius' views were attacked by many other authors. One of his most distinguished adversaries was an Englishman, John Selden. In 1618, Selden replied with his Mare Clausum (the closed sea) controverting theories of natural law with the bold fact that parts of the sea had actually been appropriated by England. In the Eighteenth Century, however, Grotius' Mare Liberum gradually gained support from other writers. Notable among them was another Dutchman, Cornelius van Bynkershoek, whose De Dominio Maris Dissertatio (Freedom of the Seas) was published in 1703.[5]

As a result of the publication of Bynkershoek's work at the beginning of the 18th Century, the question of the appropriation of the sea opened another debate. Bynkershoek was concerned in his Freedom of the Seas with the question of delimitation of the territorial sea immediately adjacent to the coast. He recognized the fact that the seas could be effectively occupied to the

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[4]Hugo Grotius, The Freedom of the Seas, trans. Ralf van Magoffin (New York: Carnegie Endowment for International Peace, 1916), p. 7.

[5]Alexander G. Nedesan, "An Analysis of the Geneva Conferences on the Law of the Sea and a Proposal of the Breadth of the Territorial Sea," (Unpublished Doctor's dissertation, The American University, 1968), p. 9ff.

maritime belt measured by the range of a cannon shot.[6]

Cannon Shot v. Marine League

Bynkershoek assigned the dominion of the adjacent sea (Mare Proximum) to the neighboring state within the range of a cannon shot. Marginal waters were thus subject to possession, to occupation and, therefore, to ownership. This extension of the sovereignty of a state beyond the limits of its land territory is based today on the principle that the territorial sovereign has a right to control its own territory and to protect its interests by controlling the waters adjacent to its sovereignty.[7]

Yet, it was not the "cannon shot" rule that gained the widest acceptance. The marine league, which had the virtues of being fixed and of guaranteeing the narrowness of the coastal state's encroachment on the free seas, became the most widely accepted. It is not because British and American cannons shot three miles, Norwegian, Swedish and Danish cannons shot four miles and Spanish cannons shot nine miles, that different rules emerged. The fact is that the British, American and Continental marine league was three miles, the Scandinavian marine league was four miles, and the Spanish marine league was nine miles. Indeed, six years after Jefferson obtained English agreement on a

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[6]Ibid.

[7]C. John Colombos, International Law of the Sea (6th rev. ed., New York: McKay Co., Inc., 1967), p. 87.

three-mile limit, the British rejected an American proposal to make the limit two leagues instead of one on the ground of increased ability of shore batteries to effect control. The rejection, accepted by the United States, was based in part on the British Law Officer's concern that "if the right of territory is to extend to two Leagues, may not demand be set up to extend it to twenty or two hundred?"[8]

THREE-MILE LIMIT

By the Nineteenth Century, writers and publishers tried to narrow the claim on the breadth of the sea. Hence, by 1900 the theoretical principle of the three-mile limit as one marine league had been adopted or acknowledged as law by some twenty states including the then leading maritime powers. Even though other states did not acknowledge the three-mile limit, they did not contest its validity. It may be said, therefore, that at the turn of the twentieth century the three-mile limit had been accepted as the customary rule of international law.[9]

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[8]Daniel Wilkes, "The Use of the World Resources Without Conflict: Myths About the Territorial Sea," Wayne Law Review, XIV, 2 (1968), 442.

[9]Nadesan, op. cit., p. 12.

Chapter 4

INTERNATIONAL EFFORTS IN LAW OF THE SEA

There were few conflicts on the breadth of the territorial sea prior to 1930. However, from 1930 until the 1958 United Nations Conference on the Law of the Sea, the practice of individual states became extremely arrogant. Such arrogant practices perhaps stemmed from the 1930 Hague Conference on territorial waters, at which time these states challenged the breadth of territorial waters at three miles.[1]

The failure of the 1930 Conference at the Hague to set a precise limit on the breadth of the territorial sea, provoked some states to extend their territorial waters beyond the customary three-mile limit.[2] The primary motivation threatening the extension of territorial waters seemed to be the desire for greater control of fishing. Though other states challenged the law, they did not extend their territorial waters beyond the customary three-mile limit until after World War II. Then, for the first time, a large number of states claimed more than three miles of territorial waters.

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[1]Marjorie Whiteman, Digest of International Law Vol. IV (Washington: U.S. Goverment Printing Office, 1965), p. 14.

[2]Nadesan, op. cit., p. 13.

EFFECT OF THE TRUMAN PROCLAMATION

With few exceptions, therefore, the world, until 1945, accepted the fact that a nation's territorial jurisdiction over adjacent sea areas should be quite limited. The three-mile territorial sea prevailed. In 1945, however, President Truman by proclamation set in motion a policy which precipitated significant changes.[3] While avoiding a strictly territorial claim the Truman Proclamation did assert United States jurisdiction and control of the natural resources and the subsoil and seabed of the continental shelf contiguous to the United States' coasts. Although it stated no outer boundary as such, it used the term "continental shelf" which was described in an accompaning press release as generally extending to a point where the water reaches a depth of 600 feet.[4] In retrospect, one may say today that U. S. decision makers should have known then that a unilateral claim, whether territorial or not, was going to touch off in later years a race by others to grab and hold vast areas of the sea and seabeds.

What the United States did not know then, but what it has since learned, is that when an important nation asserts the unilateral right to take certain action, what may be copied by other nations is not necessarily the action

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[3] Proclamation No. 2667, September 28, 1945 (59 Stat. 884).

[4] U.S. Department of State Bulletin, September 30, 1945, pp. 484-485.

itself but rather the basis upon which the action was taken. Thus, Chile, Ecuador and Peru did not believe themselves constrained by the text of the Truman Proclamation when they agreed on the Declaration of Santiago which proclaimed their sole jurisdiction and sovereignty over an area of the sea, the sea floor and subsoil extending 200 nautical miles adjacent to their coasts.[5] Since the 1952 Declaration of Santiago, these three countries have many times set forth various legal rationales for their claim. One of their arguments is that if the United States had a unilateral right to claim the resources of the seabeds adjacent to its coasts to the exclusion of all other countries, they too had a similar right to make claims consistent with their own national interests.

1958 GENEVA CONFERENCE

More than a quarter century passed before another international gathering considered the problems of the oceans. The United Nations Conference on the Law of the Sea held in Geneva from February 24 to April 28, 1958 was unquestionably the most important international conference ever held on the subject and one of the most significant attempts ever made by governments of the world to codify international law.[6]

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[5]Whiteman, op. cit., p. 1089.

[6]Carl M. Franklin, U.S. Naval War College International Law Studies, 1959-1960 (Washington: U.S. Government Printing Office, 1961), p. 1.

The Conference derived its importance from several facts. First, it was attended by all of the major maritime states of the world, including most, but not all of the members of the United Nations plus some important non-member states such as the Federal Republic of Germany and Switzerland. Moreover, the list of participants included several land-locked states, emphasizing their interest in the utilization of the ocean resources of the world.

Second, the Conference was the most important held to date on the law of the sea because of its broad scope and its accomplishments. Four conventions, an optional protocol and nine resolutions, ranging over most major aspects of maritime legislation, were adopted. The four conventions dealt with: territorial seas and zones adjacent to them; the general regime of the high seas; fishing rights and conservation of the living resources of the high seas; and exploration and exploitation of the resources of the continental shelf. Under the terms of the optional protocol, all countries signing it agreed to recognize the compulsory jurisdiction of the International Court of Justice in disputes arising out of conventions on the law of the sea. The nine resolutions dealt mainly with related maritime matters.[7]

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[7] The Law of the Sea, The Final Act and Annexes of the United Nations Conference on the Law of the Sea, Geneva, 1958 (London: The Society for Comparative Legislation and International Law, 1958), p. 1-33.

While it is true that the Conference did not reach agreement on a number of important matters, notably the breadth of the territorial sea and coastal fisheries problems, the four conventions which did emerge represented a significant amount of agreement among the participating states.

Thirdly, the 1958 Geneva Convention can be considered of major importance in that it represented the first major United Nations Codification Conference, which set the pattern for similar future conclaves under the aegis of the United Nations.

Finally, the 1958 Conference is of particular significance in that the participatory delegates viewed with determination their continuing duty to seek a solution to those problems on which agreement could not be reached in 1958. The Conference approved a resolution requesting the General Assembly of the United Nations to consider convening a second international conference for further study of questions left unsettled.[8]

During the two years between conferences, extensive preparations were made by many nations. The United States, firmly convinced that six miles was the outer limit consistent with security and the limitations of neutrality patrol, and fortified by the support for its compromise proposal at the 1958 Conference, had its representatives

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[8]Ibid.

from the Navy and the Department of State visit nations all over the world to secure support for the six-mile limit plus six more miles of fishing control. While the United States preferred a retention of a three-mile limit for a marginal sea, analysis of the voting at the 1958 Conference revealed that such a limit had no reasonable chance of approval.[9]

1960 GENEVA CONFERENCE

The Second United Nations Conference on the Law of the Sea met in Geneva from March 16 to April 26, 1960. Convened in accordance with General Assembly Resolution 1307 (XIII) of December 10, 1958, the Conference was held to consider further the questions of the breadth of the territorial sea and fisheries limits. The Conference was attended by 500 delegates from 88 countries and eight United Nations related agencies.[10]

As was the case at the first Conference in 1958, various proposals regarding the breadth of the territorial sea were made, with limits ranging from 3 to 12 miles.

The United States proposed a maximum breadth of the territorial sea at six miles, with exclusive fishing rights for the coastal state in a further six-mile zone. Subsequent to this proposal, the United States and Canada submitted a joint proposal consisting of a six-mile

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[9]Franklin, op. cit., p. 306.

[10]Yearbook of the United Nations, 1960 (New York: United Nations Office of Public Information, 1960), p. [illegible].

territorial sea and a twelve-mile exclusive fishing zone. The proposal however failed to receive the required two-thirds majority.[11]

The second conference failed to adopt any substantive proposals on either the territorial sea question or the fisheries problems.[12]

In sum, the failure of the 1958 and 1960 Conferences to reach agreement on the extent of the territorial sea did mortal damage to the three-mile rule. Yet, in spite of the gloom and pessimism with which the three-mile advocates view the Conferences, the 1958 Conference produced a very useful codification of the mechanics of the international law of the sea. No matter what specific limit becomes the ultimate successor to the three-mile limit, it will be well served by the comprehensive delimitation procedures laid down in the Convention on the Territorial Sea and the Contiguous Zone.

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[11] Official Records of the Second United Nations Conference on the Law of the Sea (U.N. Doc. A/CONF. 19/C.1/L.3, 1960).

[12] Yearbook of the United Nations, 1960, op. cit., p. 544.

Chapter 5

UNILATERAL CLAIMS

Unilateral territorial sea claims tend to exaggerate a coastal state's interest in the sea. In formulating them, nations are usually not restrained by any concern to accommodate the genuine needs of other nations. Rather, the tendency is to claim all a nation can, short of the point where it will risk serious conflict with more powerful nations. Inherent in this approach is the risk of miscalculation. Ultimately, coastal state unilateral claims may be pushed so far that maritime nations will have to react more strongly to protect their most vital interest.

A solution must be sought through international law to arrest this spreading cancer before the international community is incapable of action. Recognition of and accommodation to the serious and substantive interests of coastal states who are concerned about pollution, fisheries developments and seabed exploitation are necessary but must be accomplished without strangling international commerce and naval mobility.

A brief look at some of the more significant unilateral claims will highlight this problem area.

SOUTH AMERICA

Chile, Ecuador and Peru did not feel themselves constrained by the text of the Truman Proclamation when

they agreed on the Declaration of Santiago which proclaimed their sole jurisdiction and sovereignty over an area of the sea, the sea floor, and subsoil extending 200 nautical miles adjacent to their coasts.[1] Ecuador and Peru call their zone of sovereignty territorial seas. Chile, however, merely claims the right to protect her fishing resources in this 200 mile area. Since the 1952 Declaration of Santiago, these three nations have many times set forth various legal rationales to support their claim. One of their arguments is that since the United States exercised a unilateral right to claim the resources of the seabed adjacent to its coasts to the exclusion of all other countries, they too have a similar unilateral right to make claims consistent with their own national interests.

The Declaration of Lima reinforces the arguments put forth by the Declaration of Santiago when it stated:

> . . .The right to establish the limits of its sovereignty and maritime jurisdiction in accordance with reasonable criteria, taking into account its geographic, geologic and biologic characteristics, and the need for rational utilization of its resources.[2]

The term "reasonable criteria" does not seem to constitute much of a constraint when one notes this test will be applied by nations which already assume that 200 mile limits are reasonable.

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[1]Whiteman, Digest of International Law, Vol. IX, p. 1089-1090.

[2]"Declaration of Lima," Journal of Maritime Law and Commerce, XI (1970), p. 224.

In recent years, nine Latin American countries have asserted unilateral claims to extended coastal jurisdiction of 200 miles.[3] Even though these claims vary in the degree of control exerted by the coastal state, they all claim jurisdiction in some fashion over what was theretofore considered high seas and consequently the claims affect the mobility of United States naval and air forces.

The 200-mile claims have consistently been the subject of diplomatic protest by the United States and most other maritime nations. However, this has not prevented seizures of United States tuna boats off the west coast of South America by Peru and Ecuador.[4] The United States has been unable, either domestically or internationally, to adequately resolve the problems raised by such seizures. The abrasive effect of this problem of United States/Latin American relations is a compelling current example of the potential for confrontation inherent in the proliferation of extravagant unilateral offshore jurisdictional claims.[5]

PHILIPPINES AND INDONESIA

Two nations, the Philippines and Indonesia, have defined as internal all waters within a series of connecting

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[3]In addition to Chile, Ecuador and Peru; Argentina, Brazil, El Salvador, Panama, Nicaragua, and Uruguay (see Appendix).

[4]"Shrinking the Oceans," Time, August 4, 1971, p. 61.

[5]Robert E. Kirksey, "Territorial Seas and International Aviation" (Unpublished Master's thesis, National War College, Washington: 1971), p. 69.

base lines drawn from point to point on the outermost islands of their respective archipelagos. Using this line as a baseline, Indonesia claims the waters 12 miles seaward of this line as territorial waters. The Philippine Government measures its territorial waters from the baseline seaward to another baseline agreed upon in the 1898 Treaty of Paris as territorial waters. If these claims were internationally accepted, vast areas of the high seas including the Sulu Sea, would become internal waters, which would preclude their use by others under the rule of innocent passage.[6]

The unilateral claims made by the Philippines and Indonesia could have a tremendous impact on trade, commerce and the mobility of naval and air forces in large regions of the Pacific and Southeast Asia. Although the straits of Malacca may be treated as a separate problem under its category as an international strait, if passage were delayed, curtailed or prevented, navigation through the Indian Ocean would be severely restricted.

Both Indonesia and the Philippines presently allow ships on peaceful missions free access to navigate on their "internal waters."[7] However, the countries assert that this is a privilege which they freely grant. It is quite obvious

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[6]U.S. Department of State, Sovereignty of the Seas No. 3, "Breadth of the Territorial Seas" (Washington: Bureau of Intelligence and Research, 1969), p. 29-30.

[7]Arthur H. Dean, "The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas," American Journal of International Law, October 1960, p. 767.

under this line of reasoning, that such a "privilege" could easily be withdrawn if their national interests dictated doing so.

CANADA: A SERIOUS QUESTION IS RAISED

Another event of possibly greater significance was the enactment by Canada of certain law of the sea legislation. On June 5, 1970, the House of Commons of the Canadian Parliament approved legislation which claimed a 12-mile territorial sea, recited competence to establish a 100-mile "pollution control zone" in the waters surrounding all Canadian lands, including islands, above 60 degrees north latitude, and authorized the drawing of extensive "fisheries closing lines" primarily in the Gulf of St. Lawrence and the Bay of Fundy.[8] This assertion of offshore competence is not limited so as to exclude control over superjacent waters as was the Truman Proclamation. It asserts the right of Canada to unilaterally regulate many high seas activities--including navigation. This is the first such claim by a major maritime nation in modern times. The effect of this action was not significantly mitigated by Canada's public statements that such legislation was in response to an urgent need to preserve the unique Arctic ecological balance.

Simultaneous with announcement of this legislation, Canada entered a reservation of the compulsory jurisdiction

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[8]Bill C-202, 2nd Session, 28 Parliament, 18-19, Eliz. II, 1969-70.

of the International Court of Justice with regard to disputes:

> . . . Concerning jurisdiction or rights claimed . . . by Canada in respect of the conservation, management or exploitation of the living resources of the sea, or . . . the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada.[9]

Thus, with regard to the pollution control and fisheries aspects of the legislation, Canada has precluded a binding international adjudication as to the legality of her actions.

Canada's action opened a new round in the historic and multi-faceted struggle over freedom of the seas, while further illustrating the perception by at least some coastal states that existing international law and international arrangements are inadequate to protect their legitimate interests. It suggests, in particular that the growing concern of coastal states regarding pollution is likely to exert strong pressures on the traditional doctrine of ocean law. It raises complex questions of international law and policy regarding the legal regime of Arctic waters, the concept of contiguous zones, the status of waters within archipelagos, and the doctrine of international straits and innocent passage.

The immediate stimulus for the Canadian legislation was the historic voyage in the summer of 1969 of the

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[9]International Legal Materials, Current Documents, IX (Washington, D.C.: The American Society of International Law, 1970), p. 543-554.

United States tanker "S.S. Manhattan" through the waters and ice of the Northwest Passage north of the Canadian mainland. The environmental hazards posed by the possibility of maritime tanker or oil drilling accidents was highlighted by the 1967 "Torrey Canyon" incident, the 1968 Santa Barbara oil spill, and a series of similar incidents. The success of the "S.S. Manhattan's" voyage gave warning that Canada's Arctic environment might soon be subjected to similar threats. This risk was underlined in Canadian public consciousness by the grounding of the Liberian tanker "Arrow" in February 1970 in Chadahucto Bay off Nova Scotia, with consequent oil pollution of the waters and adjacent coast.[10]

It may be too early to attempt to pass ultimate judgment on the Canadian action. On its face, it appears contrary to the existing international law of the sea and not helpful as regards hopes for the orderly development of that law through international community processes. The precedent established is clearly capable of widespread abuse by others, perhaps less responsible states, with very harmful potential consequences for the principle of freedom of the seas. If a nation of the international stature of Canada may establish a 100-mile contiguous zone to control pollution, other coastal states may seek to do so as well, and the range of regulation that may be justified under the

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[10] Proceedings of the Fifth Annual Conference of the Law of the Sea Institute, University of Rhode Island, January 1971, p. 204-205.

rubric of pollution control, may in practice differ little from that asserted under claims of sovereignty over such zones. The Canadian legal justification of its action under principles of "self defense" seem particularly harmful and capable of introducing new confusion into this already murky area of law.[11]

RECENT UNILATERAL CLAIMS

In addition to the unilateral claims indicated above many other nations are expanding their historic jurisdiction over territorial waters for fisheries, mineral resources and pollution reasons. In Africa, for example, Sierra Leone has recently claimed a 200-mile territorial sea, Senegal is reportedly planning to claim 13 miles, and Nigeria 30 miles.[12] It was reported in November 1971 that Iceland will extend her offshore fishing rights from 12 to 50 miles effective September 1, 1972. The Icelandic claim is based on the "special position" of Iceland, since in 1970, fish and fish products amounted to 72.9 percent of Iceland's exports.[13] To carry this problem one step further, it is interesting to note that the Commonwealth of Massachusetts also announced in November 1971 an extension of its fishing rights to 200 miles.[14]

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[11] Richard B. Bilder, "The Canadian Arctic Waters Pollution Prevention Act" (Paper read at the Fifth Annual Law of the Sea Institute, June 1970, University of Rhode Island).

[12] New York Times, January 7, 1972, p. 2, Col. 1.

[13] New York Times, November 28, 1971, p. 8, Col. 1.

[14] Ibid.

All of this has happened in spite of the insistence by major maritime nations like the United States, the United Kingdom and Japan that three miles is the maximum limit for a nation's territorial sea and that they are not obligated to respect any claims in excess of that limit. In short, the United States, in the past few years, has had to face a situation of virtual worldwide deterioration of the three-mile position, in part aggravated by U. S. assertions of jurisdiction over sea and seabed resources, and by the failure to establish a fixed limit for the territorial sea in the 1958 and 1960 Conferences on the Law of the Sea.

Chapter 6

INTERNATIONAL STRAITS

The most significant factors for the whole community of nations in the territorial seas are those which relate to the usefulness of this area for international transportation and communication. The territorial seas around the globe vary greatly in their consequentiality as avenues of international movement. The ordinary territorial sea, that which is not within a strait is not usually considered an indispensable route for transit between two high sea areas, but it may be highly convenient in the sense that additional time or costs are involved in avoiding it.

It is when a territorial sea comprises all or part of a strait that it may become of critical importance for international communication and naval mobility. A strait is usually understood to be a rather narrow strip of water connecting two other bodies of water, at least one of which is outside the comprehensive, exclusive competence of any state, i.e., is part of the high seas.[1]

Straits have, of course, differing importance according to their location, volume of traffic, and prevailing political attitudes. Some straits are of the greatest importance because they are virtually indispensable for international commerce and naval mobility, no other

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[1] Myres S. McDougal and William T. Burke, The Public Order of the Oceans (New Haven: Yale University Press, 1962), p. 175-176.

route being physically or economically possible. They are the best known places in the sea, as is easily seen by reciting some of their names: Bosporus and Dardanelles, Kattegat and Skagerrak, Gibraltar and Bab el Mandeb, Florida and Torres, Tsushima and Malacca, the St. George Channel and the Straits of Dover. To these must be added the narrow isthmuses that join the continents, Panama and Suez.[2]

CORFU CHANNEL

A classic international law decision dealing with the rights of a nation to utilize international straits was the Corfu Channel Case in 1946. Following World War II, attempts were made by numerous littoral states to exclude foreign warships from waters traditionally considered as international. The mining of the North Corfu Channel in the fall of 1946 epitomized these efforts. The North Channel, approximately two miles wide, lies between the Greek Island of Corfu and the coasts of Albania and Greece. On October 22, 1946, while two British destroyers were proceeding through the Channel, H.M.S. Sumarez and H.M.S. Volage, struck mines which had been laid in the Channel. The explosions caused serious damage to the ships and the loss of forty-four lives. Although the channel is contiguous or

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[2]Roger Revelle, "Man and the Sea," Scientific America, September 1969, p. 4.

adjacent to Albanian territories and considered part of the territorial waters of that country, the British charged Albania had illegally mined an international strait, contending that,

> . . . in accordance with the normal rules of international law, which recognizes that in peace and war there is both for warships and merchant vessels a right of innocent passage through straits forming highways of international maritime traffic.[3]

Albania on the other hand, insisted that British warships had no right to pass through the strait.

The incident was brought before the International Court of Justice where a decision in favor of Great Britain was rendered. The Court concluded that Albania was responsible under international law and bound to pay due compensation to the United Kingdom for having failed to warn the British warships of the existence of the minefield in its waters.[4] The court stated in part:

> . . . it is, in the view of the court, generally recognized and in accordance with international custom that states in time of peace have a right to send their warships through straits used for international navigation between two ports of the high seas without the previous authorization of a coastal state, provided that the passage is innocent. ~~Waters~~ otherwise prescribed in an international convention, there is no right for a coastal state to prohibit such passage through straits in time of peace.[5]

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[3] The Corfu Channel Case, United Kingdom-Albania, International Court of Justice, April 9, 1949, Reports of Judgements, Advisory Opinions and Orders, 1949 (Leyden: A. W. Sijthoff's Publishing Co., 1951), p. 4ff.

[4] Ibid.

[5] Ibid.

FOREIGN POLICY IMPLICATIONS

The United States has long opposed extensions of territorial seas beyond three miles because such extensions would overlap 116 international straits which, under a three mile rule, contain high seas.[6] Nations which depend upon their merchant marine and their navies for economic and national security, nations such as the United States, the United Kingdom and the Soviet Union, can be strangled by having access to oceans limited or delayed when passing through narrow international straits. Submerged transit of submarines, overflight of aircraft and freedom from restrictions would generally disappear. To the extent they would continue to exist, these rights would depend upon the good graces of the coastal state or states bordering on the strait in question. Such a result would be unacceptable to any country with global interests, a global foreign policy, a large merchant marine and a large navy and air force. It is for this reason that the United States has opposed territorial sea extensions beyond three miles.

Unilateral extensions of jurisdiction are not likely to be restricted in such a way as to comport with what the United States regards as vital national security interests. Even if the United States were willing to see its rights as a nation on the high seas compartmentalized, and even if the

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[6]Bruce A. Harlow, "Freedom of Navigation," The Law of the Sea, ed. Lewis M. Alexander (Columbus: The Ohio State University Press, 1967), p. 193.

United States were willing to treat these rights differently, for example, according higher priority to the rights of its warship than those of its distant-water fishing fleets, it is difficult to see how the United States could prevent interference with its fishing boats from maturing into interference with its warships when unilateral assertions of jurisdiction alone determine what is lawful.

In addition to the benefits of freedom of navigation for maritime countries, this position also serves many other interests. Coastal states can be relieved of having to resist the pressures of one or another nation to use access through the straits off their coasts for political purposes. Small countries near straits need not be concerned about being strangled as a result of minor political differences with a neighboring country whose geographic good fortune put it in a powerful position because it sits astride a strait. Therefore, a policy that waters in narrow international straits retain enough of the character of high seas to assure continued freedom of navigation and overflight seems essential to all nations, large or small. A failure to have a clear and internationally recognized right of transit through, and over, these essential ocean arteries would render freedom of the seas a mere meaningless phrase from the standpoint of vital naval and commercial navigational interests.

Chapter 7

INNOCENT PASSAGE

Notwithstanding the principle of freedom of the seas, there are certain positions of the sea along a states' coast which are universally considered as a prolongation of its territory and over which jurisdiction is recognized. Sovereignty, however, of the littoral state over these territorial waters is subject to the limitations recognized in customary and conventional law that vessels have the right of innocent passage.[1] The sovereignty of a state over the airspace above its territorial waters is more complete in that it is not subject to the right of innocent passage by aircraft.[2]

VARYING INTERPRETATIONS

When discussing the right of innocent passage through foreign territorial waters, opinions differ considerably. One school of thought is of the opinion that the right does not extend to vessels of war; another view considers passage of warships permissible but only in time of peace; still another considers warships to have an unrestricted right to innocent passage. In actual practice, there are many variations to the foregoing.

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[1] Convention on the Territorial Sea and Contiguous Zone (U.N. Doc. A/CONF. 13/L.52), Article 14.

[2] Kirksey, op. cit., p. 50.

Peacetime Mobility

The question may be asked: How does the territorial sea concept and the accompanying exception in favor of innocent passage affect the mobility of U. S. Naval forces in time of peace? First, a coastal state may act to unreasonably restrict the exercise of this right, for political or other reasons unrelated to the true meaning of innocent passage. While "innocent passage" is easily enunciated, it may become ambiguous and restrictive in its application.

Although the principles embodied in Article 14 of the 1958 Geneva Convention on the Territorial Sea enumerate six specific provisions of innocent passage of ships for all states, Article 14 (4) which defines innocent ". . . so long that it is not prejudicial to the peace, good order or security of the coastal State . . .,"[3] leaves considerable latitude for interpretation.

Secondly, several states argue either that warships generally do not possess the right of innocent passage or that the right may be exercised only after prior notification of the coastal state. Colombos, in quoting Higgins, states that the right of innocent passage does not extend to vessels of war:

> No general interests are necessarily or commonly involved in the possession by a state of a right to navigate the waters of other states with its

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[3]Convention on the Territorial Sea and Contiguous Zone, loc. cit.

> ships of war and such privilege may often be injurious to third states and it may be dangerous to the proprietor of the waters used.[4]

Other writers contend that while passage of warships is not generally recognized, it nonetheless shall not be denied in time of peace. This principle was also found in the Hague Codification Conference which stated:

> As a general rule, a coastal state shall not forbid the passage of foreign warships in the territorial seas, and will not require a previous authorization or notification. The coastal state has the right to regulate the conditions of such passage. Submarines shall navigate on the surface.[5]

By inference, the right of innocent passage of warships through territorial waters is authorized in the Geneva Convention on Territorial Seas of 1958. The Convention is, however, silent on the question whether or not such passage is subject to a previous authorization or notification.[6]

USSR Position

The position of the USSR, for example, is clearly indicated in a reply rejecting a U. S. protest note:

> . . . Ministry reaffirms its Aide Memoire of . . . 24 August 1967, concerning applicability of the Statute of Protection of USSR State Borders in /the/ Straits of Kara Sea as well as Dmitri Lapten Straits and Sannikov Straits . . . passage of foreign military vessels through the straits is permitted only with prior permission of Government of the USSR, requested through diplomatic channels not later than 30 days before

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[4]Colombos, op. cit., p. 260.

[5]Ibid., p. 261.

[6]Ibid., p. 262.

> proposed passage. This requirement as is known, is in complete accordance with position of Government of USSR . . . State has /the/ right /to/ require permission for passage /of/ foreign military vessels through its territorial waters. Therefore reference in /U. S./ Embassy's note to "right of innocent passage" of American military vessels through territorial waters of USSR, including Vilkitskiy Straits allegedly deriving from 1958 Convention on Territorial Seas and Contiguous Zone have no juridical basis.[7]

The Soviet view of innocent passage can be summarized in the following extract from a Soviet Ministry of Defense Publication:

> The absence of uniformity in the practice of states constitutes irrefutable proof that the so-called "right of innocent passage" of warships cannot be regarded as a universally recognized rule of international law.[8]

CURRENT STATUS

The current international status of the right of innocent passage through territorial waters is far from clear. While the 1958 Geneva Convention on the Territorial Sea appeared to guarantee the right of innocent passage for all ships, the USSR and other bloc nations uniformly entered reservations to the Convention which embodied their view that a warship has no right of innocent passage. This initial attempt to carve out exceptions has been further aggravated by the practice of many states of subjectively

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[7] Department of State cable from the American Embassy Moscow to the Secretary of State, October 4, 1967.

[8] P. D. Barabolya, et. al., Manual of Maritime International Law (translated by Translation Division, Naval Intelligence Command) (Moscow: Military Publishing House of the Ministry of Defense of the USSR, 1966), p. 20-28.

determining what passage is "innocent" so as to emasculate the right of innocent passage when it served their political purpose.[9]

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[9]Kirksey, op. cit., p. 52.

Chapter 8

PROBLEMS IN DETERMINING THE BREADTH OF THE TERRITORIAL SEA

In the Twentieth Century, three major attempts have been made to progressively develop the law of the sea. All three conferences failed to settle on one basic problem--the breadth of the territorial sea. The determination of the limit of territorial waters seemed to involve the conflict of national interests among the states represented at the Conferences. International community efforts depend upon international cooperation as does international trade and commerce. For a viable international trade, the limits of territorial waters must therefore be kept to a reasonable limit so as not to hamper trade. Yet the national interest of a coastal state demands, for its own sake, defense of its coasts, and protection of fisheries and other resources; these requirements seem to demand a wider territorial sea. An obvious contradiction arises even before specific national interests are considered.

UNCERTAINTIES IN THE LAW OF THE SEA

Adding to the problems of the territorial seas are many uncertainties in International Law. The law of the sea as it is today raises issues and presents problems; and most of the issues which are unresolved affect the territorial sea either directly or indirectly. Some are due to the law's uncertainties, while others are due to old or

new inadequacies in the law. As regards military uses, the law of the sea is basically one of laissez faire. It is not clear what special security measures a coastal state may take either in its contiguous zone, or on the continental shelf, or beyond. There is uncertainty as to whether the right of innocent passage in the territorial sea applies to military vessels. The uncertainty as to the breadth of the territorial sea has important military consequences since a wider territorial sea effectively bars military uses in more of the sea, and may completely bar important international straits to military vessels. It has been estimated that an increase in the territorial sea claims from three to twelve miles reduces the high seas by three million square miles.[1]

Fishing has also suffered, not necessarily from legal uncertainties, but from inadequate regulation and cooperation. Inefficiency as well as conflict have also been promoted by the claims of coastal nations to exclusive rights in increasing areas of coastal waters. A network of treaty arrangements has grown but their coverage is limited and they have not been coordinated. Adding to the problem is a growing income gap between the developed and developing countries. By whatever criteria one wishes to employ, material wealth, education, energy use or resource use, the absolute difference between the developed and

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[1]Edmund A. Gullion (ed.), Uses of the Seas (New Jersey: Prentice Hall, Inc., 1968), p. 5.

developing nations increases even though the rate of growth for some of the developing countries may be larger. Major steps must be undertaken to change this pattern if the developing countries are truly to develop. One avenue of resource is to provide in one form or another a larger share in the revenues of the oceans to the developing countries.[2]

INTERESTS IN THE TERRITORIAL SEA

The exclusive interest of particular states in the territorial sea arises principally from the fact that this area, like internal waters, provides an important means of access to coastal land masses. It would be a mistake to assume that because of recent spectacular developments in the field of weapons technology, weapons delivery systems, and transportation that this value of the ocean as a means of military access has entirely disappeared. Weapons of mass destruction, high speed aircraft and missiles do, of course, permit posing long distance threats to and from nations all over the world. Nevertheless, the contemporary means of coercion and warfare include a great range of weapons and strategies, and not all of them involve hurling supersonic hardware halfway around the globe. Threats of a more conventional type, involving possible penetration into the marginal belt, are still frequently perceived by

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[2]Louis Henkins, Uses of the Seas, ed. Edmund A. Gullion (New Jersey: Prentice Hall, Inc., 1968), p. 77.

coastal states, and states continue to express their traditional concern over coping with them.

Other exclusive interests arise from the conventional interactions in the territorial sea involving more prosaic events than threats to security. Foreign vessels may seek to intrude upon fishing grounds considered to be reserved for coastal nationals. Advances in methods of fishing and fish processing epitomized by Soviet "strip mining" methods of fishing have brought this problem to the forefront in recent years. Ships failing to exercise precautions may inflict serious harm upon adjacent coastal property from the discharge of waters. The latter problem has been highlighted in recent months by the concern expressed by a number of nations on the west coast of Africa over the oil and ballast being discharged by oil tankers proceeding off the west coast of Africa.[3] Events in the marginal belt and beyond have already generated demands to subject a passing vessel to local juridical process, as in the Canadian Arctic proclamation.[4]

CONFLICTING U.S. INTERESTS IN TERRITORIAL SEAS

United States commercial and scientific interests in the oceans have been discussed for decades in many publications and need not be set forth here in detail.

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[3]Statement by W. Pierle Elliott (Legal Advisor to the Director Politico-Military Policy Division, Office of the Chief of Naval Operations), Personal interview, December 17, 1971.

[4]New York Times, April 23, 1970, p. 31, Col. 1.

A brief list of some of the major interests nevertheless will assist in keeping the problem in perspective.

1. The United States has a sizeable fishing industry. Many members of this industry believe their interests will be best protected by expanded U.S. jurisdiction in the sea for the purpose of excluding foreign fishing, while other interests, principally the tuna and shrimp industries, prefer narrow limits of jurisdiction.

2. The United States has vast continental margin areas along its coasts which are likely to produce valuable petroleum resources. The petroleum interests have, therefore, advocated expanded coastal state jurisdiction.

3. The United States has a small but growing hard mineral industry. Interests have focused primarily in the shallow water areas with some promise of deep water mining. The interests of this segment of U.S. industry in the law of the sea seems to be minimal at this time.

4. The United States suffers from the pollution of its beaches and adjacent waters from many sources including foreign registered vessels navigating off the coasts. Those whose responsibility it is to protect against this aspect of pollution generally favor expanded jurisdiction in the waters off our coasts.

5. The United States has a large merchant marine which must navigate near the coasts of many nations. Coastal state restrictions and constraints will result in

additional expenses to U.S. merchant marine interests. This interest therefore suggests narrow coastal state jurisdiction.

6. The United States has many scientific institutions which conduct research on the sea and the seabeds. Freedom of scientific research is considered by these interests to require narrow coastal state jurisdiction.

One conclusion seems to emerge from the foregoing: The overall interest suffers the greatest risk under a system which permits, indeed encourages, unilateral claims. For any nation that asserts a claim, will be doing so to benefit its own interests with little, if any, consideration given to the interests of others.

Fishing

The fishing interests in the United States speaks with many voices. Their views are dissimilar and any U.S. position which attempts to reflect all of these interests will be a compromise. The fishing industry can be easily divided into two separate groups. The first group, the coastal fishing interests, is that part of the industry which fishes in international waters contiguous to the United States. The second group, distant water fishing interests, is that part of the industry such as the tuna and shrimp industry, which fishes in international waters contiguous to other coastal states. It is not necessary to determine which of these interests is more important. Statistics on fish catches are readily

available in the U. S. Bureau of Commercial Fisheries Annual Summary.

For a variety of reasons the U.S. coastal fishing interests favor the extension of U.S. jurisdiction out as far as possible. Apparently, their primary problem is to remain competitive in a highly competitive business. A wide U.S. coastal jurisdiction will reduce or limit much of the present competition of the U.S. coastal fisherman. However, such an extension by other nations would eliminate free access to certain fishing grounds for the U.S. distant-water fishing interests. Therefore, the distant water interests prefer to keep national jurisdiction as narrow as possible.

Although the different fishing interests may have different short-term goals, it is safe to say that they have at least one long-term goal in common, and that is the continued health of world fishing in general and of their own fish sources in particular.

Petroleum

The margins of the oceans surrounding the continents, containing the continental shelves and slopes and the deeper continental rise, are probably the principal locations for one of the most important mineral resources beneath the sea: petroleum.[5]

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[5]Revelle, op. cit., p. 12.

World production of liquid fuels in 1969 was about 15 thousand million barrels. Its probable production will be in the range of 25-30 thousand million barrels in 1980 and 60-75 thousand million barrels in the year 2000. Offshore production now provides about 18 percent of the total and it may supply 30-40 percent of it in 1980 and possibly 40-50 percent of the total in the year 2000.[6]

The petroleum industry is perhaps the strongest and best organized of the U.S. industrial groups with an interest in the oceans. The influence of the petroleum industry should not be overlooked in seeking a rationale for the Truman Doctrine of 1945 which claimed the non-living resources of the continental shelf for the U.S. Many writers today blame the current proliferation of 200-mile claims on the Truman Doctrine.[7]

Unlike the fishing interests, the oil industry speaks with one voice. Although it may be possible to find individuals and groups within the industry who hold contrary opinions, the official view of the petroleum industry can be found in a recent report of the National Petroleum Council. In their opinion:

> National jurisdiction extends over the continental shelf, the continental slope, and at least the landward portion of the continental rise and the United States should promptly and

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[6]Vincent E. McKelvey, Chief Geologist, U.S. Geological Survey (Statement read before the U.N. Committee on the Peaceful Uses of the Seabeds and the Ocean Floor Beyond the Limits of National Jurisdiction, August 4, 1971, Geneva)

[7]Leigh Ratiner, "United States Oceans Policy: An Analysis," Journal of Maritime Law and Commerce, January 1971,

> forthrightly assert these rights while recognizing similar rights of other coastal nations.[8]

Concurrent with this explicit recommendation is a somewhat more vaguely worded one to the effect that since ". . . existing principles of international law are adequate to govern petroleum exploration and exploitation of the abyssal ocean floor for some time to come,"[9] no effort should be made at this time to establish a more formal regime for high seas mineral exploitation.

The opinion of the petroleum industry must be viewed in the light of self-interest in competition with other U.S. interests. There is sufficient disagreement, both within the U.S. and within the world community, about the interpretation of the exploitability clause in the continental shelf convention to suggest that it would be unwise to base the petroleum case on this argument. In addition, the recommendation of doing nothing about a high seas regime at this time does not appear to square with the realities of the times.

Hard Minerals

The interests of the hard mineral industry in the law of the sea is relatively new. There is little activity at present but there is growing interest and research.

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[8]"Petroleum Resources Under the Ocean Floor," Report of the National Petroleum Council, Washington, D.C., p. 11.

[9]Ibid., p. 12.

Interests focus both in the shallow waters and the deep ocean. Deposits of tin, diamond, gold and platinum can be found in submerged stream channels. From what is known of changes in sea level in geologic times, it would appear that most deposits of interest would be found adjacent to land masses in depths of less than 200 meters.[10] Thus any agreed upon regime for the limits of national jurisdiction of the resources of the seabed would probably satisfy the needs of this segment of the mining industry. At the other extreme is the interest in minerals on the deep ocean floor.

Manganese nodules have been discovered over much of the deep ocean's floor at very great depths. They contain quantities of nickel, copper, cobalt, and manganese which will probably prove to be economical to process in the near future.[11] Jointproduct recovery of nickel and copper from nodules is considered feasible by 1975-1976.[12] The availability of capital may well prove to be a limiting factor in the rate of growth of the nodule production industry.

These deposits are far enough from the continental margins that it seems inevitable that they will be considered

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[10]K. O. Emery, "The Continental Shelf," Scientific American, September 1969, p. 107-121.

[11]H. W. Menard, "Deep Ocean Floor," Scientific American, September 1969, p. 127.

[12]McKelvey, loc. cit.

part of the ocean floor beyond national jurisdiction regardless of the agreed upon seaward extension of the territorial sea or continental shelf.

Pollution

There are those who believe that the present interest in ecology and pollution is of transient political importance. Although much of the emotional element may be removed in time, the basic fact that a profound shift has taken place in the way man views his life on this planet cannot be denied. The pollution effect on large fresh water bodies has been well documented, but there is very little factual information on possible pollution in the open ocean.

Presently coastal states are taking unilateral action in response to pollution threats. Canada's pollution zone and more stringent regulations governing the dumping of materials in international waters off the U.S. coast provide recent examples. Reports from Africa indicate that a number of West Coast nations are expressing growing concern over oil pollution of their beaches and coastal waters.

Three broad sources of ocean pollution can readily be identified: the land, the air, and marine activities. The sources of pollution from the land include river discharges, discharge through coastal pipelines, and agricultural runoff. The major source of pollution from the air originates from volatile compounds and airborne

particles.[13] Control of these forms of pollution must come largely from national legislation although an international convention incorporating guidelines and standards for such national pollution legislation would be universally beneficial in preserving the marine environment and establishing a universal norm.

The third and final category of ocean pollution results from marine activities, which include dumping by ships and barges, deliberate pollution by ships, accidental pollution by ships, and exploitation of seabed minerals.[14] Several governments have taken, or are in the process of taking, steps at the national level to prevent pollution. It is evident that some immediate pollution controls are necessary. In this area, however, an initiative on the international level is necessary if adequate provisions are to be adopted for controlling pollution, both within territorial waters, as well as on the high seas.

Merchant Marine

Since all coastal nations depend, in varying degrees, on ocean trade, it is unlikely that the transportation interests of any nation differ markedly from others. What does occur is that those nations which are heavily dependent upon ocean transportation, such as Japan and

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[13]Donald L. McKernan, Alternate U.S. Representative (Address before the U.N. Committee on the Peaceful Uses of the Seabeds and the Ocean Floor Beyond the Limits of National Jurisdiction, Geneva, August 17, 1971.)

[14]Ibid.

England, usually give this interest a higher priority than other coastal states which are not as economically dependent upon international trade.

Ocean transportation continues to grow. Air transportation can compete in the movement of high value and perishable materials, but all other goods go by sea. World shipping has doubled in the past decade. Shipping to and from the U.S. has increased 60 percent in the same period. Bulk carriers continue to grow in size and significance and there is nothing on the technological horizon that suggests that shipping will not continue to grow.[15]

In any future law of the sea conference, it can be expected that the transportation industry will oppose any erosion of the present rule of innocent passage and to some extent oppose efforts toward large territorial jurisdictions. In addition, opposition to unilateral claims such as Canada's pollution zone, will no doubt increase. Since the Canadian pollution zone can, in effect, prohibit certain types of ships from the area, a major problem could develop for the transportation industry if other nations follow Canada's lead.

Scientific Research

Scientific research in the oceans should not be obstructed by any nation. It should be conducted with the

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[15]Henkins, op. cit., p. 79.

view of open publication for the benefit of all. During the past several decades, scientific inquiry into the oceans has contributed to our understanding of ocean circulation patterns and up-welling processes, the interchange between ocean and atmosphere, and the process of sea floor spreading and continental drift. All of these have greatly increased our understanding of biological and mineral resources of the ocean and the sea floor.

Only during the last few decades have we evolved major principles governing the conservation of the living resources of the sea, developed an understanding of the distribution of fluid hydrocarbon resources in the ocean seabed and the technology for their extraction, and we have begun to understand the impact of the ocean on weather modification. The continued acquisition of information of this type will have an important bearing on man's future welfare and may be a determining factor on man's capacity to cope with the growing problems of pollution or to develop the technology required to make full use of both the living and non-living resources available in the oceans.[16]

The prospects of ocean science and technology, the fear of pollution, exploited resources and territorial infringement and the transfer of new hopes and national

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[16]McKernan, loc. cit.

aspirations to the ocean realms are forcing the pace in evolution of the law of the sea.

Chapter 9

NAVAL INTERESTS AND MOBILITY

There is hardly any need to emphasize the importance in the significance of naval power to the growth and development of a world power. Great Britain maintained "command of the seas" for over two centuries. Under British naval supremacy, the Commonwealth developed to such an extent that her internal communication links among the members of the Commonwealth became the world's ocean trade routes. Great Britain could not have existed without importing foodstuffs and raw materials and freely exporting manufactured products in time of peace and war. The Royal Navy thus became the most potent instrument for the protection of these routes and for securing the peaceful navigation of British ships and the legal right of British citizens.

> Naval supremacy, although primarily devoted to the protection of British interests at home and abroad, was on many occasions instrumental in advancing the welfare and prosperity of mankind as a whole.[1]

It was influential in suppressing piracy and the slave trade at a period of their strongest activity. It provided a safe asylum to political refugees fleeing from persecution, helped to suppress revolutionary and civil strifes in many countries, and brought timely help to territories ravaged

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[1]John C. Colombos, The International Law of the Sea (4th ed.; London: Longmans, Green and Co., Ltd., 1959), p. 41.

by disease and natural disaster. The existence of a strong Royal and Merchant Navy must therefore be credited with providing valuable assistance toward the promotion of friendly international relations.[2]

NATIONAL AWARENESS

Until a half-century ago, our national well being seemed to be little effected by what happened abroad, particularly in the less developed regions. Since then, we have moved very rapidly--within a few decades--from a position of relative isolation and a minor role in world affairs to deep involvement and heavy responsibilities as the strongest nation in what is now a much more closely interrelated world.

In the era since the close of World War II, the United States has committed itself, through alliances, to assisting and protecting nations around the globe. Yet, U.S. involvement in world affairs is not exclusively based on our alliance system, but rather on formal and informal obligations which are derived from and shaped by our own national interests. "To protect our interests, we must assure free use of international air space and free access to the world's oceans."[3]

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[2]Ibid.

[3]Melvin R. Laird, Statement of the Secretary of Defense Before the Senate Armed Services Committee on the Fiscal Year 1972 Defense Program and Budget, March 15, 1971 (Washington: U.S. Government Printing Office, 1971), p. 163.

U. S. NAVAL OPERATIONS

Submarine Operations

The U. S. Navy has always opted for a minimum territorial sea and maximum freedom of the high seas.[4] The Navy position has been based on insuring and guaranteeing the mobility necessary to carry out its assigned mission. This mobility is particularly necessary for the Navy to carry out its assigned strategic second-strike mission with its 41 missile-carrying nuclear submarines. The major concern in this area is that these submarines maintain maximum maneuverability and avoid detection. This implies complete freedom of movement on the high seas. The Navy's missile carrying nuclear submarines comprise the Navy entry in the U.S. strategic deterrent forces. "They also serve an important role, together with theater and tactical nuclear capabilities, in deterring conflict below the level of general nuclear war."[5]

U. S. Navy missile submarines are equipped with sixteen intermediate range Polaris ballistic missiles. Each missile is equipped with a nuclear warhead about one megaton in size and has a range of 2,500 miles. A number of Polaris submarines have been refitted to carry the Poseidon missile, with a multiple, independently targeted re-entry vehicle (MIRV), capable of carrying ten weapons in the 50-kiloton range to separately programmed targets.

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[4]Swartzrauber, op. cit., pp. 446ff.

[5]Laird, op. cit., p. 67.

The range of the Poseidon missile is greater than that of Polaris. A total of 31 Polaris submarines are scheduled to be refitted with the improved Poseidon missile system.[6]

Although the missile launching submarine is the Navy's only entry in the U.S. nuclear strategic force, other naval vessels are capable of carrying nuclear weapons: aircraft carriers, destroyers, and others. Because of the weapon size and method of employment, these are considered tactical as opposed to strategic weapons.

The Submarine and Other Strategic Forces

U. S. strategic offensive forces at the end of fiscal year 1972 will consist of 1,054 land-based ICBM's, approximately 520 B-52 and FB-111 bombers, and 41 Polaris-Poseidon submarines carrying 656 missiles.[7] It is significant to note that the number of ICBM's will be reduced by 54 and the number of bombers will be reduced by about half during the next few years. With the completion of the Minuteman III and Poseidon programs in the mid-1970's, the United States will have some 8,000 strategic offensive warheads, of which 5,120, or approximately two-thirds, will be carried by Polaris-Poseidon submarines. Although the number of warheads is only one method of tabulating strategic offensive forces, the Polaris-Poseidon

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[6]Raymond V. B. Blackman (ed.), Jane's Fighting Ships, 1971-1972 (London: Paulton House, 1971), p. 405-406.

[7]Laird, op. cit., p. 64.

submarines also are expected to continue as the least vulnerable strategic system available to the United States.[8]

The increasing accuracy of ICBM's, the advent of the multiple independent targeted re-entry vehicle (MIRV), and the general pessimism about building an acceptable anti-ballistic missile screen have brought many experts to the opinion that future missile development will rely even more heavily on mobile platforms. More and more such first strike targets as Minuteman sites and strategic air bases are being considered less than desirable by the neighboring populations. Early attempts to develop mobile launching sites on land, using railroad cars and trucks, have been abandoned for political as well as technical reasons.[9] Therefore, the missile-launching submarine is a very important part of our nation's nuclear arsenal and it seems likely that its importance will grow rather than lessen in the future. The nuclear submarine argument posed by the Navy for a narrow territorial sea is not based on being a few miles closer to shore when war breaks out. Quite to the contrary, even a 200-mile territorial sea would not pose a major problem if its only effect were to increase the target range by that amount. With a missile range of 2,500 miles, submarines on station in the Arctic, Indian, Atlantic, Pacific and Mediterranean can reach virtually any major target in Europe or Asia.

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[8] Blackman, loc. cit.

[9] Herbert York, "Military Technology and National Security," Scientific American, August 1969, p. 28.

The Submarine and Territorial Seas

The real concern for a narrow territorial sea relates to straits and narrow seas which, with an enlarged territorial sea, would either be closed to nuclear submarines, or would require the submarine to transit the strait on the surface. There is much disagreement regarding the rights of warships and innocent passage, but the 1958 Territorial Sea Convention is very explicit on the issue of submarines. Article 14 of the Convention on the Territorial Sea and the Contiguous Zone states:

> Subject to the provisions of these Articles, ships of all states, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea . . . . Submarines are required to navigate on the surface and to show their flag.[10]

A twelve-mile territorial sea, for example, would require submarines to transit on the surface through straits 24 miles in width or less. At present, U.S. missile submarines operate submerged during their entire patrol including passage through such international straits as the straits of Gibraltar, which is only eight miles wide. Most of the world's straits are of little importance to the nuclear submarine, many are important to naval surface vessels and still more are important to maritime commerce. However, a 12-mile territorial sea agreement without some agreement regarding free transit through international straits would not be in the best interest of the Navy or

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[10] Convention on the Territorial Sea and Contiguous Zone (U.N. Doc. A/CONF 13/L.52), Article 14.

the national security. Efforts to work out an agreement on the "important straits" does not really solve the problem, since any definition of the term must necessarily be colored by parochial as well as national interests. But even if consensus could be reached on "important straits," the unimportant straits of today can well become the "important straits" of tomorrow and the problem begins anew.

It is essential for our nuclear strategy that missile submarines remain submerged while on patrol. If its position is compromised, a submarine would be subject to destruction in any enemy first strike nuclear attack. On the other hand, a 12-mile territorial sea agreement which included guarantees of free transit through straits would not be unnecessarily restrictive for the Navy. However, a 200-mile territorial sea, as advocated by some nations would pose serious problems. A 200-mile territorial sea would close the Mediterranean Sea, the Sea of Japan, the South China Sea, and all passages to the Arctic, as well as the Caribbean and the Gulf of Mexico. On the other hand, a 200-mile territorial sea also closes the USSR off from direct access to the Atlantic.

Surface Forces

As the last two decades have demonstrated, reliance on a nuclear capability alone is by no means sufficient to inhibit or deter aggression. "A sufficient nuclear capability must be coupled with sufficient conventional

capability."[11] In this respect, a second type of national security planning is based on the U.S. ability to exert pressure on coastal states, and if necessary, to fight a limited war. In either case, this involves the capability to provide a show of force off the coast of any nation and to move men and equipment quickly from one place to another. With a 3-mile territorial sea, a show of force has a different emotional impact than a 12-mile or 200-mile limit. At three miles, anyone on the coast can readily see a task force of ships from the beach. At 12 miles, a view from a hill with binoculars is necessary. However, beyond visual range, the psychological impact of a show of force on a coastal government is considerably lessened.

The U.S. has been able to control the seas with the attack aircraft carrier as the backbone of the surface fleet. The term "attack aircraft carrier" indicates a ship capable of operating contemporary high performance fighter, strike, and reconnaissance aircraft. Each of the 14 attack carriers built since World War II are capable of operating from 80-90 aircraft.

The carrier with its embarked aircraft is capable of sinking surface ships, surfaced submarines, destroying enemy aircraft, and with the advent of the new F-14 aircraft, shooting down missiles launched from any one of a number of

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[11]Laird, op. cit., p. 76.

enemy sources.[12]

Aircraft Operations

International law has long recognized that a coastal state may exercise jurisdiction and control within its territorial sea in the same manner that it can exercise sovereignty over its land territory. The question may be asked: How does the territorial sea concept and the accompanying exception in favor of innocent passage affect the mobility of United States Naval Air Forces? The sovereignty of a state over the air space above its territorial waters is more complete than its sovereignty over the territorial waters themselves.[13]

According to established international law, each state has exclusive jurisdiction in the airspace above its territory, internal waters, and territorial sea. There is no freedom of flight over internal waters and territory; nor is there a right of innocent passage through the air space over the territorial sea analogous to the right of innocent passage through the territorial sea.

> In the absence of a convention regulating the flight of foreign civil or military aircraft through its airspace, each state has complete discretion in regulating or in prohibiting such flight.[14]

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[12]E. R. Zumwalt, Jr. (Interview), "Where Soviet Threat Keeps Growing," U.S. News and World Report, September 13, 1971, p. 72-75.

[13]Kirksey, op. cit., p. 41.

[14]Law of Naval Warfare (Washington: Department of the Navy, 1955), p. 4-5.

Thus it may be stated that no aircraft whether flying in the air or taxiing on the surface of the water, has a right of innocent passage under customary international law over or on foreign territorial seas in time of peace. "Aircraft may enter the air space above the territorial sea only with the expressed consent of the coastal state."[15]

LOGISTICS SUPPORT

In a limited war or contingency situation, once a decision is made to move troops into a country, the airplane can perform the function faster than a ship. A problem arises in providing logistics support for the ground forces. In spite of the capabilities of the Air Force C-5A aircraft, which is capable of carrying payloads in excess of 250,000 pounds, "aircraft can make only a minor contribution to supplying sustained military operations."[16] Any military operation which lasts for more than two or three weeks must be supported by sea transportation. During the Korean War, for example, 99 percent of all material was transported by ship. In the early stages of the Vietnam War, 98.6 percent of supplies and equipment went by ship; approximately 97% is still going by ship.[17] Assuming a secure sea

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[15]Ibid.

[16]John D. Hendricks, "C-5A to Revolutionize US Military Airlift," Aviation Week and Space Technology, November 20, 1967, p. 104.

[17]Stanley Powell, "United States Shipping Industry--Problems and Prospectives," Naval War College Review, November 1969, p. 9.

route is available, the length of the route is a comparatively minor factor after the first few weeks of the operation. "The logistics pipeline from the United States to Vietnam extended over a distance of 10,000 miles."[18] The problem is not how long the route, but whether military transports can get there without passing through the territorial sea of one or more neutral nations, and if not, the extent to which such passage is considered innocent.

The extent to which the 1958 Territorial Sea Convention can be invoked to prohibit military transport through territorial seas is open to debate. The 1958 Convention states that: "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state."[19] Warships can and have been excluded from territorial seas. Perhaps military transports carrying troops can also be excluded. Carrying the question one step further, might not merchant ships with military cargoes also be excluded from the territorial sea?

A 200-mile territorial sea which would close off access to such areas as the Mediterranean Sea would pose a major problem to U.S. naval mobility. It may be said that the United States will move its naval forces wherever necessary in time of war, yet, it is much less clear whether naval forces would be ordered through territorial seas

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[18]John J. Lane, "MTMTS: Managing Defense Transportation Requirements," Defense Industry Bulletin, November 1967, p. 38.

[19]Convention on the Territorial Sea and Contiguous Zone, loc. cit.

of a neutral country during a crisis, for example, in the Middle East. The problem is further compounded in a case where the neutral nation publicly indicates its displeasure over the action. The necessity of applying diplomatic pressure to acquire permission to move ships through other nation's territorial seas could automatically escalate the nature of a U.S. response to a crisis. Efforts to obtain permission for a U.S. naval task force to transit Indian territorial waters in December 1971, during the India-Pakistan War, would have been ludicrous.

In his statement before the Senate Armed Services Committee on March 15, 1971, Secretary of Defense Laird, in presenting the 1972-1976 defense program, stated:

> To protect our interests, we must insure . . . free access to the world's oceans. Thus, our future defense planning must ensure a U.S. capability to prevent an effective challenge to free use of . . . the oceans of the world.[20]

The ability of naval forces to operate at sea near potential trouble spots provide a special capability for both response and flexible presence. Deployments of the Sixth and Seventh Fleets includes aircraft carriers, escort destroyers, amphibious assault and support ships. In addition, the current nucleus of small combatant craft provides a basis for creating a coastal and river patrol force should circumstances warrant such a force.[21]

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[20]Laird, op. cit., p. 106.

[21]Ibid., p. 107.

Chapter 10

NATIONAL OPTIONS AND NAVAL MOBILITY

The U. S. has several options concerning the problem of mobility of military forces. At one extreme, forces can be based overseas in many potential trouble areas. The mere presence of the forces provides a deterrent. At the other extreme, all military forces can be based in the United States, ready to be air- or sea-lifted to trouble areas as necessary. The latter requires a smaller standing force and is certainly the least expensive. In addition, with the current administration concept of a low military profile, many overseas bases are being returned to the host government as U.S. forces are recalled to the United States.

In the past two years in the Asian area alone, widespread force reductions have taken place. Plans to withdraw and reduce military strength in Asia by approximately 325,000 men are underway. In addition to troop redeployments from Vietnam, the figure includes reductions in Japan, Okinawa, Thailand, Philippines and Korea.[1]

TASK FORCE OPERATIONS

In the initial stages of applying pressure on any country whose actions are such that the U.S. is considering military operations, there is considerable advantage in the use of ships rather than aircraft to move forces. There is

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[1] Ibid., p. 108.

certainly more of a psychological advantage to be gained in having elements of the Sixth Fleet move into position off a coastal state than to put an Army airborne division on tactical alert either in the U.S. or at an overseas base. Further, there is more flexibility with a naval task force which can stay at sea for long periods while diplomatic pressure is applied to settle a confused or unstable political situation. Conversely, once troops are embarked in aircraft, the planes must land somewhere within a few hours. Changes in a political situation could necessitate aircraft returning home or seeking permission to land on nearby neutral soil. The decision to land on unfriendly soil is not one to be made lightly.

Despite the winding down of the Viet Nam War, the responsibilities of the U. S. Navy remain. The "Nixon Doctrine" for Foreign Policy in the 1970's calls for meeting overseas commitments and responsibilities, but with a "low profile" of U.S. forces overseas. This is an obvious mandate for the astute employment of highly mobile seapower. In this respect, it is significant to note that the Navy is receiving the largest portion of the fiscal year 1972 budget allocation to the services, 34.56 percent. This is the first budget since the unification of the armed services in 1947 that the Navy has received the largest share.[2]

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[2]Ibid., p. 163 ff.

POLITICO-MILITARY IMPLICATIONS

The right to free use of the seas has been virtually uncontested since World War II. During this period of conflict and confrontation on the land, the high seas have remained open to all nations. This situation has prevailed simply because the strength of the U. S. Navy has stood as a bulwark that no other nation or combination of nations could contest upon the sea with any substantial measure of credibility--political or military. The world had little doubt of our capability or intent when U. S. Navy task forces countered Chinese Communist challenges to control of the Formosan Strait in 1955 and 1958, or when a combined carrier and amphibious force put U. S. Marines ashore in aid of Lebanon in 1958, or during the mobilization at the time of the Berlin Crisis in 1961, or when the might of the U. S. Atlantic Fleet established the quarantine to force withdrawal of Russian missiles from Cuba in 1962. During the Jordanian Crisis in 1970, "the only airfields capable of being used were those airfields at sea--the carriers."[3] These are straightforward examples of politico-military successes made possible by the application of mobile seapower in the nuclear age.

NATIONAL POLICY ALTERNATIVES

The underlying question then is, what can the United States do to counteract unilateral claims of jurisdiction

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[3]Zumwalt, loc. cit.

which do not comport with United States national interest and the mobility of its naval forces? In order to analyze United States options, it is important to take a candid look at the relative military power of the United States. The look discloses that, notwithstanding immense naval and air power, the term "super power" indeed seems to be an anachronism, at least in the law of the sea concept.

Yet, there are many people who argue that when it really counts, the United States Navy will get through, notwithstanding coastal state objections, indeed not withstanding international law. Obviously, what is meant by the phrase "when it really counts," is when there is a war. People tend to think of World War II as an example of when the United States used its alleged or actual rights without concern for legalities. The fact is that the fundamentals of international politics have changed since World War II. United States forces, and indeed the Navy, cannot go anywhere they wish merely because we regard it as being in our interest. The United States is compelled to observe law, and if the law is unclear, or allows interference with important military missions, by coastal states, the mission may not be performed.

To view the same problem in another perspective, it is evident that a unilateral extension of a land boundary by one state into the territory of another is usually considered as an invitation to armed conflict. Yet when Chile, Ecuador and Peru extended their western

boundaries into an area in which the United States and other maritime nations had important freedoms as sovereign nations, there was no hint of armed conflict. The United States and other maritime nations have lost rights of free navigation on the sea, submerged transit of their submarine, overflight by their military aircraft and, of course, the freedom to fish. Not only were these rights lost, but to the extent the claims of the signatories of the Declaration of Santiago have withstood the test of time, other nations have found themselves in a position to impose similar restrictions. It is suggested that, seen exclusively from a national security point of view, the loss of a few cities could well be insignificant compared to the ultimate loss of the right to freely use all high seas around the world, within 200 miles of every foreign coast.

It can be argued that a civilized nation in the decade of the seventies would not resort to open hostilities to establish or protect its rights on the high seas. Yet, considerable public support would be forthcoming for a military action in support of our land boundaries. It can be assumed, therefore, that citizens today, and indeed nations, cannot be expected to rally in support of a seemingly obscure legal right at sea. One may point to U.S. reluctance over the years to provide naval protection to American tuna boats off the coast of South America, preferring, apparently, to pay Ecuador fines totaling, for example, 2.5 million dollars in 1970. Since, under the

Fisherman's Protection Act of 1967, the United States Treasury reimburses the boat owners for both the licenses and the fines.[4]

On the other hand, it can reasonably be assumed that if Spain or Morocco were to close the Straits of Gibraltar to all warships, and efforts to change their position through negotiation were to fail, some state, the UK, US or USSR, would nevertheless exercise its right to transit the straits. The difficult question is where to draw a line short of the Straits of Gibraltor.

Although this problem may seem remote to many, a similar situation may already be developing over the Strait of Malacca. In November 1971, Indonesia and Malaysia agreed:

> . . . that the Strait of Malacca and Singapore Strait 'are not international straits,' . . . but [they] . . . recognize free use of the waterways for international shipping on 'the principle of innocent passage,' . . . [and] . . . claim the right to close the waterway to any ship.[5]

SUMMARY

It is against this background that the United States and other nations began to deal in earnest with the law of the sea issues between 1967 and 1971. The 12-mile territorial sea is accepted by a plurality of states today and the 200-mile claims are gaining adherents. Despite its

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[4] New York Times, January 7, 1972, p. 2, Col. 1.

[5] New York Times, November 20, 1971, p. 4, Col. 1.

"super power" status the United States cannot force a change in these claims with any effort short of direct military confrontation, which today seems unlikely.

Seen from an historical perspective, the United States can only conclude that if this nation does nothing, the views of a minority of countries stand a fair chance of achieving wider support or at least acquiescence. If, on the other hand, the United States were to do something, it must be in the form of a substantial diplomatic undertaking, not involving the use of military power. A developing country and/or coastal state revolution seems to be taking place and the United States needs to comprehend the reasons for it while at the same time begin plans to negotiate on an honest basis.

Faced with the increasing coastal state claims of offshore jurisdiction, the need for affirmative action to return to stability in the law of the sea seems to be an obvious one. One step in this direction would be to bring unilateral claims into a multilateral arena. International agreement on the territorial sea breadth is a logical starting point for such effort.

Chapter 11

NEW DEVELOPMENTS IN THE LAW OF THE SEA

Proposals for a new law of the sea have been cropping up with increasing frequency, differing widely in basic philosophy, in scope, and in the care and detail with which they have been prepared. However, in many respects a comprehensive new law for the sea may not be feasible at this time. The last major effort, in 1960, failed to resolve many of the problems which it inherited from the 1958 Conference. It may be premature to consider that a new convention in the near future would have a greater impact. On the other hand, it may be time to deal anew with those segments of the law of the sea where the need for a new law is clear, visible and urgent.

No nation, not even the rich and powerful United States, can get exactly the law it wants. But in the development of new law, American attitudes are critical. The U.S. has extensive coasts, capital, technology, power, influence, and a foreign policy that in many ways is enlightened. It has a unique opportunity to develop law in its interests and for the common good.

UNITED NATIONS SEABED COMMITTEE

Ambassador Pardo of Malta, publicly proposed in 1967 that a study be made of the peaceful uses of the seabed and ocean floor beyond national jurisdiction. This proposal resulted in the establishment of a United Nations ad hoc

committee which was followed by a permanent Seabed Committee. From 1967 through 1971, this Committee met regularly and considered a wide range of alternative proposals. They included a concept of an exploitation free-for-all on the seabeds, several intermediate positions, and, at the other extreme, a proposal for United Nations ownership of the seabeds.[1]

While little substantial progress was being made in the Seabed's Committee, it was apparent that proposals, followed by studies, followed by a Committee, followed by General Assembly Resolutions, would inevitably lead to a treaty and sooner or later a law of the sea conference would take place. In view of this, nations began staking out their bargaining positions and proliferation of claims to high seas areas was stepped up.

A Third International Conference

In December 1970, the General Assembly of the United Nations approved a resolution which provided for a Third International Conference on the Law of the Sea to convene in 1973.[2] The Seabed Committee was expanded to 86 members and charged with the task of preparing for the Law of the Sea Conference. This Committee held two sessions in Geneva in 1971.

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[1] Ratiner, op. cit., p. 234.

[2] U.N. General Assembly Resolution 2750c (XXV) of December 17, 1970.

A study of the Seabed Committee report for 1971 and of the statements made in the preparatory meetings indicate trends which could have serious implications on the maintenance of the principles of freedom of navigation on the high seas and upon naval mobility. A majority of the speakers favored the idea of establishing a broad zone of an economic or resource jurisdiction for the coastal state. Many countries said this zone should be 200 miles in width. Although there were different interpretations as to what specific rights the coastal state would enjoy within these zones, there were many who believed that the coastal state should have exclusive rights over all resources, the conservation of these resources and the control of pollution. Few of the members who took this position made an attempt to clarify whether freedom of navigation would be permitted within these zones.[3]

During the past year, the above trends have become a reality on the part of several countries who have actually made claims for extensive territorial seas or resource zones. There have been recommendations that the Organization for African Unity should endorse a broad zone type approach to Law of the Sea problems. In addition, the People's Republic of China has openly supported the Latin American theory that a coastal state has a right to unilaterally extend its

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[3]John R. Stevenson (U.S. Representative), Statement made before the UN Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, Geneva, August 6, 1971.

jurisdiction to 200 miles.[4]

The Question of Exclusive Rights

Most every nation would agree that a coastal state should have certain preferential rights over resources adjacent to its coast. The degree or exclusiveness of these rights, however, can pose a real threat to the principle of freedom of navigation. If freedom of transit were not guaranteed within a resource zone, freedom of navigation for navies and merchant fleets would be seriously affected. All vessels might find themselves subjected to a variety of restrictive regulations subjectively arrived at by every coastal nation. For example, pollution regulations could be established by a coastal state which might prohibit the passage of certain vessels or subject the right of transit of other vessels to the whims of a particular coastal state. The principle of innocent passage might be applied which would prohibit submerged transit of submarines. Overflight by military aircraft might be denied. The net result might very easily be a situation not too dissimilar from one resulting from broad territorial seas. Furthermore, history bears out the real possibility that within a short period of time coastal states would be tempted to actually convert these broad resource zones into territorial seas.[5]

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[4] New York Times, November 21, 1971, p. 10, Col. 1.

[5] Stevenson, op. cit., August 18, 1971.

Free Transit

Another trend which has emerged from the meetings of the Seabed Committee during 1971 has been the lack of support for the theory of freedom of transit through and over international straits. This is essential for the mobility of naval forces. In the August 1971 Geneva Seabed Meeting, the United States tabled draft treaty articles on territorial seas, straits and fisheries. Among other things, the Articles proposed a 12-mile territorial sea providing that a satisfactory agreement could be reached on the question of free transit through and over international straits.[6]

In his August 3, 1971 statement before the Committee, the Honorable John R. Stevenson, United States representative stated:

> We believe the right to transit straits should be regarded in law for what it is in fact: an inherent and inseparable adjunct of the freedom of navigation and overflight on the high seas themselves. Without such a right of transit, these high seas freedoms would lose much of their meaning if an expansion of the territorial sea to twelve miles is to be recognized and agreed.[7]

The majority of public statements made on the subject of international straits expressed the position that innocent passage as defined in the 1958 Geneva Convention was adequate. This would, however, preclude submerged

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[6]U.N. General Assembly, Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, Subcommittee II, A/AC.138/SC.II/L.4. Draft articles on the Breadth of the Territorial Sea, Straits and Fisheries, submitted by the United States, 30 July 1971.

[7]Stevenson, op. cit., August 3, 1971.

transit and overflight. Some states adopted the view that the term "innocent" as defined in 1958 needs redefining. Those taking the latter view based their belief on the idea that the passage of mammoth tankers and nuclear vessels could no longer be considered innocent in respect to the interests and security of the coastal state concerned. It was made clear that retention of all the traditional freedoms of the high seas in straits was not advocated, but rather a much narrower right of merely transiting the straits, not of conducting any other activities. In addition, should a vessel conduct any other activities that are in violation of coastal state laws and regulations, it would be exceeding the scope of its rights and would be subject to appropriate enforcement action by the coastal state.

An example of this restrictive approach is the proposal put forward by the Spanish Government to the UN Seabed Committee meeting at Geneva in March 1971:

> If the breadth of the territorial sea is to be given a general solution . . . by establishing a 12-mile rule, that would appear to us to be acceptable . . . what we consider totally unjustified is any attempt to alter the traditional regime of the territorial sea with respect to innocent passage through its waters [straits] which would constitute a violation of the peace, law and order, or security of a coastal state . . . . This is a traditional safeguard of coastal states which has become more critical with the development of naval power . . . and with technological developments, since warships, nuclear powered vessels, giant oil tankers, and vessels transporting

> dangerous cargoes pre-suppose a potential threat to peace, law and order or the security of a coastal state.[8]

On the other hand, in expressing the U.S. view on the subject of coastal state restrictions, Mr. Stevenson stated in August 1971:

> We doubt whether any state would wish to subject its sea communications or defense preparedness to the consent or political goodwill of another state. Accordingly, it should be apparent that new rules of international law that might have the effect of reducing mobility cannot be expected to enhance international stability. Instead, they can be expected to intensify the competition for strategic advantages relating to activities which are now freely conducted. This would increase not diminish the chance of conflict. No state would gain, least of all a state which suddenly finds itself the object of such competition.[9]

MULTILATERAL NEGOTIATIONS

Any successful multilateral initiative in the law of the sea must adequately accommodate the interests of over 100 nations. If new agreements regarding the oceans are to provide long term stability, they must take into account and satisfy the various interests which have caused and could cause instability.

In assessing various interests in the law of the sea, countries naturally fall into categories based largely on geographical and economic considerations. First, there are nations without coastlines or without access to

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[8]Department of State Cable from the US Mission, Geneva to the Secretary of State, March 16, 1971 (containing translated text of March 16, 1971 Spanish Government statement before Seabeds Committee at Geneva).

[9]Stevenson, op. cit., August 3, 1971.

continental margin areas, and it is safe to say that they have usually been short-changed with respect to benefits from the sea. Some are developed, such as the Federal Republic of Germany, although most can be considered in the developing stage. Second, there are nations which although they cannot be considered land-locked, have very modest coastlines or continental margins. Nations in this category are primarily the developing African countries. Third, there are nations with sizeable coastlines but with virtually no accessible continental margin area. These include Ecuador and Peru and to some extent Chile. Finally, there are nations, both developing and developed, with substantial coastlines and continental margin areas. Australia, Argentina, Brazil, Canada, and India would fall into this category.[10]

The first group of countries, numbering approximately forty, could probably constitute a blocking third at a law of the sea conference if these nations organized themselves as a bloc. They, rather than the military might of the super powers, could thus constitute an effective counter-balance to those nations with strong territorial ambitions in the seas and seabeds. To the extent that they are developing countries, they are probably interested in a scheme in which they could for the first time receive an equitable share of the benefits from the sea. Moreover, since broad limits of coastal state jurisdiction would

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[10]Ratiner, op. cit.,pp. 240ff.

exclude these areas from producing international revenues, these nations would presumably favor narrow coastal state boundaries and some form of international control of resources beyond the territorial seas.

The second category of nations could find its interests similar to the land-locked countries. For, if the principle of revenue sharing were to be included in an international regime, such countries, to the extent that they qualified as developing countries, would probably obtain greater net benefits from having a share in all the world's continental margins, rather than from having exclusive benefits from a limited continental margin adjacent to their own coasts.

The third group has made it well known that it would only be satisfied with 200 miles of coastal jurisdiction. Although the fishing resources in their claimed territorial seas are abundant, jurisdiction over their seabeds would net these countries nothing, since their continental shelf areas are both narrow and inaccessible. It is reasonable to believe, therefore, that a share in worldwide seabed revenues would be more attractive than 200 miles of ocean limited to fish. It is interesting to note that reports from Ecuador, one of the original members of the "200 mile club," suggest that the Ecuadorian Government is planning to announce a major policy change. "Instead of claiming 200 mile 'sovereignty,' Ecuador may claim 15 miles, with the remaining 185 miles offshore free for 'innocent passage' of

all ships and planes."[11]

The fourth group raises two separate issues. Countries like Canada and Australia would obtain little benefit from a revenue-sharing regime in which the revenues went to developing countries exclusively. Their primary interests would be in the resources off their own coast, therefore, they would probably favor jurisdiction over as large an area as possible. The developing countries in this category are confronted with an economic calculation. Could they develop enough of the resources off their own coasts to counterbalance the benefits they would receive if they were to share in worldwide revenue?

SUMMARY

The problem of course with attempting to categorize complex problems in neat little boxes is that many problems today do not lend themselves to such categorization. In the cases above, the problem becomes totally confused when nations begin moving from one category to another. Australia, for example, may favor a broad continental shelf for national exploitation purposes, yet because of her maritime and shipping interests in the Southeast Asian area, may fear broad coastal state jurisdiction in the waters above the continental margin. Hence, a variety of nations with maritime interests such as Japan, Australia, the United Kingdom, the Netherlands, Norway and the Soviet Union

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[11] New York Times, January 7, 1972, p. 2, Col. 6.

will have to carefully consider the effect on their maritime interests if they were to favor expansive coastal state jurisdiction.

In spite of the foregoing, it would not seem unreasonable to assume that a significant number of countries in each of the four categories indicated above could be expected to favor various aspects of international control of resources beyond the limits of national jurisdiction, with resultant restrictions on coastal state sovereignty. Any U.S. initiatives in the law of the sea must, therefore, not overlook this implication.

The time may be right therefore to seek an International Law of the Sea Conference which could gain agreement on some of the more pressing problems confronting maritime nations today. An agreement on the seabeds regime could be the logical first step in seeking agreement on the breadth of the territorial sea. Guarantees and assurances to developing nations incorporated in a seabed regime could go a long way in reducing the intransigence of nations claiming territorial seas in excess of 12 miles.

Chapter 12

A U. S. POSITION ON LAW OF THE SEA

Any U.S. proposal on the Law of the Sea must take into consideration the many views of the U.S. scientific and industrial communities as well as the interests of national security and naval mobility. Against this setting of opposing views, a U.S. proposal should be consistent with the overall interests of the world community and seek to foster international cooperation but without sacrificing security or maritime mobility.

A PROPOSAL

It is suggested that the following principle should, therefore, be considered in the development of a U.S. proposal for the forthcoming Geneva Conference:

1. Seek agreement on the exploitation of the sea-bed, the ocean floor and its subsoil, beyond the limits of the national jurisdiction which would guarantee their benefits to the international community.

2. Seek agreement on a 200-mile exclusive fisheries zone. A 200-mile exclusive zone could provide the necessary inducement for majority acceptance by providing exclusive fishing rights to coastal states. In this zone, beyond the 12-mile territorial sea, ships and aircraft would have the right to navigate freely, unrestrained by the limitations inherent in "innocent passage." Issues such as revenue sharing, licensing, and conservation would be determined by

an international body acting in concert with the coastal state.

The critical element in determining the outer limit of the exclusive zone is fisheries, not mineral resources. Further study may suggest that a revised definition of the outer limit of the exclusive zone may be necessary but insofar as can be determined, all major fish catches, except tuna and whale are made in the exclusive zone.

3. Seek agreement on a 12-mile territorial sea. The 12-mile claim is recognized by a plurality of states today (see Appendix) and it seems to be the only claim which can realistically be expected to achieve broad acceptance.[1] It is unreasonable to assume that unilateral claims in excess of 12 miles can be reversed, even by the United States. A 200-mile exclusive fisheries zone might induce states with unilateral claims in excess of 12 miles to moderate their claims, recognizing the fact that in most cases where broader jurisdictional claims have been made, the reasonsfor those claims were resource-oriented.

4. Seek to obtain agreement on international straits which would retain enough of the character of high seas through the straits to assure continental freedom of navigation and overflight. This element of a proposal is no doubt the most significant for international commerce on the high seas as well as naval mobility. Without a guarantee for free transit through international straits,

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[1]Stevenson, loc. cit.

an increased territorial sea, even to only 12 miles, could prove disastrous to both maritime commerce and naval mobility.

5. Seek to obtain agreement to encourage scientific research in the oceans, unimpeded by arbitrary coastal state restrictions.

6. Urge a strong but reasonably unambiguous pollution control convention which includes the provisions for international monitoring and enforcement.

7. Finally, adoption of a resource management plan which gives the greatest assurances to fisheries and mineral resources should be encouraged. The plan should be designed to aid in closing the economic gap between the developing and the developed nations and encompass fish harvesting and mineral exploitation.

It is foolhardy to believe that all of the points indicated above will enjoy wide favor and admittedly there are major obstacles which must be surmounted before any point could receive unilateral accept nce. However, agreement on all matters of substance are going to be difficult at the next law of the sea conference.

The trends in the past decade can certainly cast serious doubt upon the effectiveness of the major maritime nations to influence the direction of a new law of the sea regime. The ever increasing voice of blocs of developing nations and the reluctance of the super powers to apply force and their inability to effectively use persuasion

could bring about a reversal in the "might equals right" concept and cast the mini-states into the center ring of the political circus.

INTERNATIONAL REGULATORY MACHINERY

The question may be raised as to whether the establishment of international regulatory machinery is in the best interest of the United States. It may be postulated that it is in the long term interest of the U.S. to strengthen rather than weaken international regulatory machinery. The U.S. has less influence in the United Nations today than it has had in the past and there is little reason to believe that this trend will change. However, the alternatives to stronger international organizations to deal with such things as pollution, fisheries problems, and international straits are not very attractive either. The richest nation in the world has the most to lose if the problems of the oceans are not solved in a rational manner. If an effective international regime for regulating ocean resource use and development can be made to work, it will perhaps build confidence as well as experience in developing international structures and organizations capable of handling other politically explosive problems.

Formulating the Framework

The development of international institutions and machinery for the seas is inextricably tied to the development and changes in the law of the seas. International

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agreements reached with regard to such things as the width of the territorial sea, international straits, regulation of world fisheries, and the deep seabed will determine many of the functions to be performed by international machinery. In turn, functions will influence the degree of authority and responsibility that must be accorded international bodies, and will determine patterns of international decision making.

The development of international machinery in this respect would not be a completely new venture into the world of the unknown. Technological advances have had considerable influence on international relations already. New technologies are emerging that require the cooperation of many countries if the benefits of the technology are to be fully realized, or that have effects beyond national borders, or that are relevant primarily outside national jurisdiction, or that require investment beyond the means of most or all nation states acting individually. These technologies, which can be thought of as global technologies, are represented in aspects of outer space exploration, in nuclear energy, in concern over pollution, in many fields of medicine, and in many elements of exploitation and use of the maritime environment. These global technologies have the general effect of reducing a nation's freedom of action to apply science and technology as it alone sees fit, especially when viewed in combination with economic and political interdependence. When it becomes

technologically possible for one or a few nations to alter the entire earth's environment, perhaps irreversibly, or to destroy resources known to be needed by others, freedom of unilateral action may simply become unacceptable. Limitations upon unilateral action will be particularly relevant as technology becomes simpler and less costly, and spreads from a few advanced nations into the hands of many.

International Authority

The issues associated with developing an adequate international regime for the oceans are made more complex because of the long history of private, national and international activities on the high seas and the legal inheritance they bring.

In principle a nation can choose among four paths in the development of international authority over the oceans. It can follow a path of resistance to all but the barest minimum of international rules. This is an easy but selfish policy which favors the advanced nations in the best position to exploit ocean resources. It can elect a second path leading to a series of bilateral agreements which might keep the complications of international organization to a minimum, but would also tend to favor the wealthier nations. A third path is toward vesting a real measure of control in an international organization. The fourth and perhaps most venturesome path would be toward actual ownership of land or resources by an international organization. The latter two choices favor the development

of independent power in international organizations, and by implication some attrition or limitation of national power and freedom of action.

The third alternative, vesting control in an international organization, could provide the means for an acceptable solution. The creation of an organization within the framework of the United Nations with special responsibilities in respect to the exploitation of the resources of the sea has a distinct advantage since the basic framework has already been established. Its initial authority might include the issuance of fishing licenses, collection of revenue, establishing quota regulations, and with authority to refer disputes to international arbitration or adjudication, or perhaps directly to the International Court of Justice.

OUTLOOK FOR 1973 CONFERENCE

While the proposed 1973 Law of the Sea Conference may not result in agreement in all disputed areas in the law of the sea, the only way to achieve a solution to these unresolved problems is to continue studying them. An international conference may not necessarily reach substantative agreement; it may, and often does, however, facilitate the delineation of the areas of disagreement. Moreover, with the spotlight of world public opinion focused upon an international conference there is always the hope that opposing sides will concede enough to produce a

comprehensive convention which can move the development of international law foreward in this area and reduce the probability of confrontation. Since the world is already too small for violence, the conference method of resolving international problems must be used increasingly.

CONCLUSIONS

In the decade of the 1970's, the United States will be presented with many opportunities in the oceans which can contribute to its national well-being. In part, these opportunities will be of the kind that have in the past provided for growth of the economy of the United States since possibilities for trade and investment abroad in countries bordered by the sea continue to grow at an increasing rate. Beyond the conventional use of the oceans, advances in technology provide economic opportunities in further developing the resources of the sea, as well as using the sea in new ways for military purposes. These developments suggest that the sea will become a resource of greater importance than ever before and therefore a source of both power and dispute. The opportunities for the United States may be endangered by political developments restricting the use of the seas. These restrictions could arise from either unilateral acts of nations controlling favorable portions of the sea and strategic straits or from international or regional agreements arrived at prior to an adequate technological, political, military or economic assessment

of the implications of such actions.

As a naval power, the United States must maintain freedom of maneuverability for its naval forces. This could best be served, as it has in the past, by maintaining a three mile territorial sea, together with the general agreement that warships enjoy the right of innocent passage. Yet changes in the international community have taken place which preclude this traditional posture. The three-mile limit is no longer a majority position. Innocent passage of warships, as well as oil tankers and nuclear powered vessels is being questioned.

Uses of the sea have increased from providing a source of food yesterday, to an economic, social, and political revolution in ocean technology today. This revolution has outstripped the law of the sea in some areas and left unresolved questions in other areas. Moreover, the burgeoning population of this century is being forced into a position of increased reliance on the protein and mineral resources of the sea. This was brought to focus by the 1945 Truman Proclamation and subsequent expanded territorial sea claims based on this Proclamation.

The effectiveness with which the United States is able to utilize its military power as an instrument of its foreign policy will depend, to a great extent, on the agreed breadth of the territorial sea. The most logical alternative to the now defunct three-mile limit is a

twelve-mile territorial sea. It has become, with some exceptions, the international fishing and customs limit. A plurality of states have already adopted twelve miles as their limit of territorial waters.

Agreement on a twelve-mile limit alone does not provide a complete answer. There must be agreement for free transit through, under and over international straits if naval operations and maritime trade are expected to continue unimpeded.

It is vital to the United States that an agreement be reached. Without agreement, there is virtually no end in sight to the limits and extent of territorial sea claims. The 200-mile limit continues to gather support. The 12-mile limit is obviously a better choice, and for the United States, a necessary compromise.

The effective use of the sea to further U.S. interests does not mean the abridgment or infringement of the rights or interests of other nations. The oceans are so vast and the potential benefits so great that a cooperative international effort to develop maritime resources for the benefit of all humanity seems both logical and appealing. The institutional means for this development are so rudimentary while activities and interests of other nations are evolving so fast that urgent and continued U.S. efforts are required in the interim to preclude a possible abridgment of our interests by others.

The implication is that freedom of the seas cannot be conceived of as being static, especially since increasing intensity and sophistication of ocean exploitation and military technology require legal arrangements beyond the traditional understanding of this concept. An evolving concept of freedom of the seas does not imply that more suitable versions must reflect narrow conceptions of our national interests. The problem is to adopt the principle of freedom to the general interest rather than to any exclusive interest. A realistic conception of freedom of the seas is likely to remain vital to protection of the maritime interests and national security of the United States for many years to come.

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APPENDIX

TERRITORIAL SEA CLAIMS AS OF MARCH 31, 1972[1]

Country	Territorial Sea	Country	Territorial Sea
Albania	12 miles	Fiji[5]	See note
Algeria	12 miles	Finland	4 miles
Argentina[1]	200 miles	France	12 miles
Australia	3 miles	*Gabon	30 miles
Bahrain	3 miles	Gambia	12 miles
Barbados	3 miles	Germany (E)	3 miles
Belgium	3 miles	Germany (W)	3 miles
Brazil	200 miles	Ghana	12 miles
*Brunei (UK)	3 miles	Greece	6 miles
Bulgaria	12 miles	*Greenland (Denmark)	3 miles
Burma	12 miles	Guatemala	12 miles
Cambodia	12 miles	Guinea	130 miles
Cameroon	18 miles	Guyana	3 miles
Canada	12 miles	Haiti	6 miles
Ceylon	12 miles	Honduras	12 miles
Chile	50 kilometers	Iceland	4 miles
		India[6]	12 miles
China (Comm)	12 miles	Indonesia	12 miles
China (Taiwan)	3 miles	Iran	12 miles
Colombia	12 miles	Iraq	12 miles
*Comoro Islands (France)	12 miles	Ireland	3 miles
		Israel	6 miles
Congo (Brazzaville)	3 miles	Italy	6 miles
		Ivory Coast	6 miles
Costa Rica	12 miles	Jamaica	12 miles
Cuba	3 miles	Japan	3 miles
Cyprus	12 miles	Jordan	3 miles
Dahomey	12 miles	Kenya	12 miles
Denmark	3 miles	Korea (N)	12 miles
Dominican Republic	6 miles	Korea (S)	3 miles
Ecuador	200 miles	Kuwait	12 miles
El Salvador[2]	200 miles	Lebanon	20 kilometers
Equatorial Guinea	12 miles		
Ethiopia	12 miles	Liberia	12 miles
*Faroe Islands (Denmark)	3 miles	Libya	12 miles
		Malagasy	12 miles

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[1]United States Department of the Navy, Office of the Chief of Naval Operations (OP-616), List of Territorial Sea Claims (Serial 3486P61), 4 March 1972, corrected to 31 March 1972.

Country	Territorial Sea	Country	Territorial Sea
Malaysia	12 miles	Somali	12 miles
Maldive Islands[7]	See note	South Africa	6 miles
Malta	6 miles	Spain	6 miles
Mauritania	12 miles	Sudan	12 miles
Mauritius	12 miles	*Surinam (Netherlands)	3 miles
Mexico	12 miles	Sweden	4 miles
Monaco	12 miles	Syria	12 miles
Morocco	3 miles	Tanzania	12 miles
Muscat & Oman	3 miles	Thailand	12 miles
Nauru	12 miles	Togo	12 miles
Netherlands	3 miles	Tonga	3 miles
*New Caledonia (France)	12 miles	Trinidad	12 miles
New Zealand	3 miles	Tunisia	6 miles
Nicaragua	3 miles	Turkey-6 miles (Black Sea-12 miles)	
Nigeria	30 miles	UAR	12 miles
Norway	4 miles	United Arab Emirates[4]	3 miles
Pakistan	12 miles	United Kingdom	3 miles
Panama	200 miles	United States	3 miles
Peru	200 miles	Uruguay[3]	200 miles
Philippines[8]	See note	USSR	12 miles
Poland	3 miles	Venezuela	12 miles
Portugal	6 miles	Vietnam (N)	12 miles
Quatar	3 miles	Vietnam (S)	3 miles
Ras al Khaimah	3 miles	Western Samoa	3 miles
*Reunion (France)	12 miles	Yemen	12 miles
Romania	12 miles	Yemen (S)	12 miles
Saudi Arabia	12 miles	Yugoslavia	10 miles
Senegal	12 miles	Zaire (formerly Congo Kinshasa)	3 miles
*Seychelles (UK)	3 miles		
Sierra Leone	200 miles		
Singapore	12 miles		

*Certain dependent areas are included on the list. These particular dependent areas are separately listed because their locations give them importance with respect to world-wide navigation. This list does not include all dependent territories. In each case the breadth of the territorial sea of the dependent is fixed by its metropole, which appears in parentheses after the name of the dependent territory.

Notes:

1. Argentina: By law of 29 December 1966, sovereignty was claimed over a 200 mile zone, but freedom of navigation of vessels and aircraft was not curtailed. It is not clear whether or not this is a territorial sea claim in extension of the previously claimed three mile limit.

2. El Salvador: Article 7 of the Constitution established a 200 mile territorial sea which included "the air overhead, the subsoil and the corresponding continental shelf." It further provides, however, that the decree "does not affect freedom of navigation in accordance with accepted principles of international law." El Salvador's Permanent Representative to the UN and leading Law of the Sea authority, Dr. Reynaldo Galindo Pohl, has interpreted El Salvador's territorial sea claim as not affecting navigation beyond 12 miles.

3. Uruguay: Law of 3 December 1959, claims a 200 mile territorial sea, but specifically guarantees freedom of navigation and overflight in the area beyond 12 miles. In the 12-200 mile portion of the zone only foreign fishing is restricted.

4. United Arab Emirates: U.A.E. is composed of Abu Dhabi, Agman, Dubai, Fujairah, Sharjah and Umm Al Qaiwain. All of these Sheikdoms claim 3 miles except for Sharjah which claims 12 miles.

5. Fiji: Claims an archipelago theory and regards the seas enclosed within the archipelago to be territorial seas, within which it does not restrict the right of innocent passage. Beyond the archipelago, Fiji claims a 3 mile territorial sea.

6. Indonesia: Claims an archipelago theory under which its 12 mile territorial sea is measured seaward from straight baselines connecting its outermost islands.

7. Maldive Islands: The "territory" of the Maldive Islands is defined as the islands, sea and air surrounding and in between the islands situated between Latitudes 7° - 9½' (North) and 0° - 45 ½' (South) and Longitudes (East) 72° - 30½' and 73° - 48'.

8. Philippines: Archipelago theory: Waters within straight lines joining appropriate points of outermost islands of the archipelago are considered internal waters; waters between these baselines and the limits described in the Treaty of Paris, Dec. 10, 1898, the United States-Spain Treaty of Nov. 7, 1900, and U.S.-U.K. Treaty of Jan. 2, 1930, are considered to be the territorial sea.