Chapter 2

Territorial Sea

I. Territorial Sea Concept

The territorial sea concept has existed as a cornerstone principle of the law of the sea for many centuries. It has always been recognized that the freedom of the sea does not apply to all the areas of the globe that belong to the sea in the geographical sense. The concept of territorial sea derived its origin and historic rationale from fear of who might come against their shores by sea, from concern to keep the wars of others at some distance, from desire to retain for their own the most accessible fish, and from interest in preventing violation of their territorial sovereignty through the smuggling of things and people across their sea frontiers.

The territorial sea concept had its most significant origin in the 17th century. During this period, a fairly widespread and generally accepted body of customary international law including that, except for limited territorial sea claims, the seas were "free" for the reasonable use of all states. The territorial sea concept was thus developed through the gradual establishment of the maritime powers to become the general practice as evidenced by widespread custom and practice, and not through particular international treaty or convention. By the 19th century, there was a general consensus among the major maritime powers that

a coastal state could legitimately claim as its territorial sea, a belt of sea immediately adjacent to its coast.

Distinction between Territorial and National Waters.

When we speak of the territorial sea, we are referring to that body of the seas which is included within a definite maritime belt immediately adjacent to a state's coastline. Territorial waters consist of the waters contained in a certain zone or belt which surrounds a state and thus includes a part of the waters in some of its bays, gulfs and straits. Within those waters, it is generally recognized that foreign powers may claim certain rights for their vessels and their subjects, the chief of which is the right of innocent passage. Interior or national waters, on the other hand, consist of a state's harbors, ports and roadsteads and of its internal gulfs and bays, straits, lakes and rivers. It is important to note this physical difference, for separate rules govern these different bodies of water.

Internal waters are characterized by the fact that the coastal state exercises complete sovereignty over them in the same manner that it exercises sovereignty over its land mass. In these waters, apart from special conventions, foreign states cannot, as a matter of strict law, demand any rights for their vessels or subjects. Although for reasons based on the interests of international commerce and navigation, it may be asserted that an international custom has grown in modern

times that the access of foreign vessels to these waters should not be refused except on compelling national grounds. As regards the bed of the waters and the subsoil beneath both the territorial and the interior waters, it is now generally admitted that they belong, to an unlimited extent, to the state which is sovereign of the surface. It therefore possesses the right to carry out the exploitation of both the surface and its subsoil by tunnelling or mining for coal and other minerals. Similarly, the rights of state extend to the air space above its territorial and interior waters.

Juridical Status of Territorial Waters

The legal status of territorial sea was confirmed by Article 1 of the Geneva Convention of 1958 on the Territorial sea and the Contiguous zone:

> The sovereignty of a state extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

And also by the Article 2 of that Convention:

> This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.[1]

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[1] Ian Brownlie (ed), Basic Documents in International Law (London: Oxford University Press, 1967), p. 70.

Thus, in this part of the sea the coastal nation exercises full sovereignty over the waters, the air space, and the seabed. The coastal state has exclusive rights to all its uses and its resources subject to "historic rights" to fish which other nations may have acquainted, and to rights given to other nations by treaty.

Still, there is one word to note here which gives us the key to the distinguishing features of territorial seas, it is "sovereignty." When either the term "sovereignty" or "jurisdiction" is applied in connection with a land mass, it means absolute control subject to but minor servitudes or rights of other countries. When the term is used in connection with territorial seas, however, the sovereignty exercised there by the coastal state is subject to certain well-defined limitations. Moreover, there are certain rights exercised by the coastal state over the territorial sea which are easily distinguishable from those exercised over the land mass.

The reasons which justify the extension of the sovereignty of a state outside the limits of its land territory are always the same. They may be summarized under the following heads:

(i) the security of the state demands that it should have exclusive possession of its shores and that it should be protect its approaches;

(ii) for the purpose of furthering its commercial, fiscal and political interests, a state must be able to super-

vise all ships entering, leaving or anchoring in its territorial waters; and

(iii) the exclusive exploitation and enjoyment of the products of the sea within a state's territorial waters is necessary for the existence and welfare of the people on its coasts.

Hall[2] upholds the necessity of the maritime belt on the ground that unless the right to exercise the control were admitted, no sufficient security would exist for the lives and property of the subjects of the state upon land. On closer examination, it will soon be found that the more absolute and complete are the rights of sovereignty that the coastal state is authorized to exercise, the greater is the need for a narrow delimitation of the area over which that sovereignty is recognized. Conversely the wider the limits traced for this area of the sea, the greater is the need for restrictions on the sovereign rights of the coastal state."[3]

The International Law Commission on preparing the draft article of the 1958 Convention on the Territorial Sea and Contiguous Zone, declared in its commentary to the draft of the

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[2]Quoted from C. John Colombos, The International Law of the Sea (5th ed.; London: Longmans, Green and Co., Ltd., 1962), p. 78.

[3]Max Sorensen, Law of the Sea (New York: Carnegie Endowment for International Peace, 1958), p. 232.

Article 1 that "the rights of the coastal state over the territorial sea do not differ in nature, from the rights of sovereignty which the state exercises over other parts of its territory."[4] Consequently, the state can exercise legislative, executive, and judicial authority with respect to persons and ships of all nationalities in the territorial sea unless such persons or ships enjoy immunity by virtue of other rules of international law; a state may also exclude foreign ships and nationals from the territorial sea, unless it has undertaken by special treaty engagements not to do so.

The Article goes on to declare, however, that this sovereignty is exercised subject to the provisions of the Convention and other rules of international law. The practical application of this rule is primarily the reservation of the right of innocent passage by foreign ships.

Right of Innocent Passage

Within the territorial sea, vessels of other countries were recognized as having a right or priviledge of passage provided they complied with the requirements of what came to be called "innocent passage." Such passage can be for the purpose of transiting the territorial sea without entering in

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[4] Ibid., p. 233.

internal waters, or of proceeding to internal waters, or of going to the high seas from internal waters. The passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal state. Passage includes stopping and anchoring if these actions are incident to ordinary navigation or are necessary because of distress or force majeure (a superior or irresistible force) (Article 14 of the Convention of Territorial Sea). The coastal state must not hamper innocent passage; it is obligated to use the means at its disposal to insure respect in its territorial seas for the principle of freedom of communication and to prevent those waters from being used for acts contrary to the rights of other countries. It also has the duty to give adequate publicity to any known dangers of navigation. (Article 15)

The Corfu Channel case between Great Britain and Albania, decided in 1949 provided an instructive example of this clause. In this case the International Court of Justice held that in view of "every state's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states,"[5] the Albanian authorities were under an obligation to notify or give warning of the presence of a minefield in Albanian waters. The minefield had previously caused damage to two

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[5]L. Oppenheim, International Law: A Treatise (8th ed.; London: Longmans, Green and Co., Ltd., 1963), Vol. 1, p. 291,310.

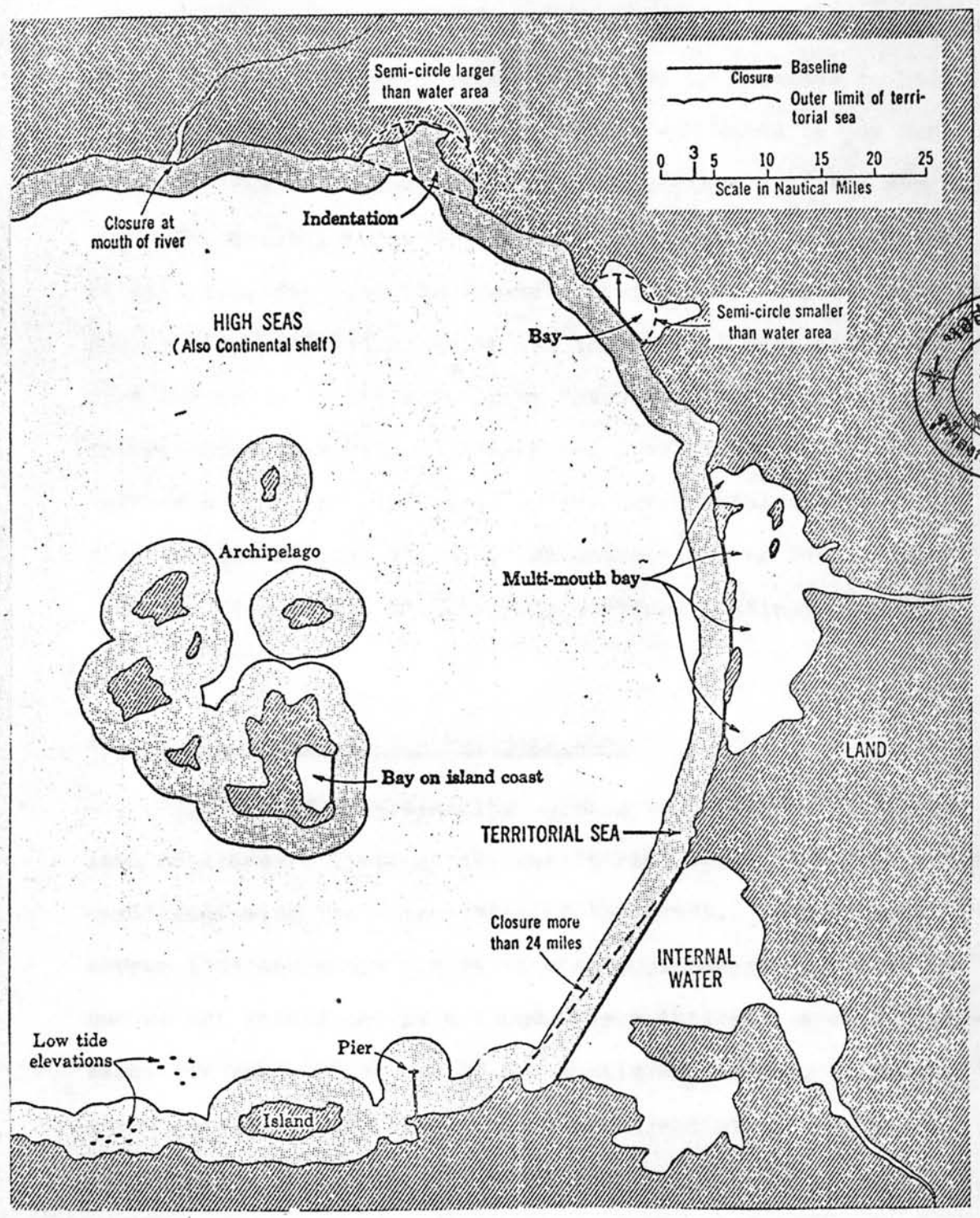
British destroyers and the Court held Albania responsible for the damage caused. As the Court found that in the circumstances of the case the Albanian authorities must be presumed to have had knowledge of the minefield, Albania was bound to pay compensation for the damage caused by the explosion of the mines.

The coastal state may prevent non-innocent passage; and it may also, for security reasons, temporarily suspend innocent passage in specified areas of its territorial sea, provided that the areas do not constitute "straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state." (Article 16). No charges may be levied upon foreign ships except for specific services rendered. (Article 18).

II. Delimitation of the Boundary Line

The method traditionally adopted to determine the baseline or landward limit of the territorial sea is the "low water mark" following the sinuosities of the coast. When it does happen that the coast has no special configuration, where it curves but gently and is not marked by relatively acute indentations for bays and rivers or by an offshore island, no difficulty arises in determining the starting-point of the limit. The baseline from which the territorial waters are measured is always "the line of mean low-water spring tide, following

Figure 1: The Baseline from Which the Territorial Sea Is measured



Source: US. Department of State, Bureau of Public Affairs, 1974

the sinuosities of the coast and not a line drawn from point to point."[6] And this rule is reaffirmed in Article 3 of the Geneva Convention on the Territorial Sea 1958.

The problem, however, becomes more difficult when geography does not so conveniently conform to wishes for simplicity. Some coastal areas do appear to be without any distinctive or special configuration and are characterized by relatively uncomplicated contours, but there are more the exception than the rule. Other coasts display a great variety of configurations, such as indentations that vary in size, shape, general usage, and relationship to other physical features. In further complexity, the coastal zone may be spotted with islands of various sizes, shapes, and relationships with each other and with other physical features of the coastal area.

All these features--a deeply indented coast with considerableopenings or clefts,or fringed islands and shoals, or in the case of islands or archipelagos lying off the coast, application of the general principle would come into conflict with geographical or other factors which may point to special needs or interests of the coastal state. In this certain geographical circumstances it is permissible to draw "straight baselines" across the sea on a map,from headland to headland,

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[6]Colombos, op. cit., p. 103.

or from island to island, and to measure the territorial sea from those straight lines.

The law governing the establishment of such baselines was set forth by the International Court of Justice (ICJ) in the well-known "Anglo-Norwegian Fisheries Case," which was decided on December 18, 1951. The Court was asked by the two Governments to decide whether the "method employed for the delimitation of the fisheries zone by the Royal Norwegian Decree of July 12, 1935, and the baselines fixed by the said Decree in application of that method was contrary or not to international law.[7]

The portion of the coast covered by the Norwegian Decree extended from the Norwegian-Russian border on the south shore of Varanger-Fjord northwards along the east coast of Finnmark to the North Cape and thence southward along the west coast as far as Traena (66° 28.8' N.), a little to the south of Vestfjord. It defined the limits of Norwegian territorial waters over this great stretch of coast by reference to straight baselines drawn between 48 fixed points some of which were over 10 miles apart, the longest being 44 miles. The outer limit of Norwegian territorial waters drawn 4 miles from these baselines by parallel lines.

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[7] Ibid., p. 104.

In denying the validity of the Norwegian Decree under international law, the United Kingdom Government reaffirmed its view that for the proper delimitation of territorial waters, the baseline must be the low-water mark or permanently dryland or the proper closing line of Norwegian interior waters. In view of the special configuration of the Norwegian coast and other irregularities of its coastline, the United Kingdom Government advocated the adoption of the "arcs of circles" method, which consists in drawing arcs with a radius of 3 miles (in the case of Norway, 4 miles) from every permissible base-point along the coast and of treating the line thus formed by all the intersecting arcs as the outer limit of a state's territorial waters.

In its judgement, delivered on December 18, 1951, the operative portion of the opinion of the Court was this:

> Where a coast is deeply indented and cut into, as is that of Eastern Finnmark (Norway's Northern coast) or where it is bordered by an archipelago such as the "skjaergaard"* along the western sector of the coast here in question, the baseline becomes independent of the low-water mark... In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coast line to be followed in all its sinuosities; ..."[8]

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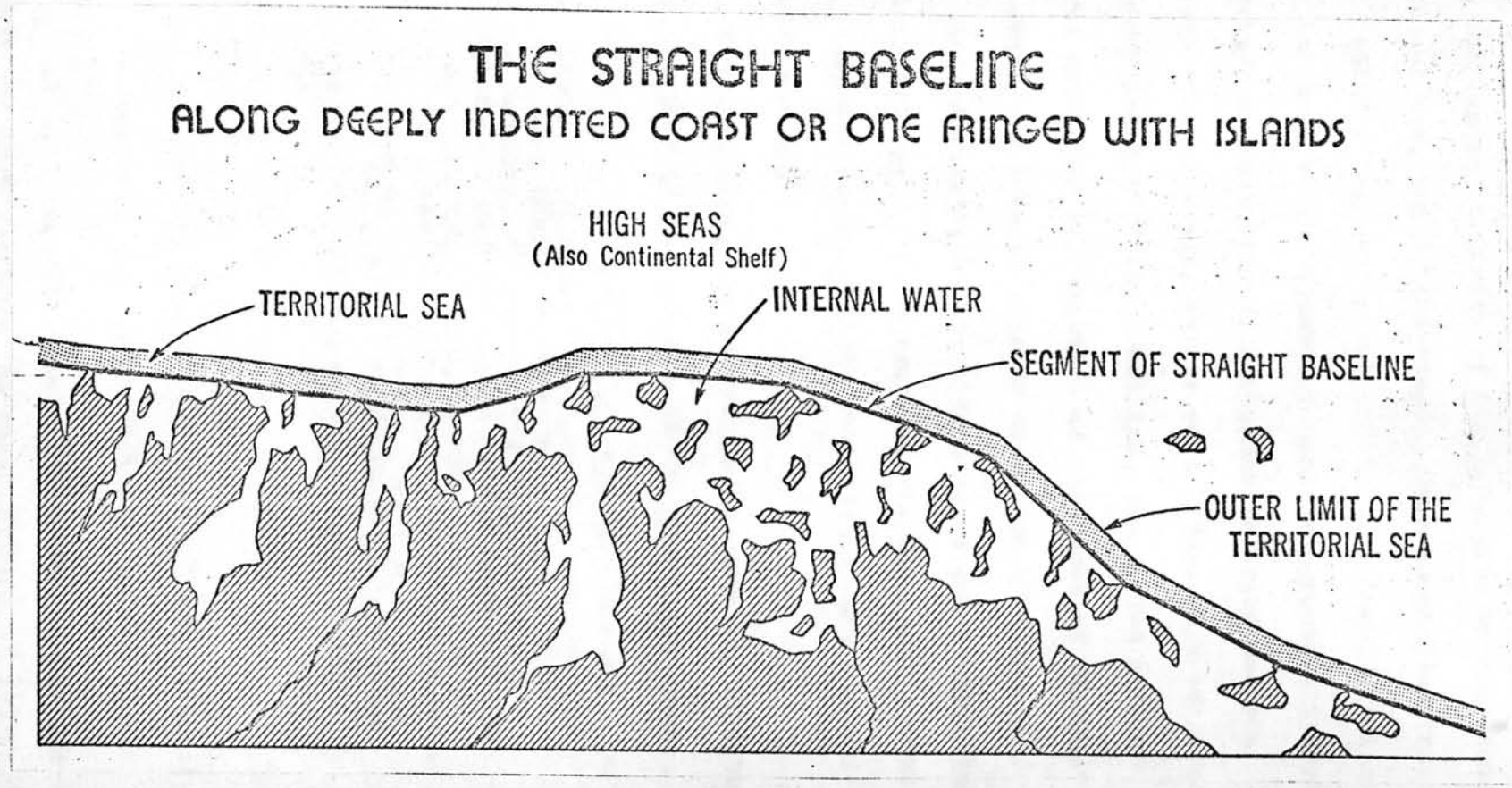
*"Skjaergaard" is a Norwegian term meaning literally rock rampart and embracing the various islands, islets, rocks and reefs.

[8]Arthur H. Dean, "The Geneva Conference on the Law of the Sea: What Was Accomplished," American Journal of International Law, 52, 4(October, 1958), 616.

Figure 2: The Straight Baseline Along Deeply Indented Coast or One Fringed with Islands



Source: US. Department of State, Bureau of Public Affairs, 1974.

This solution was dictated, in the Court's opinion, by 'geographic realities' and was also influenced by 'economic interests peculiar to a region, the reality and importance of which are clearly evidenced by long usage.' The Court thus arrived at the conclusion, by 10 votes to 2, "that the method employed for the delimitation of the fisheries zone by the Royal Norwegian Decree of July 12, 1935, was not contrary to international law," and by 8 votes to 4," that the baselines fixed by the said Decree application of this method were not contrary to international law."[9]

The International Law Commission sought to embody the opinion of the Court in its draft. It did so in substantially the language which was finally adopted by the Conference in 1958 as Article 4 of the Convention on the territorial sea which provides:

> 1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baseline from which the breadth of the territorial sea is measured.
>
> 2. The drawing of such baselines must not depart to any appreciable extents from the general direction of the coast...
>
> 3. ...
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> 4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining

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[9]Colombos, op. cit., p. 106.

> particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage."[10]

At the time of the decision, the Court's opinion was regarded as an innovation, but the principle laid down in Article 4 has come to be generally accepted, and since 1964 the United Kingdom has used straight baselines off the west coast of Scotland.

In the case of Thailand, the Thai government proclaimed to draw the straight baseline closing the upper part of the Gulf of Siam on September 22, 1959 in order to claim the rights of the historic bay. Eleven years later on June 11, 1970 three additional areas were promulgated by the Thai government to use the straight baseline: they were the east coast of the Gulf of Siam, west coast of the Gulf of Siam, and the Andaman Sea.[11]

Nevertheless, complications still arise in the use of straight baselines. Article 4 of the Convention lays down certain guidelines, both for determining when the straight baseline regime may be adopted and for delimiting individual baselines, but in both cases the language is imprecise. How,

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[10]Michael Akehurst, A Modern Introduction to International Law 2d ed., London: George Allen and Unwin Ltd., 1971), p. 218.

[11]Thanom Charoenlap, Territorial Sea of Thailand Bangkok: naval Officer School, 1973), pp. 10-11. (in Thai).

for example, can one determine the cut-off point at which islands along a coast do not constitute a "fringe" or when economic interests peculiar to a coastal region do not justify liberal baseline delimitations? Such imprecision may give rise to sweeping claims to straight baselines along rugged coasts or coasts fringed with islands, with little regard paid to whether or not the sea areas lying within the lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters. Certain it is that the straight baseline regime, adopted originally for a peculiar situation in Northwest Europe, may lead in time to the closing off of extensive areas of the marginal sea as internal waters.

Article 4 refers only to islands along the coast and in its immediate vicinity, out not to "mid-ocean" groups of islands or archipelagos. It is a controversial issue whether the method of straight baselines is applicable in the case of such island groups. By analogy perhaps the sea areas enclosed by straight baselines in archipelagos should be so linked to the land domain as to be subject to the regime of internal waters, but such a requirement has received little attention. And the Geneva conventions themselves are silent as to what the actual criteria are for justifying an internal waters regime. Attention was focussed upon this question by the Indonesian proclamation of 13 December 1957, under which all the

islands of that country were grouped together within one single system of baselines enclosing vast areas of the sea between the islands. The legality of this measure was contested by the maritime countries. A similar problem arises in the case of the Philippines, which traditionally considers the sea areas between the islands as belonging to its territory.

Claims to straight baselines in archiplelagos may be held as contrary to international law, and other states need not recognize them. But foreign ships operating within what a coastal state maintains are its own waters run the risk of arrest, fines and confiscation of catch or gear. A point worth noting is that most of the colonial territories on the mainland of the continents have become independent, and now it is the island territories which will be achieving selfrule. In many cases island groups are administered as one political unit and, when attaining independence, will continue as unified countries. But some of these island groups are spread across thousands of square miles of ocean. Will they, too, demand that their inter-island waters be treated as internal?

Article 5 of the Convention provides:

> 1. Waters on the landward side of the baseline... form part of the internal waters of the state.
>
> 2. Where the establishment of the straight baseline in accordance with Article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territerial sea or of the high seas,

> a right of innocent passage... shall exist in those waters."[12]

It is uncertain whether a right of innocent passage normally exists in internal waters; Article 5 is thus an exception to the general rule. Aside from this, the implications of this principle (Article 5 paragraph 2) are important, in general and particularly, with respect to archipelagos. Whatever is ultimately decided as to the legality of enclosing a group of islands by a system of straight baselines, this Article makes it certain that existing rights of passage between the islands will not be affected.

Bays are restrictively defined and regulated in great detail by Article 7 of the Convention. Long before the Norwegian Fisheries case, it had been customary to draw straight baselines across the mouth of a bay and to measure the width of the territorial sea from such lines. But there was controversy about the maximum permissible length of such lines. After considerable argument, the Geneva Conference laid down 24 miles as the maximum length.

The provisions of Article 7 are stated not to apply to historic bays, i.e. bays which the coastal state claims to be entitled to treat as internal waters, not by virtue of the

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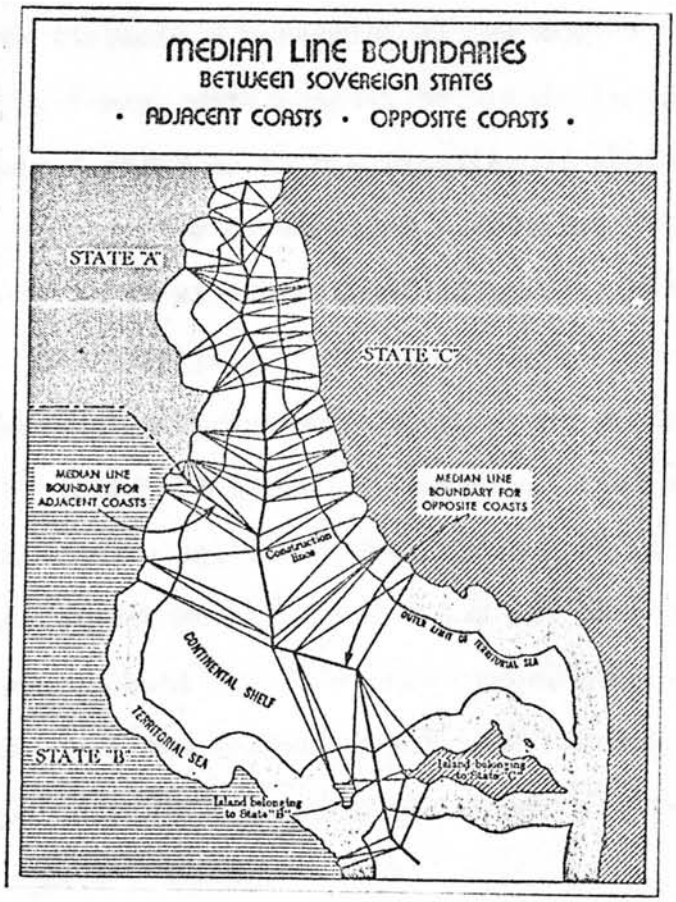
12. Akehurst, loc. cit.

Figure 3: Median Line Boundaries Between Sovereign States



Source: US. Department of State, Bureau of Public Affairs, 1974.

general law, but by the virtue of a special historic right. For instance, Canada claims historic rights over Hudson's Bay, which has an area of 580,000 square miles and is 50 miles wide at the entrance. Anyway, though the Geneva convention did not deal with historic bays, but such claims exist and seem likely to grow in number. An interesting point here concerns the newer states of the world whose former mother countries never considered their colonies' coastal indentations as being uniquely a part of the national territory. After how many years of independence may such a former colony be in a position legitimately to advance its claims to certain offshore waters as belonging to it historically ?

Article 10 (2) states that "the territorial sea of an island is measured in accordance with the provisions of these articles."[13] The British government regards this as an implied condemnation of the practice followed by the Philippines and Indonesia of measuring the territorial sea from straight baselines drawn round the outer edge of an archipelago.

Finally, where the territorial seas of two states would otherwise overlap, the normal solution is to divide the sea down the middle between the two states concerned (Article 12 paragraph 1).

III. Breadth of the Territorial Sea

The basic question in the field of the law of the sea

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[13] Ibid., p. 219.

concerns the breadth of the belt over which the territorial sovereignty of the coastal state extends. Other questions, whether they relate to the rights and duties of states on the high seas or the nature of sovereign rights that the coastal state can exercise over its territorial waters, depend in one way or another on the breadth of the territorial sea. The wider the limit, the less is the need for the exercise of exceptional powers on the high seas and the greater is the need for exceptions to the powers of the coastal state over foreign ships in its territorial waters. The crucial character of the question, and the substantial economic and political interests involved, have contributed to making it one of the most controversial questions in contemporary international law.

We find that by the middle of the 18th century, there was a general consensus among the major maritime powers that a coastal state could legitimately claim as its territorial sea, a three-mile belt or what is commonly termed today as the "cannon-shot rule" adjacent to its coast.* This traditionally doctrine was

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*It should be noted here that the "mile" referred to in connection with territorial sea, contiguous zone and so on, is the "Admiralty "or" nautical mile" as adopted by the British Hydrographic Office. The mile is the same as the geographic mile of 60 to a degree of latitude and is equivalent to 1,853 metres. One such mile equals approximately 1.15 common or stutute miles while the "marine league" equals to 3 nautical miles or 3.453 stutute miles.

founded upon the principle laid down by the Dutch Jurist Bynkershoek in his "De Domino Maris" in 1702 which maintained that -

> The possession of a maritime belt ought to be regarded as extending just as it can be held in subjection from the mainland... Hence we do not concede ownership of a maritime belt any farther out than it can be ruled from the land and yet we do concede it that far... the control of the land (over the sea) extends as far as cannon will carry; for that is as far as we seem to have both command and possession. I am speaking, however, of our own times, in which we use these engines of war; otherwise I should have to say in general terms that the control from the land ends where the power of men's weapon ends; for it is this, as we have said, that guarantees possession[14]; imperium terrae finiri ubi finitur armorum potestas.[15]

In the course of time, the three - mile limit was accepted by the major maritime nations, among them - Great Britain, and the United States. In addition to Great Britain and the United

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[14]Kurt Von Schuschnigg, International Law: An Introduction to the Law of the Sea (Milwaukee: The Bruce Publishing Company, 1959), pp. 129-130.

[15]F.V. Garcia Amador, The Exploitation and Conservation of the Resources of the Sea (Leyden: A.W. Sythoff, 1959), p. 26.

States, Germany also regards the three-mile limit of territorial waters as the "only one recognized in international law" and therefore had no hesitation in subscribing to Article 1 of the Anglo-American Treaty in her own treaty with the United States of May 19, 1924. The same rule of territorial waters is upheld by National Republic of China, Israel, Jordan, Liberia, Japan and the Netherlands.

Other states, however, claimed wider limits, e.g., the Scandinavian countries, particularly Norway and Sweden, on historical grounds, and further, in the case of Norway, on reasons founded on the peculiar configuration of her coasts, supported the four-miles distance. Belgium, France and Poland seem favorable to the three-mile limit, but claim an extended zone of from 3 to 12 miles for special purposes such as customs supervision and defence. Greece, after wavering between the three - and six - mile limits, has finally adopted the latter distance in the Greek law of September 17, 1936, although at the Geneva Sea Conference of 1958, the Greek delegate asserted that his country would be prepared to accept three miles if a general agreement could be reached. The same limit of six miles is claimed by Spain, Portugal, Saudi Arabia, India and Yugoslavia. The majority of the civil codes of the South American Republics declare that the territorial sea extends to one nautical league from the shore, but attains four leagues for police and security purposes as well as for fiscal and customs regulations. Mexico has since 1935 fixed nine nautical miles for the

breadth of its territorial waters. In 1912, the Russian Government declared that it proposed to maintain, as a permanent policy, a twelve-mile distance for its territorial waters, and this claim was reasserted by the Soviet Government in a decree of June 15, 1927. For the Italian legislation, the Italian Government claimed six miles for territorial waters together with six additional miles for particular rights. Additionally, People's Republic of China, Colombia, Guatemala, Indonesia, and the United Arab Republics also claimed twelve miles. On October 6, 1966, the Thai government also announced the territorial sea of 12 miles from the baselines from which the breadth of the territorial sea is measured.[16]

The problem of the width of the territorial sea came to the fore in the twentieth century when unilateral establishment of fishing and conservation zones called attention to the varying limits set by the coastal states for their territorial waters. And so it is in this time that the claims began to vary widely, from the three nautical miles to 200 miles, claimed by some Latin American states in the Declaration of Santiago 1952. Before considering further to the motives or sources of the demanding of a width of territorial sea by the Latin American claims, let us look briefly at the major causes of the claims to a particular width for the territorial sea.

The Claims to a Particular Width of the Territorial Sea

Perhaps the most significant factor to be considered in determining an appropriate balance between exclusive and inclusive claim is the relationship between the interest which the coastal state is seeking to protect and the authority normally incident to the territorial sea. The real impetus behind most of the demands for a broader territorial sea appears to derive from

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[16]Thanet Kongprasert, "Law of the Sea in Economic Perspective," Bangkok Bank Monthly Review, 8, 5 (May, 1976), 283. (in Thai)

the fact that the ocean areas close to land masses are very widely considered to be highly consequential as a source of food supply for an ever-increasing world population. It is believed that expanded width for the territorial sea could be made to contribute to achieving a greater production of food from the sea or a more effective economic development. There is a most profound community interest, engaging a progressively wider and more highly organized community attention, in assuring adequate production and distribution of food resources, including especially those available from the marine environment. This factor, the potentiality of the oceans as a source of food and wealth, bears of course most heavily upon the issue of the permissible width of the territorial sea for, there is universal agreement that coastal states have a right of exclusive access to the resources included therein.

Apart from this, a demand to monopolize the exploitation of fish or to obtain revenue by requiring payment for exploitation by non-nationals are also the significant interest in the demands for extension of the territorial sea. Indeed, this particular interest overshadows all other particular interests that might be advanced to justify the extension. In attempting to secure a special right in exclusive exploitation of the animal and mineral resources of the marginal belt, coastal states may thus be seen to demand extension of a regime of the most comprehensive authority over wide adjacent sea areas. The extravagance of this claim becomes manifest when the broad comprehen-

siveness of such authority is recalled in more detail as including :

1. Exclusive rights of exploitation and control over animal and mineral resources of the marginal belt;

2. The competence to exclude passage through the marginal belt by qualifying the character of the passage sought or, under some conditions, by suspending any passage at all;

3. Authority to subject navigation in the belt to the regulation of the coastal state;

4. An indeterminate competence over events and persons aboard passing vessels;

5. An equally indeterminate competence over the vessel itself for the purpose of judging claims against it;

6. A competence commensurate with the obligation to maintain safety of navigation in the belt;

7. Authority to protect against pollution from passing ships;

8. Authority to prescribe and apply regulations concerning security, customs and health;

9. Authority to control belligerent use of neutral waters, a control that might be onerous and embarrassing to the claimant during times of violence.[17]

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[17]Myres S. McDougal and William T. Burke, The Public Order of the Oceans: A Contemporary International Law of the Sea (New Haven and London: Yale University Press, 1962), p.72.

However, there is one vital observation about the various limits suggested by the width of the territorial sea. The difficulty with all the specific limits proposed from time to time is that none of them bears any relationship, except in certain very limited instances, to the range within which fish stocks move in adjacent waters. It may be noted here that one determinable limit appears to have such a relationship, and even this limit does not hold for all species of fish. This is because the most important food fish are commonly found in the relatively shallow waters above the continental shelf. Hence, if the territorial sea were to be demarcated as the outer limit of the shelf, it would encompass a substantial part of the presently exploited fish populations of the world. There have been unsuccessful efforts within countries to secure adoption of legislation to this effect, as with respect to certain waters off the Alaskan coast.

The solution of employing the outer edge of the shelf as the boundary of an exclusive fishing area or of the territorial sea would, however, appear wholly inadvisable. Among the many reasons for this is the major one that it would most likely result in a greatly reduced production of fish if it could be enforced. It is not likely that very many coastal states either have the capacity to exploit such an area effectively or could dispose of the fish economically, if a full and rational catch could be made by each state. There is also great doubt that any single state, with very few exceptions, ought to seek, in the

economic allocation of its total resources, to devote such resources to fishing on the scale that would be required effectively to exploit the fish stocks of the continental shelves.

Thus, the claimed width for the territorial sea, whether 6, 9, or 12 miles, offers no solution to the problem which is alleged. The reason for this is that the area which would be included within the territorial sea so expanded would still not include the whole area within which the exploited stock or stocks range. It is probable that there are only a very few areas, in which fish are concentrated so close to shore and do not migrate beyond such limits or beyond the lateral boundaries of the state.

Apart from the interest in monopolizing of fish food, security interest of the coastal state is also served as another significant factor for the claims of certain limits of territorial sea. The interest in security demonstrates, as clearly as any interest, this need for fluidity. In the present decentralized structure of the world arena, each state has an overriding interest in protecting itself from military attack. States continue to find a need for protecting internal value processes, such as those specialized to wealth and well-being, from potential deprivations directed from the oceans. Foreign vessels may seek to intrude upon fishing grounds considered to be reserved by exclusive exploitation by coastal nationals. Persons may attempt to use the unprotected water approaches to a state for evading coastal restrictions upon the ingress and egress of persons and goods. And ships failing to exercise precautions may inflict

serious harm upon adjacent persons and property from discharge of wastes.

Hence the interest in security is common to all states, however unique it may appear in particular instances. Furthermore, even in the age of satellites and missiles, perhaps even more urgently in such an age, states, in order to preserve their security, must continue to make occasional, limited assertions of authority, as by establishing radar stations or enforcing requirements of identification, in areas beyond the bounds of the territorial sea. However, it would perhaps be a mistake to assume because of contemporary spectacular developments in the technology of transportation, of weapons, and of weapons delivery systems, that the extension of the breadth of territorial sea has the value for security protection. High-speed aircraft and missiles and new devices of assuring accurate long-range delivery of weapons do, of course, permit posing long-distance threats to and from states all over the world, landlocked as well as maritime. This continuing danger to coasts for more conventional weapons is concisely stated by Sir Gerald Fitzmaurice, who said that "under modern conditions ... warships could bombard a coast with the utmost accuracy from a distance of 40 miles or more, and aircraft carriers could operate from a distance of 200 or 250 miles or more."[18]

In short, in the imperfect world in which we live today,

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[18] Ibid., p. 78.

many nations including the United States, which depend upon air and sea mobility to guarantee their ability to exercise self-defense, choose to let security interests prevail over maritime.

Developments in Latin American Concept of Territorial Sea Limit

National claims, whether made unilaterally or at the regional or subregional level, play a fundamental role in the development of the law regarding the exploration, exploitation and conservation of natural resources of the sea. In general, the early Latin American maritime claims were stimulated by President Truman's Proclamations on the Continental Shelf and on Fisheries of September 28, 1945. It should be observed that the national claims of the Latin American countries can be classified into three broad categories of claims: the 200-mile "maritime zone", the 200-mile "patrimonial sea", and the 200-mile "territorial sea".

(i) The 200-Mile "Maritime Zone"

Not long after the Truman Proclamations, a new type of Latin American claim appeared. On August 18, 1952, at the Santiago Conference on the Exploration and Conservation of Maritime Resources of the South Pacific, Chile, Ecuador, and Peru signed the Declaration of Santiago on the Maritime Zone, wherein they proclaimed that as a principle of their international maritime policy, each of them possesses sole sovereignty and jurisdiction over an area of the sea adjacent to their coast and

extending to at least 200 nautical miles from said coast. A similar zone is to extend around any islands belonging to these states.

The economic and social considerations underlying the claim to the 200-mile maritime zone are outlined in the Preamble to the Santiago Declaration according to which: Governments are under an obligation to secure the necessary conditions of subsistence for their peoples and to provide them with the means for the conservation and protection of their natural resources and to regulate the exploitation of those resources to the best advantage of their respective countries ... It is therefore also their duty to prevent exploitation of the said resources outside their jurisdiction from jeopardizing the existence, integrity and conservation of this wealth to the detriment of nations which, owing to their geographical positions possess in their sea irreplaceable sources of subsistence and vital economic resources.

The Santiago Declaration goes on to state that: "The Governments of Chile, Ecuador and Peru accordingly, as a principle of their maritime policy, the exclusive sovereignty and jurisdiction to which each of them is entitled over the sea which washes the coasts of their respective countries, to a mimimum distance of 200 nautical miles from the said coasts."[19] In a later paragraph, the Declaration describes the limitations to which the exercise of this maritime competence of the coastal state is

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[19] Amador, op.cit., p. 76.

subject in the following terms: "The present Declaration implies no disregard for the necessary limitations on the exercise of sovereignty and jurisdiction by international law in favor of innocent and inoffensive passage by ships of all nations through the specified zone."[20] These two paragraphs of the Declaration are the chief clue to the true juridical nature of this extension of competence. The paragraphs previously quoted must be taken into consideration as well however, since they indicate the purposes for which the "maritime zone" was established.

At a conference in Lima, Peru, held in 1954, Costa Rica, El Salvador and Honduras joined in claiming exclusive authority over 200-mile zones. At the third meeting of the Inter-American Council of Jurists, held in Mexico City in 1956, the representatives of Chile, Ecuador, and Peru attempted to justify the Santiago Declaration as a defensive measure to protect fisheries. They argued that it was not contrary to any rule of international law and did not violate the principle of freedom of the seas. A resolution was then adopted over the objections of the United States and Cuba affirming the right of coastal states to exclusive exploitation of species of fish closely related to the coast, the life of the country, or the needs of the coastal populations.

Representatives of various Latin American states, as well as number of writers, have attempted to explain the Santiago Declaration. An expansive view of the Declaration has been advocated and used in practiced. A justification has been offered

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[20] Loc.cit.

by the Honduran delegate, Lopez Villamil, who suggests that the concerned Latin American states have title to the seabed, subsoil, and superjacent waters extending as far as 200 miles from the coast because they have no continental shelf in the geological sense, and the natural resources in the claimed sea belt "are properly theirs because of geographic proximity in the nearby geobiologic region."[21]

We have in mind in particular the frequent claim that the countries which have no continental shelf should be compensated by recognition of other rights over specific areas of sea contiguous to their territory. During the deliberations of the Third Meeting of the Inter-American Council of Jurists, the representative of Peru, Professor Alberto Ulloa, expressed the view that the Joint Declaration of the three American republics of South Pacific seaboard constituted a just rule, in that..."it represents compensation[22] to those countries which have no continental shelf."

The "idea of compensation" is not the sole basis for the Santiago Declaration but it is one of the most solid bases vis-a-vis other states and one that cannot be ignored. The same

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[21] Juraj Andrassy, International Law and the Resources of the Sea. (New York and London: Columbia University Press, 1970), p. 44.

[22] Amador, op.cit., p. 74.

basis was developed at greater length by a representative of Ecuador at the Specialized Conference of Ciudad Trujillo. In his opinion.

> We take the fair, human and absolutely just view that were nations to take the limit of their continental or insular terraces, as the case may be, as the limit of their territorial sea, many such nations would find themselves in a position of inferiority by comparison to other, since the submarine terrace alone is not sufficient to create that equality condusive to wellbeing.[23]

Shortly speaking, the "maritime zone" which established by the tripartite Declaration of Santiago in 1952, is an extension of specialized jurisdiction, or, to use a more modern term, it is a "special jurisdiction". The purpose of the zone, as expressly stated, is to extend the entire competence of the coastal state over the new area of the sea but merely its sovereign and exclusive competence for specific purposes up to the limits indicated. The coastal state can not, therefore, exercises this maritime competence for any other purpose. At the same time, the special nature of this competence must not give the impression that it is a " contiguous zone" (which will be discussed later in this chapter) in the sense generally attached to that term. Such zones are established purely for the purpose of protecting specific interests beyond the limit of territorial sea, which, in the case in point, would mean for

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[23] Ibid., p. 75.

the purpose of protecting the interests of the coastal state in the marine fauna to be found in the high seas bordering on the territorial sea.

We now see the true purport of the Santiago Declaration and what, accordingly, is the juridical nature of the maritime zone which it establishes. It is not a "contiguous zone", because it serves other purposes than that of conservation proper. Nor is it a territorial sea in the strict sense of the term. And a "special jurisdiction" of "maritime zone", or, also in the terminology of today, an "economic zone", is repeatedly confirmed by authorized representatives of the three countries, particularly in the United Nations organs and conferences.

(ii) The 200-Mile "Patrimonial Sea".

The "patrimonial sea" was claimed at the subregional level in the Declaration of Santo Domingo, adopted at the Specialized Conference of the Caribbean Countries on Problems of the Sea, held in the capital of the Dominican Republic from June 5 to 9, 1972. The pertinent part of the Declaration provides:

1. The coastal state has sovereign rights over the renewable and non-renewable natural resources, which are found in the waters, in the seabed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea.
2. The coastal state has the duty to promote and the right to regulate the conduct of scientific research

within the patrimonial sea, as well as the right to adopt the necessary measures to prevent marine pollution and to ensure its sovereignty over the resources of the area.

3. The breadth of this zone should be the subject of an international agreement, preferably of a world-wide scope. The whole of the area of both the territorial sea and the patrimonial sea, taking into account geographic circumstances, should not exceed a maximum of 200 nautical miles.
4. The delimitation of this zone between two or more states should be carried out in accordance with the peaceful procedures stipulated in the Charter of the United Nations.
5. In this zone ships and aircraft of all states, whether coastal or not, should enjoy the right of freedom of navigation and overflight with no restrictions other than those resulting from the exercise by the coastal state of its rights within the area. Subject only to these limitations, there will also be freedom for the laying of submarine cables and pipelines.[24]

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[24] F.V. Garcia-Amador, "The Latin American Contribution to the Development of the Law of the Sea," American Journal of International Law, 68, 1, (January, 1974), 42.

Another version of the "patrimonial sea" and the most recent one is described in the draft articles of a treaty* jointly proposed by Colombia, Mexico and Venezuela in the UN Seabed Committee during its first session of 1973. The "patrimonial sea" of this proposal, although described in somewhat more detail than in the Declaration of Santo Domingo, coincides substantially with the "patrimonial sea" of the Declaration. It is a proposal that basically would have a 12-mile territorial sea with the normal right of innocent passage. Beyond that, out to 200 miles, there would be freedom of navigation in a resource zone that would be an exclusive resource zone for the coastal state. And beyond the 200-mile figure, if the coastal states' seabed happened to go beyond that, it would also have jurisdiction over the seabed continental margin, out to the limit of the margin if it was further seaward than 200-miles.

(iii) The 200-Mile "Territorial Sea"

In evaluating this type, it is begun by identifying those claims that establish a territorial sea in a strict sense, i.e., a maritime space subject to a legal regime such as that

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*Further detail of Mexico - Venezuela - Colombia joint proposal on the "Patrimonial Sea" see "United Nations Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor: Colombia - Mexico - Venezuela : Draft Articles for a Treaty on the Territorial Sea," International Legal Materials, 12, 3(May, 1973), 570-572.

established by the Geneva Convention on the Territorial Sea and the Contiguous Zone. In chronological order they are the claims of Ecuador, Panama and Brazil.

Ecuador claimed a 200-mile territorial sea by Decree No. 1542 of November 10, 1966, which amended the Civil Code. As further amended by the Permanent Legislative Committee in 1970. Article 628 of that code states that " the adjacent sea, to a distance of 200 nautical miles... comprises the territorial sea and is of national domain." According to the same article, "different zones of the territorial sea shall be established by executive decree and these shall be subject to the regime of free maritime navigation or of innocent passage for foreign ships."[25]

In claiming its 200-mile territorial sea, Panama, on the other hand, did so in a simple, straightforward manner, as did Brazil in Decree-Law No. 1098 of March 25, 1970. The only observation that might be made regarding the recent Brazilian legislation is that in implementing Article 4 of the Decree-Law, Decree No. 68.459 of April 1, 1971, establishes two "fishing zones in the Brazilian territorial sea,"[26] each 100 nautical miles wide. In the first zone fishing activities are limited to Brazilian fishing vessels. The establishment of these fishing zones obviously has no bearing on the essential nature and scope of the claim to a 200-mile territorial sea for all legal purposes.

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[25] Garcia - Amador, op.cit., p. 39.

[26] Loc.cit.

Thus, from the above mentioned, it can be concluded that the position of the various Latin American countries is evolving decisively in favor of the 200-mile claim. In fact, nearly all the claims have gone in that direction, whether by way of domestic legislation or through declarations of principle at the subregional level. However, it would be in appropriate to refer to a unified "Latin American position" on the law regarding the exploration, exploitation, and conservation of the natural resources of the sea. Obviously there are similarities and even some noteworthy coincidences in the claims asserted. Aside from that, when the claims are examined as a group they display differences that sometimes have a considerable bearing on the very nature and scope of the claim. In this section, an effort will be made to point out both the major differences and similarities.

(a) The first diversity among the current Latin American claims is precisely with regard to the breadth of 200 miles. Although the claims in the Declaration of Santiago of 1952 and in multilateral claims subsequent to that Declaration, 200 miles was the fixed breadth of the "maritime zone" or of the extension of jurisdiction, the Santiago Declaration expressly declares that the "sole sovereignty and jurisdiction" of each of the countries extends "not less than 200 nautical miles" from its coast. While the "patrimonial sea" according to the Declaration of Santo Domingo recalls that, "the whole of the area of both the territorial sea and the patrimonial sea, taking

into account geographic circumstances, should not exceed a maximum of 200 nautical miles."[27] It has frequently been observed in support of this innovation that given the differing geography of the coastal countries, it is the only formula which makes that claim feasible for them all.

(b) Another important difference between one group of Latin American claims and the others lies in the essential nature and scope of the extension of jurisdiction. Although nearly all the claims are extensions of specialized jurisdiction to the 200 miles, that is, a maritime space over which the total jurisdiction of the state extends and in which no limitations are recognized on the exercise of that jurisdiction except those deriving from the right of innocent passage. However, these same countries have tended to refrain from extending full jurisdiction over their respective "territorial seas". For example, current Ecuadorean legislation provides for the eventual establishment of different zones in that area, in which there would be freedom of navigation or innocent transit; and recent Brazilian legislation makes a distinction between two zones, each of which is 100 miles wide, in reserving to Brazilian vessels fishing in the zone contiguous to its coast.

(c) Finally, also worth noting is the profound difference between the "patrimonial sea" as conceived of in the

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[27] Ibid., p. 46.

Declaration of Santo Domingo and nearly all the other Latin American 200-mile claims, both those which relate to a territorial sea and those which are mere extensions of specialized jurisdiction. The national claims are based on the right of the coastal state unilaterally to determine the breadth of the zone or zones to which the extension of jurisdiction applies, while the Declaration establishes that "the breadth of this zone should be the subject of an international agreement, preferably of a worldwide scope."[28] It is generally admitted that the right claimed should be exercised within reasonable limits, taking into account geographic, economic, and other factors. Although this has no bearing on the nature and scope of the claims, it is still a fundamental question in the current process of revising the law of the sea, just as it was in the negotiations prior to and during the 1958 and 1960 Geneva Conferences.

For the similarities, the major one can be seen that the "territorial sea" resembles, in its essential aspects, the "patrimonial sea". Although the Declaration of Santo Domingo, for example, does not provide for two zones as part of a single, unique maritime space, it does establish that "the whole of the area of both the territorial sea and the patrimonial sea" (the breadth of the former being fixed at 12 miles elsewhere in the Declaration) "should not exceed a maximum of 200 nautical miles."[29]

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[28] Ibid., p. 49.

[29] Ibid., p. 47.

However, the most noteworthy similarity lies in the nature and scope of the claim. In fact, both types of claim contemplate the exercise of sole sovereignty or jurisdiction by the coastal state over the renewable and nonrenewable natural resources in the waters, seabed, and subsoil of the area of the sea affected by the claim.

Consequencing from the 200-mile claims of these Latin American countries, wide area of economic activities are affected particularly the distant water fisheries of many countries. This is because, while these countries notably Chile, Ecuador, Peru, had only narrow continental margins with little likelihood of recoverable oil and gas deposits, their claims encompassed fishing grounds important to distant water fishermen from other countries, giving rise to international conflicts, including seizures of the United States tuna fleet, that have continued up to the present day. The U.S. dispute with Chile, Ecuador and Peru continued, and prospects for an early settlement seem dim. Since 1951, more than 100 U.S. tuna boats have been seized by Ecuador in the area between 12 miles and 200 miles from the coastline. The area about 150 miles from the coast is one of the world's most productive tuna areas due to the upwelling of nutrient rich waters.[30]

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[30]"Statement by the Honorable John R. Stevenson, United States Representative to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, August 3, 1971" Lawyer of the Americas, 3, 3 (October, 1971), 652.

The 1958 and 1960 Geneva Conferences

The need to reconcile the conflicts and other newly asserted rights with existing international law, together with attempts to achieve a generally acceptable and uniform width of territorial sea led to the convening of the United Nations Conferences on Law of the Sea.

The most recent world conference on the law of the sea before the Geneva Conference was held at the Hague in 1930. Credit must go to the League of Nations for taking the first step in this field. In view of the divergence of doctrines relating to territorial waters, the League of Nations endeavored to negotiate an international convention on the subject through its Committee for the codification of international law. After examining many topics, the Committee come to the conclusion that the laws of territorial waters, were ripe for codification. It took several years in preparing the conference and, ultimately, an international conference convened by the Council of the League sat at the Hague from March 13 to April 12, 1930. Forty-two states sent delegates, and Russia was represented by observers.

It may be stated at once that the Conference failed to achieve its object, as the work accomplished was confined to the presentation of a Draft and the adoption by the Conference of a resolution and recommendations. The chief difficulties in reaching an agreement related to (i) the breadth of the territorial sea, (ii) the right of a state to take measures outside this

breadth in an adjacent and contiguous area, and (iii) the definition of the nature of rights which states are entitled to exercise over the territorial sea.

Although the Conference was unable to agree on a treaty, it was successful in preparing a Draft on "The Legal Status of the Territorial Sea" which was embodied in the Final Act of the Conference. Notwithstanding the fact that it is only a Draft, it constitutes "an important document in the history of international law and a landmark in the long process of codification."[31]

The following is a summary of the Draft. The legal regime of the belt of sea round a state's coasts is covered by Article 1 : "sovereignty over this belt is exercised subject to the conditions prescribed by the present Convention and the other rules of international law". Although the word "sovereignty" is used, the conditions laid down for its exercise in the other articles of the Draft render it equivalent to little more than "authority" or "jurisdiction". "The coastal state may put no obstacles in the way of vessels navigating the territorial sea" (Article 4), thus recognizing the right of "innocent" passage, provided that "no act must be done prejudicial to the security, the public order or fiscal interests of the state" (Article 5). Coastal states can take all necessary steps to secure these rights, and by legislation, in conformity with international

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[31] Colombos, op.cit., p. 96.

usage, a coastal state can provide for (a) the safety of traffic, protection of channels and of buoys; (b) protection against pollution of any kind; (c) protection of the products of the territorial sea; and (d) of the rights of fishing, and analogous rights belonging to the coastal state (Article 6). No charge is to be levied on passing vessels by reason of their passage through the territorial sea, except for specific services rendered to the vessel. These charges shall be levied without discrimination (Article 7).[32]

The Conference showed that it fully realized the necessity of pursuing its labors in the future, as it adopted a Resolution requesting the "Council of the League of Nations to transmit its Report and annexes to the various Governments and that they be invited to continue, in the light of the discussions of this Conference, their study of the question of the breadth of the territorial sea and questions connected therewith and to endeavor to discover means of facilitating the work of codification."[33]

Following the failure of the Hague Conference in 1930, there were two more issues which created a situation clamouring for the study and settlement of the question of international organizations; they were the two Proclamations of the President of the U.S. (1945) on the continental shelf and on

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[32] Ibid., pp. 96-97.

[33] Ibid., p. 97.

conservation of fisheries. This time it was the International Law Commission (ILC) of the United Nations which took the lead.

The ILC, as its first session (Lake Success, 1949) chose the "Regime of the High Seas" as one of its priority topics in the work of codification, and towards the end of the same year, the General Assembly recommended that the Commission included in its list of such topics the "Regime of the territorial Sea". Thus, the Commission drew up various drafts on two problems of the regime of the high seas: the "Continental Shelf" and "Fisheries".

At the next session of the Assembly (1954), the Assembly requested the ILC "to devote the necessary time to the study of the regime of the high seas, the regime of the territorial waters, and the problem of the conservation of the living resources of the sea,"[34] In its eight session, the ILC finished its work on the law of the sea and submitted to the General Assembly the final report.

At its eleventh session (1956), the General Assembly of the UN. considered the final report prepared by the ILC and decided, in accordance with a recommendation of the Commission, "that an international conference of plenipotentiaries should be convoked to examine the law of the sea, and to embody the results of its work in one or more international conventions or such other

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[34]Amador, op.cit., p. 6.

instruments so it may deem appropriate."[35] And five proposals, ranging from a strict three-mile limitation to the unilateral right of a coastal state to fix the breadth of its own territorial sea, were considered. None of the proposals received a majority vote. The proposal finally accepted did not resolve the problem; it did, however, provide an accurate statement of what constituted the problem. In the words of the ILC:

> 1. the Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.
> 2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.
> 3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes on the one hand, that many states have fixed a breadth greater than three miles and, on the other hand, that many states do not recognize such a breadth when that of their own territorial sea is less.
> 4. The Commission considers that the breadth of the territorial sea should be fixed by an international conference.[36]

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[35] Ibid., p. 8.

[36] Burdick H. Brittin and Liselotte B. Watson, International Law for Seagoing Officers (3d ed., Maryland: Naval Institute Press, 1972), p. 82.

As a result, the General Assembly of the UN., by its Resolution 1105 (XI) adopted on February 21, 1957, called for a conference of its members to "examine the law of the sea, taking into account not only of the legal but also of the technical, biological, economic and political aspects of the program."[37] The UN. Conference on the Law of the Sea, as anticipated in the Preface, met in Geneva from the 24 February to 29 April 1958, but during this lapse of time a considerable amount of preparatory work was undertaken.

Eighty-six states were represented at the Conference, and most of the interested specialized agencies of the UN. and inter-governmental bodies sent observers. In accordance with the General Assembly resolution, the report of the ILC. was adopted as the basis for the consideration of the law of the sea. The Conference also adopted the Secretariat's recommendation concerning the allocation of the ILC draft articles, the following four Committees being created to this effect :

- First Committee (Territorial Sea and Contiguous Zone) : Articles 1 to 25 and 66;
- Second Committee (High Seas : General Regime): Articles 2 to 48 and 61 to 65;
- Third Committee (Fishing, Conservation of the Living Resources of the High Seas) : Articles 49 to 60;
- Fourth Committee (Continental Shelf): Articles 67 to 73.

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[37] Dean, op.cit., p. 607.

Certainly, the most significant development at the 1958 Conference was the shift of the major supporters of the three-mile limit, the United States and the United Kingdom, to sponsorship and support of a territorial sea of six miles, coupled with the extension of certain limited exclusive fishing rights to 12 miles.

The major proposals which did reach a vote were sponsored by Canada, the United States and jointly by Mexico and India.

- The Canadian measure called for a territorial sea up to 6 miles in width and, in an area extending 12 miles from the baseline, the coastal state was to have "the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea."[38]

- The joint proposal of Mexico and India would have permitted extension of the territorial sea up to 12 miles, and made no explicit reference to additional authority beyond that limit. The principal feature distinguishing the India-Mexico proposal from that of Canada was that the latter sought to take into account the general interest in transportation (both air and sea) by limiting territorial sea to 6 miles though exclusive fishing was permitted in another 6 miles, while the former would have permitted extension to 12 miles of the entire range of coastal authority over the territorial sea, in other words, it

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[38] McDougal and Burke, op.cit., p. 530.

means that the 12-mile exclusive fishing zone in the Canadian proposal and the 12-mile territorial sea in the Indian-Mexican provision.

- The final American proposal also sought to achieve the transportation and communication objectives of the Canadian proposal, but it went further and attempted to protect those states whose fishermen were accustomed to fishing in "distant" waters, seemingly close to the shore of coastal states.

But all the proposals were rejected because none of them received the required two-thirds majority vote. Nonetheless, from the above it can be seen that the great majority of states were in agreement that the breadth of the territorial sea lies somewhere between three and twelve miles.

As the outcome of its deliberations, the Conference adopted four conventions and three resolutions. Each of the four adopted conventions constitutes a general code of law, they are:

- first, Convention on the Territorial Sea and Contiguous Zone, in force on October 10, 1965, (while failing to agree on a common distance) set a 12-mile maximum limit on the territorial sea;
- a second, Convention on the High Seas, in force on September 30, 1962, codified freedom of navigation, fishing, overflight and the laying of submarine cables and pipelines;
- a third, Convention on the Fisheries and Living Resources of the High Seas, in force on March 20,

1966, among other things permitted coastal states to regulate fisheries around their shores, even beyond a 12-mile limit; and

- a fourth, Convention on the Continental Shelf, in force on June 10, 1964, provided for national exploration and exploitation of continental shelf resources.

In contrast to the League Codification Conference of 1930, one gets the impression that this was a Conference ready and able to address itself to the practical maritime problems which confront the seafaring community. It is certainly not surprising that agreement was not reached on all problems; the measure and extent of agreement was surprising. A rather superficial examination of the voting suggests that there was no uniformity in the line-ups. The voting seems to have followed national interests as interpreted by the governments which instructed the delegations and which were no doubt in some instance influenced by the economic (fishing) interest of influential groups of their nationals.

Naturally if one looks at the language of the various conventions. One notes, for example, that the Convention on the Territorial Sea and Contiguous Zone and the Convention on the Continental Shelf begin with the simple statement that "the State Parties to this Convention have agreed as follows :," whereas the Convention on the High Seas declares that "the State Parties to this Convention, Desiring to codify the rules of international

law relating to the high seas, Recognizing that the United Nations Conference on the Law of the Sea... adopted the following provisions as generally declaratory of established principles of international law, Have agreed as follows:".[39] The difference is certainly signnificant. The Convention on Fishing and Conservation of the Living Resources of the High Seas is clearly drafted in terms of a legislative (albeit by agreement) act recognizing need and then adopting measures to meet the need. The Optional Protocal of Signature Concerning the Compulsory Settlement of Disputes is also clearly of another nature entirely.

Nonetheless, Geneva 1958, was a real step forward in the law of the sea, despite the unresolved matters remaining. First, in certain areas it codified existing law and by large majority votes put an end to speculative and argumentative theories. Second, it focused attention on other subjects and crystallized thinking to a sharp point by the interaction of opposing theories in debate. Third, often where full accord was not reached, it provided some weight of authority by actual votes recorded as greatly in favor of certain premises and opposed to others. Fourth, the enunciating of principles has made it easier for later bilateral and multilateral agreement between states. Fifth, it has placed restraints upon states who would move against the principles enunciated, whether or not those states ratifying the respective conventions.

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[39]Philip C. Jessup, "The Geneva Conference on the Law of the Sea: A Study in International Law-making," American Journal of International Law, 52, 4 (October, 1958), 732.

One triumph at Geneva 1958, was in keeping separate the subject matter of the four conventions. Although some problems are interrelated, the separation of subject-matter allowed many accords to be reached which would otherwise have been irreconcilable.

Apart from this, it is evident that although we progress slowly in the field of the law of the sea, there are definite gains from sitting down to the conference table and doing over these many problems with our neighbors in the community of states. Bilateral and multilateral agreements have been facilitated because of the guidelines set forth in the Geneva Conventions. Fourteen European states have amicably resolved number of problems in the North Sea.

The 1960 Second Geneva Conference on the Law of the Sea was convened by Resolution 1307 (XIII) of the General Assembly adopted on December 10, 1958 to try once more to solve the central problem of the breadth of the territorial sea and fishery limits which the first Conference had been unable to settle. Convening during March 17 to April 26, 1960 at Geneva, the Conference organized itself into a Committee of the Whole for holding preliminary general and specific debate about proposals.

Numerous proposals were advanced in the Committee, some went beyond the questions of the territorial sea and exclusive fishing zones to include provision for coastal rights of exclusive access to fisheries subject to conservation regulations. The major proposals were as follows :-

- The Soviet proposal called for authorization of a territorial sea up to a limit of twelve nautical miles, coupled

with permission for a contiguous zone up to the same distance if the coastal state chose to establish a territorial sea of lesser breadth.

- The Mexican proposal, Article I, would have authorized states to fix the width of the territorial sea up to 12 miles. According to Article 2, if the state chose a distance less than 12 miles, an additional fishing zone would be authorized, with the width of the zone varying inversely with the limit of the territorial sea. In other words, it meant that the narrower the area claimed as territorial sea the wider the additional zone for exclusive fishing.

- The sixteen-power proposal, sponsored by the combination of Asian, African, and Arab states, also provided for a territorial sea up to 12 miles wide and for a contiguous fishing zone to this distance if the territorial sea claimed were less.

- The United States suggested a six-mile territorial sea coupled with a six-mile contiguous fishing zone, subject to the right to continue fishing in the outer six miles for any states whose vessels had a practice of fishing in such zone for a five-year period preceding January 1, 1958.

- The separate Canadian proposal would have provided for a territorial sea up to 6 miles wide and for an additional exclusive fishing zone up to 12 miles wide.

- The joint Canadian-American proposal, replacing their separate suggestions, consisted of the original Canadian

proposal plus two additional paragraphs, these were :

3. Any state whose vessels have made a practice of fishing in the outer 6 miles of the fishing zone established by the coastal state, in accordance with paragraph 2 above, for the period of five years immediately preceding 1 January 1958, may continue to do so for a period of 10 years from 31 October 1960.

4. The provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted at Geneva on 27 April 1958, shall apply mutatis mutandis to the settlement of any dispute arising out of the application of the foregoing paragraphs.[40]

- The sixteen-power proposal and the Mexican proposal were replaced before voting by the eighteen-power proposal embodying some features of both. Article 1 and 2 provided for the twelve-mile territorial sea and, if the state chose less, for an exclusive fishing zone. Article 3 included the principle of reciprocity originally in the sixteen-power proposal. The Mexican scheme of compensation by a sliding scale of additional fishing areas was dropped.

The great bulk of the recorded discussion on all proposals occurred in the Committee of the Whole, though apparently

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[40] McDougal and Burke, op.cit., p. 544.

the most critical negotiations and compromises took place after the Committee had adopted the Canadian-American proposal.

The Canadian - American joint proposal was adopted by the Committee by receiving a total of 43 favorable votes, with 33 opposing and 12 abstaining. But it failed to achieve the necessary two - thirds majority at the Conference by the margin of but one negative vote. If but one state voting against had abstained, the 54-vote total would have met the required majority.

Thus the Conference again failed to establish universal agreement on the width of the territorial sea. And the march of new claims went on. In the absence of an agreement, the United States delegate stated that the United States would adhere to the traditional three-mile limit, and would be under no obligation to recognize claims in excess of it.

Conflicts of Interest and International Law

Why have so many states abandoned the three-mile rule ? And why has agreement on a new rule been so hard to reach ? The answer to both questions is that the width of the territorial sea has given rise to a conflict of interests between different groups of states particularly between the major maritime powers and other states. This is well illustrated, for example, by the different national attitudes concerning the extent of the freedom of the seas. The recent Geneva Conferences have revealed formidable obstacles to agreement to the strong

maritime nations, which favor narrow zones of territorial waters, and the weaker nations, which favor extended territorial water limits.

The conflict of interests is most apparent in connection with fishing. Areas of the sea close to shore are particularly rich in fish, and modern improvements in trawling techniques, coupled with the development of refrigeration, have made it possible for fishing vessels from one state to operate for long periods at a time off the coasts of distant countries. Rich states with relatively efficient fishing industries, such as the United Kingdom, the United States and Japan, therefore favor a narrow territorial sea. Poor states, whose fishing industries are unable to compete on equal terms, seek to extend their territorial seas in order to exclude foreign fishing vessels, this is particularly true of countries like Iceland which are economically dependent on local fisheries. In some cases, too, there is a danger of fishing stocks becoming exhausted through over-exploitation.

The economic interests which affect the attitudes of states are not confined to fisheries; for instance, since aircrafts have no right of innocent passage through the air space above the territorial sea, an extension of the territorial sea is opposed by some states on the grounds that it would force civil aircrafts to make expensive detours.

But, apart from fishing, the main clash of interests relates to question of security. Some Afro-Asian states want a

wide territorial sea because they are afraid that the three-mile rule would enable a great power to exert psychological pressure at moments of crisis by an ostentatious display of naval force just beyond the three-mile limit. Such specific doctrines as the Latin American countries have developed, must be clearly seen as expressions of the interests of politically weak and economically inferior nations, in response to the claims and practices of stronger Powers. Thus the doctrine of non-intervention, as formulated in the Bogota Convention of 1948 is essentially a generalization of the two most famous and earlier Latin American doctrines known as the Calvo Doctrine and the Drago Doctrine.[41] The former purports to make an individual renounce the right, conferred upon his home state by international law, of protection against treatment by the host state contrary to international law. The second renounces the use of force by another state in the recovery of a foreign public debt.

On the other hand, western states, which are traditionally dependent on sea-power and on sea-borne trade, fear that an extension of the territorial sea, especially if coupled with a denial of innocent passage for warships, would restrict the freedom of movement of their fleets, and thus place them at a strategic disadvantage. They also fear that extensive neutral territorial seas could be used as a sanctuary by enemy (i.e. Russian)

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[41]Wolfgang Friedmann, The Changing Structure of International Law (New York: Columbia University Press, 1964), p.303.

submarines in wartime.

To sum up, the main source of the failure of the Geneva Conferences concerning the delimitation of the breadth of territorial sea is derived from this conflict of national interests to the point that the remark of Professor Riesenfeld may therefore be recalled "It can probably be said without exaggeration that the law of territorial waters has been one of the most unsatisfactory portions of international law."[42]

IV. International Straits

Closely connected with the subject of the territorial sea is the subject of international straits used for international navigation. The principal characteristic of a "strait" as recognized in existing international law, is that it consists of a narrow space or passage connecting one part of the high seas, either with another part of the high seas, or with the territorial sea of a state. The definition of a strait contained in paragraph 4 of Article 16 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone is broadly drawn to include straits "between one part of the high seas and another part of the high seas or the territorial sea of a foreign state."[43]

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[42]S. Whitemore Boggs, "Delimitation of Seaward Areas Under National Jurisdiction," American Journal of International Law. 45, 2 (April, 1951), 240.

[43]Charles G. Fenwick, International Law (Bombay: Vakils, Feffer and Simons Limited, 1967), p. 457.

At the present time, there is still no uniform agreement on the geographical classification regarding the width of straits. Since no international agreement has been reached on the width of territorial waters , the juridical aspect concerning "straits" remains sensitive, complicated and opening to "conflicting interpretation."

The origin of the concept of international straits comes from the interpretation of paragraph 1 and 2 of Article 4 of the 1958 Geneva Convention on the Territorial Sea in which a new method for drawing straight baselines for joining the fringes of islands along the coast and also for grouping of islands by linking the outermost points of the outermost islands, are adopted. Several straits, according to the Article 4 (2) of the 1958 Geneva which stipulated that..." the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters",[44] are automatically found, juridically speaking, to be inside internal waters.

With regard to outlying archipelagos, the Philippines, Fiji, Ecuador, Iceland, Indonesia and Faeroes (Denmark) have applied the principle of treating the archipelago as a unit. This new concept of state practice relating to the protection of territorial integrity, but also affecting the regime of straits

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[44]Phiphat Tangsubkul, "An Asian Viewpoint on the Status of Straits," SPECTRUM, 2, 4 (July, 1974), 65.

used for international navigation, is addressed on December 12, 1955, by the Government of the Philippines to various countries and to the United Nations Secretariat in which it declared:

> "All waters around, between and connecting different islands belonging to the Philippines Archipelago, irrespective of their width and dimension, are necessary appurtenances of its island territory, form an integral part of the national or inland (underscoring added) waters, subject to the exclusive sovereignty of the Philippines."[45]

This new state practice has clearly changed the characteristics of straits as recognized by the 1958 Geneva Convention. The new regime of straits will be not only a narrow space connecting two parts of the high seas or one part of the high seas and the other part of the territorial seas but, in addition, it will be found inside the internal waters of a state. Consequently, the straits can be classified into at least three categories :

(i) Straits connecting two parts of the high seas i.e. Formosa Strait

(ii) Straits connecting one part of the high seas and another part of the territorial seas i.e. Malacca Straits, Strait of Hormutz, Korea Strait, Singapore Strait and Luzon Strait

(iii) Straits found inside the internal waters of a

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[45] Andrassy, op.cit., p. 39.

sovereign state i.e. Sunda Strait, Lombok Strait etc.

Legal Regime of Straits

In contrast to the law governing territorial waters of bays and gulf, the rules applied to straits forming an avenue of communication between two parts of the high seas are quite clear. In general, if the land on both sides of a strait of six miles or less in width belongs to one country, then all waters therein are territorial. For example, the strait between Nova Scotia and Cape Breton Island falls in this category.

Where different countries own the opposing shore-lines, each exercises its sovereignty within the limits of its own territorial waters. If the width is less than six miles, the boundary line is established in the middle of the strait or in mid-channel. When the width of the straits exceeds six miles, all waters outside of the respective three-mile limits are, with few exceptions, considered to be high seas and free to all.

Thus, if there is a shift from a 3-mile territorial sea to a 12-mile territorial sea, there is going to be quite a difference in the number of straits in international community. This is because if the territorial sea is expanded from 3 to 6 or 12 miles, a large number of straits, like the Strait of Gibraltar, would be overlapped by the territorial seas of the countries on both sides of the strait. It was once determined that a six-mile limit would affect 52 major international straits

causing them to come under the sovereignty of coastal states, and that a twelve-mile limit would likewise affect 116 straits.[46]

However, it should be noted that the question of territorial jurisdiction over straits is closely associated with the more important question of the servitudes upon such waters by which freedom of navigation is secured for the commerce of all nations. Consequently in certain cases, such as those of Long Island Sound and the Strait of Solent, where the strait does not form an international highway, third states have been indifferent to the assertion of territorial claims by the state in possesion of the land on both sides.

In the case of straits normally used for international navigation between two parts of the high seas there can be no suspension of the right of innocent passage. Interference with innocent passage through international straits usually results in serious confrontations. This is a necessary consequence of the freedom of the seas, the use of which would be restricted if passages through the straits are to be prohibited. In helding that the Corfu Channel should be classed amongst the international straits, the International Court of Justice stated that the decisive factor whether a strait belongs to that category of international highways through which a right of passage exists

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[46]Lewis M. Alexander (ed.), The Law of the Sea: Offshore Boundaries and Zones (Ohio : The Ohio University Press, 1967),p.193.

is "rather in its geographical situation as connecting two parts of the high seas and the fact that it is being used for international navigation." [47] The Straits of Tiran connecting the Gulf of Aqaba and the Red Sea are a case in point which interference with innocent passage through straits creates the serious conflict. The Gulf of Aqaba is the Red Sea's northeastern finger. The 98-mile-long, 7-to-14-mile-wide strip of water washes four countries : Egypt, Israel, Jordan, and Saudi Arabia. The entrance to the Gulf of Aqaba is extremely narrow and constricted by both islands and coral reefs. At the mouth of the Gulf, called the Straits of Tiran, are two fairly large islands -- Tiran and Sanafiri.

In 1967 the United Arab Republic proclaimed that it would not permit any ships destined for Israel to proceed through the Straits of Tiran. (This action triggered the "Seven-Day War" between the Arab and Israel). A major question in the continuing dispute is whether or not the Gulf of Aqaba is a part of the high seas. It is submitted that under present law it is. It follows then that the Straits of Tiran are international straits. The United Arab Republic, therefore, does not have the right to interfere with sea traffic proceeding in innocent passage through the international strait connecting two parts of the high ses.[48]

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[47] Colombos, op.cit., p. 181.

[48] Brittins and Watson, op.cit., p. 98.

Article 16 (4) of the Geneva Convention of 1958 on the Territorial Sea similarly provides that "There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state."[49] The strait state is, however, entitled to take all precautions required for its security : for instance, in limiting the number of ships of war allowed to use the strait at the same time, or the length of their stay there. It can also enact rules of the road ensuring safe navigation which may be particularly dangerous in some straits. By international agreement, straits may be neutralized so that no fortifications or works of military defence may be erected thereon; thus the Magellan Straits are neutralized forever and the contracting parties are prohibited from erecting any fortifications on its shores.

Thus, on the problem of straits, two conflicting interests can be identified. On the one hand, the interests of maritime powers would require that the freedom of navigation apply equally to warships and submarines. The strait states, on the other hand, have different values to protect. Their basic principles, generally opposed to those of the user-states, are :

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[49] Fenwick, loc.cit.

- That a strait is an integral part of the territorial waters of a coastal state, whose sovereignty must be fully safeguarded;
- That the right of "innocent passage" through straits within territorial waters would be respected;
- That there is a distinction between the right of innocent passage of merchant ships and fishing boats and that of warships (including nuclear submarines);
- That the right of innocent passage over straits by aircraft should not be included in negotiations;
- That the concept of "free transit" through straits as de facto on the high seas is unacceptable.
- That the right of coastal states to regulate and perhaps to restrict passage through straits within their territorial seas must first be acknowledged.[50]

The conflict is therefore between "free passage" and " regulated passage" through straits. Free transit has very great implications, including implications for the passage of oil tankers. It also has substantial implications for an adequate balance of military security, an adequate balance of forces in the international community, and the ability to protect one's self under Article 51 of the United Nations Charter. Dr. Henry Kissinger,

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[50] Tangsubkul, op.cit., p. 69.

the American Secretary of State, in an address to the American Bar Association in August 1975 said that "The United States cannot accept the situation where international straits are not free. Freedom of international transit through these and other straits is for the benefit of all nations, for trade and security."[51]

Contrarily, Indonesia and Malaysia have consistently taken the position that there is no need for a separate regime on straits and that the rules on territorial sea would suffice. In the Malaysia, Morocco, Oman and Yemen Draft Articles,[52] the rules relating to territorial state recognizes that ships have a right of innocent passage through straits; that the strait states have the power to regulate navigation through the straits as well as the power to regulate ships; further, the strait states have the power to require foreign ships to use designated sea-lanes and traffic separation schemes, and to require submarines to navigate on the surface.

In the case of Straits of Malacca, which serves as the major shipping route between the Pacific and Indian Oceans. Indonesia and Malaysia do not accede to the claim that the Malacca Straits is an international waterway. Because of the extensions of the breadth of the territorial seas up to 12

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[51]Harbajan Singh, "Law of the Sea and Southeast Asian Problems," Southeast Asian Affairs 1976 (Singapore: FEP International Ltd., 1976), p. 116.

[52]Ibid., p. 115.

miles recently claimed by Indonesia and Malaysia, vessels that travel through the Straits must enter the territorial waters of either Malaysia or Indonesia. And since the making of these claims, nearly all the key-straits in this area have come under the jurisdiction of these two states.

Members of the international community, especially Japan, the USSR, the USA, the United Kingdom, and other key European countries and even two other straits states, Singapore and Thailand, have called into question the right of Indonesia and Malaysia to take this action. The common position of user-states, such as Japan, the Soviet Union, the USA, and the United Kingdom, is to keep the Straits open, although the fundamental interest in the use of the Straits is different for each country.

Nevertheless, the closure of this passageway could do more harm to Soviet naval strategy than of the US. because the USSR is on the way to increasing its maritime power in the Indian Ocean. At the same time, the blockade of this waterway could vitally affect the Japanese economy, since Japanese tankers use the Malacca Straits for the transportation of the nation's petroleum requirements - at least 500 million tons a year. On the other hand, for the US. there is the need to keep the Straits open for manoeuvres of the 7th Fleet from the South China Sea to the Indian Ocean. Since US. political influence to the Straits zone remains stronger than any other maritime power's, the American policy regarding the Straits

could be more flexible than that of the other maritime powers.

Every Asian state is concerned about the future juridical status of the Malacca Straits, but Singapore and Thailand have special interests. As an international port, Singapore's economy depends essentially on the circulation of ships through the Straits. The juridical closure of the Straits would therefore, affect that economy directly. Indirectly, too, the 12 - mile claim by Indonesia and Malaysia will stimulate the Japanese as well as the American to consider more seriously the project for the Kra Canal. If the Kra Canal were built, obviously the new waterway as the shortest passage linking the Indian Ocean and South China Sea would reduce significantly the number of ships using the Port of Singapore. For Thailand, whose coast is bordered by two seas : Andaman and South China Seas and the only connexion is the Malacca Straits, her position vis-a-vis this passageway since the last century has accordingly been to keep it open.

V. Archipelago Concept

In a purely geographical sense an "archipelago" is a formation of two or more islands which geographically may be considered as a whole. As a legal and political concept, archipelagos have been classified as

(i) Coastal archipelagos : are groups of islands consisting at least two islands, and are situated close to a mainland and may reasonbly be considered part and parcel thereof,

forming an outer coastline from which it is natural to measure the territorial sea.

(ii) Mid-ocean archipelagos or Outlying archipelagos : are groups of islands consisting at least not less than three islands andare situated out in the ocean at such a distance about 10 miles from the coast of a mainland as to be considered as an independent whole. (In this latter category may be included such important archipelagos as the Philippines and Indonesia.)[53]

In 1958 Geneva Convention on the Law of the Sea do not contain explicit provisions on the legal aspects of archipelagos that are political entities. Some provisions that are relevant are Article 4 of the Convention of a straight baseline method for measuring the territorial sea "if there is a fringe of islands along the coast in its immediate vicinity," Article 10 of that Convention which implies that islands may have their own territorial sea, and Article 1 (b) of the Convention on the Continental Shelf which expressly attribute to islands an area of adjacent seabed and subsoil.

A striking new method of determining a territorial sea of the so-called "archipelago theory" has been developed unilaterally by the Philippines and Indonesia. Both the Philippines and Indonesia have claimed to delimit the territorial sea

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[53]Suchart Prajimthit, "The Concept of Archipelago in International Law," SARAN ROM (February 10, 1974), p. 301.

from the outermost islands of their respective archipelagos, transforming the waters separating the islands into internal waters. They claim that when an island or group of islands are in some degree of proximity to each other or to the mainland, not necessarily corresponding to double the width of the territorial sea, the island or islands should be treated as a unit with other relevant features for measuring the territorial sea. The waters to the landward of the island or group of islands are, it is asserted, a part of internal waters. Thus the waters between an island, or group of islands, and the adjacent mainland coast would be claimed as internal waters and the territorial sea would be measured outward from the seaward side of the island or islands.

The Indonesian Government in 1957 declared that the geographical composition of Indonesia as an archipelago consisting of 13,000 islands has its own particular characteristics. For the purpose of territorial unity and in order to protect the resources of Indonesia, all islands and the seas in between must be regarded as one total unit. At the 1958 Geneva Conference on the Law of the Sea, the drawing of a baseline between the outermost points of the outermost islands was defended by the Indonesian delegate in the following manner :

> "If each of Indonesia's component islands were to have its own territorial sea, the exercise of effective control would be made extremely difficult. Furthermore, in the event of an outbreak of hostilities, the use

> of modern means of destruction in the interjacent waters would have a disastrous effect on the population of the islands and on the living resources of the maritime areas concerned. That was why the Indonesian Government believed that the seas between and around the islands should be considered as forming a whole with the land territory, and that the country's territorial sea should be measured from baselines drawn between the outermost points of the outermost islands."[54]

On the other hand, at the third Geneva Conference on the Law of the Sea in 1973 at Caracas, Venezuela, the representative from the Philippines informed the session that the Philippines consist of more than 7,000 islands. The Philippines is more than a group of islands. Its land, waters and people form an intrinsic geographical, economic and political entity, and has been historically recognized as such. The basic consideration of unity made it necessary that there should be international recognition of the right of the archipelagic state to draw straight baselines connecting the outermost points of the outmost islands. Sovereignty and exclusive jurisdictian within the archipelagic waters were vital to the econmy, security and territorial integrity of the archipelagic states.

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[54] Andrassy, op.cit., p. 40.

This practical concept, reaffirmed by the United Nations paper "Archipelagic Principles" has also been submitted to Sub-Committee II of the Sea-Bed Committee at its first session in 1974 by Fiji, Indonesia, Mauritius and the Philippines.* These "Archipelagic Principles" have been divided into three paragraphs :

(i) An archipelagic state, whose component islands and other natural features form an intrinsic geographical, economic and political entity, and historically have or may have been regarded as such, may draw straight baselines connecting the outermost points of the outermost islands and drying reefs of the archipelago from which the extent of the territorial sea of the archipelagic state is or may be determined.

(ii) The waters within the baselines (regardless of their depht or distance from the coast), the seabed and the subsoil thereof, and the superjacent airspace, as well as all their resources, belong to, and are subject to the sovereignty of the archipelagic state.

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*Further detail see "United Nations Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor : Fiji - Indonesia - Mauritius - Philippines : Archipelagic Principles," International Legal Materials, 2, 3 (May, 1973), 581 - 582.

(iii) Innocent passage of foreign vessels through the waters of the archipelagic state shall be allowed in accordance with its national legislation, having regard to the existing rules of international law. Such passage shall be through sea-lanes as may be designated for that purpose by the archipelagic state.[55]

Furthermore, the archipelagic state also recognizes that if, in the drawing of the baselines, a part of the sea "traditionally used by immediate and adjacent neighboring state for direct communication from one part of its territory to another part"[56] is affected, such right will continue to be respected.

Thus, if the archipelago theory were accepted by other states, the proclaimed internal waters status of the seas enclosed within the perimeters in question would abolish all rights of free passage, rights of submarines to travel submerged, and all rights of foreign aircraft to fly over the waters involved, unless special treaty rights were granted to the citizens and crafts of particular nations known as "conditionally innocent passage"[57]

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[55]Tangsubkul, op.cit., p. 66.

[56]Singh, op.cit., p. 117.

[57]Gerhard Von Glahn, Law Among Nations: An Introduction to Public International Law (New York: The Macmillan Company, 1966), pp. 307-308.

VI. The Contiguous Zone

Contiguous zones and adjacent zones are synonymous terms applied to one or more belts or zones of sea coterminous with the seaward limit of the territorial sea, and extending seaward.

It is a recognized rule of customary international law that a state may exercise preventive and protective control over a belt of the high seas contiguous to its territorial sea. This rule has the effect of rendering somewhat more flexible any rigid rule about the maximum breadth of the territorial sea. It has therefore played a prominent role in the effects made in various quarters to find a compromise solution to this thorny problem.

Between the two World Wars the French writer Gidel, the founder of the concept of "Res Nullius", propounded the theory of contiguous zone as a means of rationalizing the conflicting practice of states. At that time the British Government attacked contiguous zone as a surreptitious means of extending the territorial sea, and failure to agree on the contiguous zone was one of the main reasons for the failure of the League of Nations Codification Conference in 1930. However, opposition has faded away since then, and the present law is probably stated accurately in Article 24 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958 :

> " 1. In a zone of the high seas contiguous to its territorial sea, the coastal state may exercise the control necessary to :

(a) prevent infringement of its customs, fiscal immigration or sanitary regulations within its territory or territorial sea;
(b) punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured."[58]

By definition, the zone in which the exercise of such limited control is authorized may not extend beyond 12 miles from the baseline which the breadth of the territorial sea is measured. Thus with a three-mile breadth of territorial sea, the breadth of the contiguous zone is nine miles. In other words, the recognition of a contiguous zone presupposes that the breadth of the territorial sea is fixed at a measure less than 12 miles.

The International Law Commission made it clear in its commentary that the existence of a contiguous zone does not change the legal status of the waters comprised in the zone. These waters are and remain part of the high seas.

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[58] Akehurst, op.cit., p. 219.