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REGIME OF THE HIGH SEAS AND THE CONSERVATION OF THE WORLD'S FISHERIES RESOURCES

Part I - Some Recent Developments Affecting the Regime of the High Seas^{1/}

At no time during more than a century have those areas of international law relating to the rights of states in the waters outside their land limits been the subject of such concern as they are at the present time. I have thought it would be of interest to consider this evening what those rights are, the developments that challenge them, and the position of the United States respecting them.

History has a way of repeating itself, and since the development of this phase of the law has a bearing on our current problems, I ask this learned group to bear with me while I recall some historic facts.

DEVELOPMENT OF THE LAW OF THE SEA

The history of the law of the sea is a reflection of the changing interests of the centuries, and of the influence of economics and technological developments. Most important maritime states, at one time or another, have claimed sovereignty over large areas of the seas.

The Roman Empire claimed the Mediterranean as Mare Nostrum. In later centuries Venice levied tribute on vessels navigating the Adriatic. Genoa claimed sovereignty of the Ligurian Sea.

England's claim to sovereignty of the "English Sea" has been characterized as "in a class by itself." This, Selden in 1635 described as "that (sea) which flows between England and the opposite shores and ports," which would include at least the North Atlantic, the North Sea, and the English Channel.

No more modest were the conflicting claims of Spain and Portugal, resolved by Pope Alexander, in 1493, by partitioning the Atlantic Ocean between them.

Such was the situation when Grotius, in 1609, published "Mare Liberum," attacking on broad grounds of equity the whole principle of national dominion over the seas. Although Selden's "Mare Clausum," in 1635, sought to establish that the sea was capable of appropriation and that England was sovereign in the English sea, it did not prove to be an adequate answer to Grotius. As one author observes, "The reason why 'Mare Liberum' acquired a historical significance. . . was its earnest and powerful appeal for complete freedom of the high seas for the innocent use and mutual benefit of all." The same author continues: "Grotius spoke in the name of humanity as against the selfish interests of a few. It was his lofty moral ideas which, in combination with the profound legal and historical exposition, gave his work its reputation."^{2/} With "Mare Liberum" the modern doctrine of the freedom of the seas had been born. During the early Eighteenth Century it was to become established law, and by the Nineteenth Century it was axiomatic.

^{1/} Address by Herman Phleger, Legal Adviser of the Department of State, before the American Branch of the International Law Association, New York, N. Y., May 13, 1955. The Department of State Bulletin, vol. XXXII, no. 832 (June 6, 1955), pp. 934-940.

^{2/} Meyer, The Extent of Jurisdiction in Coastal Waters (1937), p. 23.

Freedom of the seas as a principle of international law means that the open sea is not, and cannot be, under the sovereignty of any state. It signifies that in time of peace vessels may not be interfered with on the high seas. To this principle there are certain limited exceptions. Thus, it has long been recognized that a state may suppress piracy. It may seize a vessel flying its flag without authority. The right of hot pursuit is accepted. The enforcement, on the part of coastal States, of revenue and sanitary laws is recognized.^{3/} Finally, in this modern age, the right of a state, for defense or security purposes, to take preventive measures on the high seas is in process of development.

UNITED STATES SUPPORTS THE FREEDOM OF THE SEA

It is the traditional policy of the United States to support the principle of freedom of the seas. Early in its history its refusal to compromise that principle was one of the causes leading to the War of 1812. The effective defense of the United States, the maintenance of its commercial shipping and air transport, and the prosperity of its fishing industry would all be prejudiced by any serious compromise of this principle.

The appropriation by any state of areas of the high seas is as unsound morally today as when Grotius wrote. In an age when technological advancement and increased population have made us indeed one world, it is more important than ever that those natural avenues of intercourse between peoples--the sea lanes and the air routes above--should remain free.

ATTACKS ON THE FREEDOM OF THE SEAS

Nevertheless, the freedom of the seas is under serious attack. It might be expected that, as in the past, attempts to bring large areas of the high seas under national dominion would originate with powerful and maritime states. But the contrary is the case. Today the attempts to encroach upon the freedom of the seas are being made for the most part by small coastal states.

These attempts take various forms. Some states enlarge the area of their inland waters by drawing lines from headland to headland; and then, from this baseline, which may be many miles at sea, measuring the width of their territorial waters. Others simply extend the width of their territorial waters by decree. More recently, a favored technique has been to claim exclusive sovereignty over the waters above the continental shelf and beyond territorial waters. Some claims to territorial waters extend to a breadth of 200 miles.

On August 18, 1952, Peru, Chile and Ecuador signed a Declaration, claiming "exclusive jurisdiction and sovereignty" over waters contiguous to their coasts "up to a minimum distance of 200 nautical miles," as well as "exclusive sovereignty" over the subsoil and sea bed in this maritime zone. The Declaration purports, further, to make provision for regulating fishing and whaling in this zone. The United States protested these claims on the ground that under international law there is no obligation to recognize claims to territorial waters in excess of three miles.

Other South American states, including Argentina, Honduras, and El Salvador have also claimed large areas of the high seas as territorial waters.

In 1952, Korea, by presidential proclamation, asserted sovereignty over the seas adjacent to its coasts. There are indications that the Philippines may claim the Sulu Sea as territorial waters.

^{3/} Oppenheim, International Law (7th ed. by Lauterpacht, 1948), p. 450.

UNITED STATES ADHERES TO THE THREE-MILE LIMIT

Consistent with its support of the principle of the freedom of the seas, the United States has always adhered to the three-mile rule. From the time of Jefferson, the principle that the marginal belt extends one marine league (three geographical or nautical miles) from the low-water mark, has been supported by the State Department, by court decisions, and treaties.

Recently in the Submerged Lands Act (approved May 22, 1953^{4/}), the Congress declared that the boundaries of the coastal states are limited to three geographical miles into the Atlantic and Pacific Oceans. By the same Act, the Congress left the states bordering the Gulf of Mexico free to establish historic claims to boundaries extending more than three geographical miles, but limited such boundaries, if established, to three marine leagues from the coast.

The tendency of states to advance claims to territorial waters in excess of three miles has been particularly marked following the failure of the Codification Conference in 1930 at The Hague to agree on a convention on territorial waters. However, states still adhering to the three-mile rule represent about 80 percent of the merchant-shipping tonnage of the world and most of its naval power.

POSITION OF THE UNITED STATES ON INTERNATIONAL LAW QUESTION

The position of the United States is shown in its comments on the Draft Articles on the Regime of the Territorial Sea of the International Law Commission,^{5/} which include the following:

"So far as concerns the question of the breadth of the territorial sea . . . the guiding principle of the Government of the United States is that any proposal must be clearly consistent with the principle of freedom of the seas. . . .

"That the breadth of the territorial sea should remain fixed at three miles, is without any question the proposal most consistent with the principle of freedom of the seas. The three-mile limit is the greatest breadth of territorial waters on which there has ever been anything like common agreement. Every one is now in agreement that the coastal state is entitled to a territorial sea to that distance from its shores. There is no agreement on anything more . . . A codification of the international law applicable to the territorial sea must, in the opinion of the Government of the United States, incorporate this unique status of the three-mile limit and record its unquestioned acceptance as a lawful limit.

"This being established, there remains the problem of ascertaining the status of claims to sovereignty beyond the three-mile limit. The diversity of the claims involved bears witness . . . to the inability of each to command the degree of acceptance which would qualify it for possible consideration as a principle of international law. . . . A codification of the international law applicable to the territorial sea should, in the view of the Government of the United States, record the lack of legal status of these claims."^{6/}

The International Court of Justice made clear in the Norwegian Fisheries case that the delimitation of territorial waters is not a matter dependent merely upon the

^{4/} 67 Stat. 29.

^{5/} Report of the International Law Commission Covering the Work of its Sixth Session, 3 June-28 July 1954, U. N. doc. A/2693, p. 12.

^{6/} Regime of the Territorial Sea, Comments by Governments on the Provisional Articles concerning the Regime of the Territorial Sea adopted by the Territorial Law Commission at its Sixth Session, U. N. doc. A/CN.4/90, 29 March 1955, pp. 33, 34-35.

will of the coastal state but that "the validity of the delimitation with regard to other states depends upon international law."^{7/}

CONSERVATION OF FISHERY RESOURCES

But while the United States does not consider that claims to territorial waters in excess of three miles have validity, with the possible exception of historic ones generally acquiesced in, it does not consider that the considerations which motivate such claims can or should be ignored. What are these considerations? While oversimplification is dangerous, it is suggested that they relate to fishery resources. As one authority has put it, "the fishery question has been the focal point of the whole problem of territorial waters from its very beginning."^{8/}

With those states which are concerned over the depletion of high seas fisheries and desire to take measures for their conservation, the United States has every sympathy. The dictum of Grotius that the resources of the sea are inexhaustible has long since been recognized as unsound. As long ago as the Bering Sea arbitration the United States asserted that unrestricted destruction of the living resources of the sea--in that case, fur seals--was contrary to good morals. The United States is a party to more treaties and agreements having for their objective the conservation of the resources of the sea than any other country.

On September 28, 1945, President Truman issued his proclamation on fisheries for the purpose of "improving the jurisdictional basis for conservation measures and international cooperation in this field."^{9/} This declares the policy of the United States on the establishment of fishery conservation zones in the high seas contiguous to its coasts. Where such fishing activities are maintained by United States nationals alone, it regards it as proper that regulation be exercised by the United States exclusively. But where the fishing activities have been legitimately developed and maintained jointly by nationals of the United States and nationals of other states, conservation zones may be established by agreement between the United States and such other states.

This proclamation has been misunderstood by some as implying a claim to exclusive fishing rights for United States nationals in the waters off its coasts. The proclamation asserts no such claim, and such is not the position of the United States.

As the Secretariat of the United Nations has pointed out in its Memorandum on the Regime of the High Seas: "There is a fundamental difference between the United States Proclamation on Fisheries and the Latin American texts which have followed it."^{10/} President Truman's proclamation specifically stated that "The character as high seas of the areas in which such conservation zones are established and the right to their free and uninhibited navigation are in no way thus affected." The sole purpose of the proclamation was to make possible by appropriate legal means the prevention of the depopulation and destruction of international fishing grounds.

Notwithstanding this, the United States proclamations on fisheries and on the continental shelf^{11/} have been used by some states as a justification for attempts to extend their sovereignty over large areas of the high seas. The International Law Commission of the United Nations no doubt had these measures in mind when it pointed out in connection with its draft articles on fisheries adopted at its Fifth Session (1953) that regulations issued by a state for the conservation of fisheries in any area of the high seas outside its territorial waters are binding only upon its na-

^{7/} ICJ Reports, Judgement of Dec. 18, 1951, pp. 116, 132.

^{8/} Riesenfeld, *Protection of Coastal Fisheries under International Law* (1942), p. 3.

^{9/} *The Department of State Bulletin*, Vol. XIII, no. 327 (Sept. 30, 1945), p. 486.

^{10/} Memorandum (mimeographed) prepared for the Second Session of the International Law Commission, U. N. doc.

A/CN.4/32, July 14, 1950, p. 47.

^{11/} *The Department of State Bulletin*, Vol. XIII, no. 327 (Sept. 30, 1945), p. 485.

tionals and that such unilateral measures resulting in the total exclusion of foreign nationals are "in disregard of the law as it stands at present."^{12/}

INTERFERENCE WITH FISHING ON THE HIGH SEAS

So far as the United States is concerned, the immediate impact of these claims of South American states has fallen upon its fishing industry whose vessels fish in the Pacific as far south as Peru. There has resulted a series of incidents ranging from molestation of American fishing vessels by local authorities at points far off the coast, to the seizure of the craft and their detention until heavy fines are paid.

To insure that these losses should not fall upon private persons, the Congress on August 27, 1954, enacted a statute providing that where a United States flag vessel is seized by a foreign country on the basis of claims in territorial waters or the high seas not recognized by the United States and a fine must be paid in order to secure a release of the vessel and crew, the owners shall be reimbursed by the Treasury upon certification by the Secretary of State.^{13/} Several claims for such reimbursement are pending at the present time.

Perhaps the most conspicuous example of the efforts to enforce claims of sovereignty to the high seas was the seizure last November by Peruvian war vessels and aircraft of five whaling vessels owned by A. S. Onassis flying the Panamanian flag. According to information furnished by Panama to the Organization of American States, two of the vessels were captured approximately 160 miles off the Peruvian coast; two others were attacked with bombs and machinegun fire by Peruvian naval and air units while 300 miles off the coast; and later the factory vessel was attacked by a Peruvian plane 364 miles offshore. These vessels were taken into a Peruvian port and detained until fines of 3 million dollars were paid. Insurance against this hazard was held by Lloyd's (90 percent) and by insurers in the United States (10 percent). Panama, the United Kingdom, and the United States protested to Peru concerning the incident.

On March 27, 1955, Ecuador seized two American flag fishing vessels, the Arctic Maid and Santa Ana, some 14 to 25 miles west of the Island of Santa Clara off the Ecuadoran coast. In the course of the seizure, an American seaman was seriously wounded by gunfire from an Ecuadoran patrol vessel. Although the United States made a strong protest against these illegal acts, fines of more than \$49,000 were imposed on the two vessels.

UNITED NATIONS ACTIVITIES IN THIS FIELD

The draft articles on Fisheries prepared by the International Law Commission of the United Nations have not yet been considered by the General Assembly. However, the Assembly at its Ninth Session (1954) convoked an international conference to consider the economic and technical aspects of the living resources of the high seas to meet in Rome on April 18 of this year.^{14/} It is hoped that this Conference will recommend measures for the regulation and conservation of high-seas fisheries that will satisfy the legitimate interests of coastal states while at the same time preserving the freedom of the seas.

TRUMAN PROCLAMATION ON THE CONTINENTAL SHELF

On September 28, 1945, the same date as his proclamation on fisheries, President Truman issued another proclamation, which is also important in any consideration of this subject. This is the proclamation on the continental shelf.^{15/}

^{12/} Report of the International Law Commission Covering the Work of its Fifth Session, 1 June-14 August 1953, U. N. doc. A/2456, p. 17.

^{13/} 68 Stat. 883.

^{14/} The Department of State Bulletin, Vol. XXXII, Jan. 10, 1955, p. 64, and Apr. 25, 1955, p. 696.

^{15/} The Department of State Bulletin, Sept. 30, 1945, p. 485.

It sets forth the view of the United States that the exercise of jurisdiction over the natural resources of the subsoil and seabed of the continental shelf by the contiguous nation is reasonable and just for the following reasons:

1. The effectiveness of measures to use or conserve these resources would be contingent upon cooperation and protection from the shore;
2. The continental shelf may be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it;
3. The resources under the shelf frequently form a seaward extension of a pool or deposit lying within the territorial limits; and
4. Self-protection compels a coastal nation to keep close watch over the activities off of its shores which are necessary for utilization of these resources, i.e., drilling and mining operations.

In the interest of law and order, jurisdiction over the activities in these off-shore areas should be determined. It is submitted that it is reasonable that this jurisdiction should inhere in the coastal state since these activities must receive cooperation and protection from the shore and they affect the safety of the coastal state.

The proclamation declares that the United States regards the natural resources of the subsoil and seabed of the continental shelf as appertaining to the United States and subject to its jurisdiction and control. Where the shelf extends to the shore of another state, the boundary is to be determined by the interested parties on equitable principles. Finally, the proclamation declares that "The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected."

The draft articles on the Continental Shelf prepared by the International Law Commission describe the rights of the coastal state over the shelf "as sovereign rights for the purpose of exploring and exploiting its natural resources," thus recognizing that the rights are over the shelf and not merely over its resources. The term "sovereign rights" was preferred by the drafters over the expressions "jurisdiction and control" advocated by some nations and "rights of sovereignty" preferred by others. In explanation, the International Law Commission stated that the formulation "sovereign rights" rather than "sovereignty" was employed in an effort "to avoid language lending itself to interpretations alien to an object which the Commission considers to be of decisive importance, namely, safeguarding the principle of the full freedom of the superjacent sea and the airspace above it."^{16/}

This principle is made clear in the Truman proclamation and is reaffirmed in the Outer Continental Shelf Lands Act (Sec. 3(b)), which provides:

" . . . the character as high seas of the waters above the outer continental shelf and the right of navigation and fishing therein shall not be affected."^{17/}

The principle is also declared in Articles 3 and 4 of the International Law Commission's 1953 draft which state that the rights of the coastal state over the continental shelf do not affect the legal status of the superjacent waters as high seas or the legal status of the air space above the superjacent waters.^{18/}

^{16/} Report of the International Law Commission Covering the Work of its Fifth Session, 1 June-14 August 1953, U.N. doc. A/2456, pp. 12, 14.

^{17/} 67 Stat. 462.

^{18/} Report of the International Law Commission Covering the Work of its Fifth Session, 1 June-14 August 1953, U. N. doc. A/2456, p. 12.

The term "continental shelf" is not defined in the Truman proclamation. However, the accompanying White House press release^{19/} stated that generally the subsoil and seabed of the submarine areas contiguous to the coasts of the United States was considered to be limited to submerged land covered by no more than 100 fathoms (600 feet) of water. This limitation--defined in Article 1 of the International Law Commission's draft as 200 meters--would seem to cover all practicable needs for the foreseeable future and to have the advantage of definiteness. If future technical advances should render this formulation inadequate, it can be reconsidered in the light of intervening experience.

That the principles of the Truman proclamation on the continental shelf were considered fair and reasonable is evidenced by the fact that no nation protested the claim and that it has been followed by similar claims by numerous other States. Certain United Kingdom practice and the pronouncements with respect to the Persian Gulf are comparable, in considerable measure, to the Truman proclamation. The Latin-American practice differs however, as I will now point out.

ERRONEOUS APPLICATION OF THE CONTINENTAL-SHELF DOCTRINE

Following the United States proclamation, Mexico announced its claim to the adjacent continental shelf and its natural resources, and also announced that it would "proceed to supervise, utilize, and control the zones of fishing protection which are necessary for the conservation of this source of well-being."

The Argentine Presidential Decree of October 1946, broadening an earlier decree of 1944, proclaimed Argentine's sovereignty over both the continental shelf and its sea. While it recognizes the right of free navigation in the sea above the shelf, this would appear to mean no more than a right of innocent passage. The Argentine Decree asserts that the United States has proclaimed its sovereignty both over the shelf and the peripheral epicontinental sea. This assertion is not, of course, accurate for the United States stated specifically that the proclamation did not affect the status as high seas of the waters above the shelf.

In June 1947, Chile proclaimed its sovereignty over the continental shelf at whatever depth, and over all of the waters adjacent to its coasts to the full extent necessary to reserve, protect, conserve and make use of the natural resources within or below those seas. It referred specifically to the control of fisheries, and as a first step, announced a protection zone "at present" extending 200 nautical miles from the coast.

Chile sought to justify these claims by asserting that the United States, Mexico, and Argentina had already proclaimed their sovereignty over the shelf and seas adjacent to their coasts. Clearly, this assertion misapprehends the United States position and apparently employs the continental-shelf principle only as an argumentative concept, for Chile has a very narrow continental shelf.

Peru, also with a narrow continental shelf, followed the Chilean form of proclamation. Costa Rica, in 1948, by decree-law followed the Chilean pattern.

Ecuador as a party to the Santiago Conference declaration of 1952, claims sovereignty to a distance of 200 miles seaward and over the sea bed regardless of depth.

In 1950 Honduras claimed the continental shelf and the waters above as national territory, and in 1951 claimed protection and control over the Atlantic Ocean within 200 miles from the low-water line.

Certain states in support of their claims have referred to two multilateral pronouncements of the American Republics--the Declaration of Panama and the American Treaty of Reciprocal Assistance.

^{19/} The Department of State Bulletin, Vol. XIII, no. 327 (Sept. 30, 1945), p. 484.

The first, delimited certain areas of the high seas adjacent to the American Continent, in which the participants declared their interest as a matter of self-defense. The latter merely described an area, in which aggressive action activated certain provisions of the Treaty. But neither of these furnish a foundation for the unilateral assertion by a coastal state of sovereignty over the high seas.

It seems evident that the states making these excessive claims realize the insecurity of their legal justification. Apart from reference to these two inter-American pronouncements of an entirely different character, this is indicated by the imprecise nature of their definition; the attempts to justify them on the basis of similar action by other states with similar objectives, and the obvious misapprehension of the United States proclamations where cited as a justification.

NO INCONSISTENCY WITH THE FREEDOM OF THE SEAS

It is submitted that the doctrine of the continental shelf is in no way inconsistent with the principle of the freedom of the seas. The 1945 proclamations on the continental shelf and the Outer Continental Shelf Lands Act make perfectly clear that the claims of the United States in the shelf are not intended to modify in any way the freedom of the superjacent waters.

While, as stated in the 1950 Report of your learned Society, the continental shelf theory fills the gap in international law on this subject,^{20/} the application of the new theory will create many legal problems the definitive answers to which will only become apparent with time and experience.

CONCLUSION

The principle of the freedom of the seas is as valid today as when it was established. It is even more necessary now that these highways of communication be kept open. We cannot return to the middle ages or the days of the Barbary pirates when coastal states exacted tribute for rights of navigation. Nor can we return to those days when strong and enterprising states appropriated the resources of the seas by appropriating the seas themselves.

If the resources of the sea have become more important because of the needs of increased populations for food and their decrease due to wasteful exploitation, the answer is not to be found in disregarding existing international law by unilateral extension of territorial waters or new definitions of such waters. Nor is the answer to be found in the exaction of tribute for the right to fish on the high seas. Such actions have already gone far toward upsetting otherwise good relations between states.

The alternative is a program of conservation of fisheries; the application by international agreement of control based on scientific principles. While due recognition must be given to the special interest of the coastal state in the resources off its coasts, the rights of the other members of the international community must also be respected.

The same principle should govern the application of the doctrine of the continental shelf. The right of the coastal state to the resources of its continental shelf cannot be made an excuse for reduction of the high seas above the shelf to the sovereignty of the coastal state and any exploitation of its resources must be so conducted as to result in a minimum interference with the common use of the superjacent seas.

^{20/} Report of the Forty-fourth Conference, Copenhagen, 1950, International Law Association (1952), p. 132.

Part II - United States Position on Conservation of World's Fisheries Resources^{21/}

The United States participated in the International Technical Conference on the Conservation of the Living Resources of the Sea at Rome, April 18-May 10, 1955, pursuant to a resolution of the General Assembly of the United Nations adopted at its ninth session, December 14, 1954. The Commission studied the problem of the international conservation of the living resources of the sea and made appropriate scientific and technical recommendations.

The subject of fisheries is one of the principal aspects of the problems of the regimen of the high seas which are currently under consideration in various organs and agencies of the United Nations and the Organization of American States. Conflicts of interest over fisheries have in some instances given rise to controversies between states over the right of vessels to fish in certain waters. In other instances, the existence of conflicting interests has stimulated the negotiation of constructive international agreements for the orderly regulation of fisheries in the interests of all states directly concerned.

The principal cause for the development of conflicts of interest between states over the subject of fisheries during recent years has been the increased interest of coastal states in the conservation of fishery resources in waters off their coast. The actual or potential economic importance of fishery resources has received wider recognition during the last decade than formerly. Public interest in coastal states has been aroused over the possibility that these important resources may be exhausted or severely depleted by unrestricted exploitation. Development of more efficient methods of exploitation by countries long used to fishing on the high seas has contributed to the desire of coastal states to protect and conserve the productivity of the resources of the adjacent sea. At the same time, the inadequacy of contemporary scientific knowledge regarding many aspects of the problem of conservation has aroused a renewed interest in promoting further scientific investigations.

Efforts by coastal states to impose regulations upon fishing in the high seas adjacent to territorial waters have conflicted with the rights of other nations to fish upon the high seas. Under the long-established and universally recognized principle of the freedom of the seas, the vessels and nationals of all states have rights not only of navigation but also of fishing in the high seas, i.e., in waters outside of the belt of coastal waters which under international law has traditionally been recognized as territorial waters. The right of the nationals of any state to fish upon the high seas is thus based upon a fundamental principle of international law. The Government of the United States recognized this fact in the proclamation on fisheries issued by the President in 1945, which, when stating certain interests of the United States in conserving fishery resources, specifically recognized the rights of other nations to fish in the high seas off its coasts.

The problem now facing governments throughout the world is how to reconcile the legitimate interests of the coastal state in desiring to maintain the productivity of fishery resources off its coast with the established right of all states to fish freely upon the high seas. Some states have attempted, by unilateral action, to impose control on fishing activities in the high seas off their coasts by claiming sovereignty or other forms of jurisdiction over such waters. Other states have recognized the interest of all concerned by negotiating agreements having as their objective the management of the exploitation of the fisheries resources in such a way as to maintain their maximum productivity for the beneficial use of all the interested parties.

The United States Government is firmly convinced that the latter approach is more likely to achieve practical and beneficial results from the scientific and economic viewpoint and, at the same time, avoid serious breaches of international law

^{21/} Reprinted from The Department of State Bulletin, Vol. XXXII, no. 826 (April 25, 1955), pp. 696-700; a summary prepared in the office of the Special Assistant to the Under Secretary of Fisheries and Wildlife.

which would adversely affect other interests associated with the principle of the freedom of the seas as well as rights to fish.

A consideration of important technical factors affecting the problem of fishery regulation readily reveals serious deficiencies in any approach to this problem which would give the coastal state alone the right to regulate the exploitation of fishery resources in high seas adjacent to its territorial waters. If such a principle were adopted, the responsibility for maintaining the productivity of the fishery resources would devolve upon each coastal state. Yet there are many coastal states which lack the technical resources for the study of problems associated with the maintenance of fisheries and would therefore lack the basic information on which to formulate conservation programs. Moreover, the study of fishery problems often involves elaborate and extensive operations of laboratories, laboratory ships, and other facilities which would be beyond the financial possibilities of many coastal states to develop or maintain. Further costs would be involved in the unilateral policing of high seas areas for the purpose of enforcing any regulations which might be adopted. Finally, it must be recognized that the very nature of fishery problems defies treatment along strictly national lines: many stocks of fish, particularly those having major economic importance, normally move and exist in large areas of the sea and can, therefore, neither be studied nor controlled within the waters adjacent to individual coastal states.

Economic factors likewise emphasize the inadequacy of a principle under which individual coastal states would unilaterally assume responsibility for the control of fisheries in the high seas off their coast. The purpose of fishery development is to produce fish, primarily for food, whether for consumption by the coastal state itself or for sale in other markets. Experience has demonstrated that the possibility of successful exploitation of fishery resources depends upon the production of food at a price which will create and sustain a market. There are already many evidences of efforts to develop fishery resources which have failed because of an inability to produce fish at a sufficiently low price.

Low costs in the production of fish require sustained operations of boats and other facilities, including packing plants, throughout all or most of the year. This in turn requires in many cases the development of fishing fleets capable of ranging beyond the limits of coastal states--particularly the smaller coastal states--in pursuit of stocks of fish. If the high seas were to become divided into unilaterally controlled areas, each coastal state preventing others from entering the waters under its control, the possibilities of developing economically efficient industries capable of converting the living resources of the seas into products of use to man would be severely impeded.

Practical considerations such as those mentioned above are in the opinion of the United States of great importance in determining the suitability of any method of resolving the conflicts of interest to which reference was made earlier in this summary. However, juridical aspects must also be taken into account in devising a satisfactory solution. Under the principle of the freedom of the seas a vessel fishing outside the territorial waters of another state has a well-established right in international law to conduct its operation there. This right cannot be impinged upon or limited by the declarations of one coastal state or a group of such states. On the other hand, the United States Government is entirely ready to recognize that the legitimate interest of coastal states must be given weight in establishing a system of law with reference to fisheries conservation which will resolve the inherent conflict of interests discussed herein.

Freedom of the seas includes not only the right to navigate on the high seas but also the right to fish freely in those waters and enjoy certain other rights. Action taken by the coastal state to limit freedom of the seas with respect to fisheries cannot fail to have wide repercussions upon the interests and rights of other states.

There is not, in the view of the United States, any fundamental and legitimate interest of coastal states, or of other states, which cannot be satisfactorily reconciled through a procedure of international agreement based upon a negotiation among states enjoying equal sovereignty and equal rights. Already the United States Government has enjoyed the beneficial results of agreements with certain other states respecting fisheries under which the resources of certain areas of the seas of interest to the states concerned have been developed, increased, and maintained to the economic advantage of all. Under such conservation agreements, the resources of more than one state have been brought to bear upon the study and solution of technical problems. Facilities of the directly interested states have been used in the development and enforcement of regulations for the exploitation of such resources. Methods for the settlement of points on which agreement is not reached through direct negotiation have been established in advance, in keeping with the principle of the peaceful solution of international differences.

The opinion has been expressed by some states that solution of international conservation problems by agreements among all interested states is severely handicapped or in some cases impossible owing to the fact that such agreements are voluntary and may be invalidated by failure of a single state to cooperate. The United States Government recognizes that this is a problem of some importance. It is under active study by the International Law Commission of the United Nations and will be considered by the United Nations General Assembly at a later date. The United States Government has cooperated and will continue to cooperate with other governments in supporting and encouraging the International Law Commission and the General Assembly in developing and obtaining acceptance of a satisfactory set of international principles for fishery conservation to meet this problem.

The United States Government is convinced, on the basis both of law and of practical experience, that the most satisfactory avenue for the solution of growing conflicts of interest over fishery resources lies in the development of conservation agreements among interested states. It is likewise convinced that continued efforts by coastal states to extend unilaterally their jurisdictional control over areas recognized under international law as being high seas cannot fail to aggravate existing international disputes and create new ones. It is the earnest desire of the United States to avoid such disputes and to assist in achieving the legitimate aim of all interested parties, namely, the maintenance of the productivity of the fishery resources for maximum beneficial human use.

Part III - United States Views on Draft Articles on Regime of Territorial Sea^{22/}

The Secretary-General of the United Nations on March 29 circulated the texts of comments received from member governments on provisional articles concerning the regime of the territorial sea which the International Law Commission had adopted at its sixth session in 1954. Following is the text of the reply of the United States:

NOTE VERBALE FROM THE PERMANENT DELEGATION OF THE UNITED STATES TO THE UNITED NATIONS DATED 3 FEBRUARY 1955

The Representative of the United States of America to the United Nations presents his compliments to the Secretary General of the United Nations and has the honor to refer to the note LEG 292/9/01, dated August 31, 1954, from the Principal Director in charge of the Legal Department, concerning the Draft Articles on the Regime of the Territorial Sea of the International Law Commission set out in the Report covering the work of its sixth session, June 3-July 28, 1954.

The Commission prepared a provisional text for all but four of the articles of the proposed draft and requested the comments of Governments on these articles. Among the articles for which no text has yet been drafted is Article 3 concerning the breadth of the territorial sea. With respect to this article, the Commission requested views and suggestions which might help it to formulate a concrete proposal.

^{22/} Reprinted from *The Department of State Bulletin*, Vol. XXXII, no. 826 (April 25, 1955), pp. 696-700; a summary prepared in the office of the Special Assistant to the Under Secretary of Fisheries and Wildlife.

So far as concerns the articles now drafted, the Government of the United States believes that they constitute, as a whole, a sound exposition of the principles applicable to the regime of the territorial sea in international law. The Government of the United States has, however, certain suggestions to make with respect to Articles 5 and 19.

Article 5 provides *inter alia* that where circumstances necessitate a special regime because the coast is deeply indented or cut into "or because there are islands in its immediate vicinity" the base line may be independent from the low-water mark and may be a series of straight lines. The Government of the United States presumes from the comments which follow the article that it was not intended that the presence of a few isolated islands in front of the coast would justify *per se* the use of the straight line method. The islands, as the comments indicate, would have to be related to the coast in somewhat the same manner as the skjaergaard in Norway. In the view of the Government of the United States, the words "or because there are islands in its immediate vicinity" are too general and do not convey as accurately as desirable what the Commission apparently had in mind.

With respect to Article 19, the Government of the United States is satisfied that the text incorporates principles upheld by the International Court of Justice in its judgment of April 9, 1949, in the Corfu Channel case, but it believes that the comments on this article should include a short statement of the factual circumstances upon which the court was ruling, since such a statement would point up and illustrate the significance and meaning of the principles embodied in Article 19.

So far as concerns the question of the breadth of the territorial sea and the various suggestions set out in paragraph 68 of the Report, the guiding principle of the Government of the United States is that any proposal must be clearly consistent with the principle of freedom of the seas. Some of the proposals amount to a virtual abandonment or denial of that principle. In this connection it must be pointed out that the high seas are an area under a

definite and established legal status which requires freedom of navigation and use for all. They are not an area in which a legal vacuum exists free to be filled by individual states, strong or weak. History attests to the failure of that idea and to the evolution of the doctrine of the freedom of the seas as a principle fair to all. The regime of territorial waters itself is an encroachment on that doctrine and any breadth of territorial waters is in derogation of it; so the derogations must be kept to an absolute minimum, agreed to by all as in the interest of all.

That the breadth of the territorial sea should remain fixed at three miles, is without any question the proposal most consistent with the principle of freedom of the seas. The three-mile limit is the greatest breadth of territorial waters on which there has ever been anything like common agreement. Every one is now in agreement that the coastal state is entitled to a territorial sea to that distance from its shores. There is no agreement on anything more. If there is any limit which can safely be laid down as fully conforming to international law, it is the three-mile limit. This point, in the view of the Government of the United States, is often overlooked in discussions on this subject, where the tendency is to debate the respective merits of various limits as though they had the same sanction in history and in practice as the three-mile limit. But neither 6 nor 9 nor 12 miles, much less other more extreme claims for territorial seas, has the same historical sanction and a record of acceptance in practice marred by no protest from other states. A codification of the international law applicable to the territorial sea must, in the opinion of the Government of the United States, incorporate this unique status of the three-mile limit and record its unquestioned acceptance as a lawful limit.

This being established, there remains the problem of ascertaining the status of claims to sovereignty beyond the three-mile limit. The diversity of the claims involved bears witness, in the opinion of the Government of the United States, to the inability of each to command the degree of acceptance which would qualify it for possible consideration as a principle

of international law. Not only does each proposed limit fail to command the positive support of any great number of nations, but each has been strongly opposed by other nations. This defect is crucial and, in view of the positive rule of freedom of the sea now in effect in the waters where the claims are made no such claim can be recognized in the absence of common agreement. A codification of the international law applicable to the territorial sea should, in the view of the Government of the United States, record the lack of legal status of these claims.

While unilateral claims to sovereignty or other forms of exclusive control over waters heretofore recognized as high seas cannot be regarded as valid, this is not to say that the reasons, legitimate or otherwise, which motivate such claims

should be ignored. In some cases, at least, these attempts of the coastal state to appropriate to its exclusive use large areas of the high seas seem to be based on a real concern for the conservation of the resources of the sea found in such waters. Efforts of the Commission and of the nations to settle such problems should be unceasing. But the remedy is not unilateral action in defiance of long established and sound principles of law applicable to other matters. In many cases the nations taking such action would seem to have little to gain from abandonment of such principles and reversion to a condition of anarchy on the high seas. The sounder approach would appear to be an effort to reach agreement on the principles applicable to the real matters at issue, such as conservation of natural resources and rights to fish.

