

APPENDIXES A TO K

APPENDIX A

Glossary of Terms Used

(*This glossary is intended to serve as a ready reference to the legal and technical terms used in Volume One, whether or not they are defined in the text. The figure references are to those in the text.*)

A

Abstention.—A doctrine advocated by the United States at the Geneva Conference on the Law of the Sea which holds that where a State has developed a fishery in a given area, States which have formerly not fished that stock, or have not contributed to the development of the area, should abstain from fishing there in the future. Principle was not incorporated in the convention on fishing but ratification of convention by the United States was made subject to its right to press for its inclusion in fishery agreements. See *Conventions on the Law of the Sea*.

Accession.—Where a sovereign power becomes a party to an agreement already effected between other powers. See *Ratification*.

Accretion.—The gradual and imperceptible accumulation of land by natural causes, as out of the sea or a river. This may result from a deposit of alluvion upon the shore, or by a recession of the water from the shore. Accretion is the act, while alluvion is the deposit itself. See *Riparian Rights, Alluvion, Reliction, Riparian Boundaries*.

Act of Dec. 19, 1836.—The act by which the Republic of Texas fixed its seaward boundary in the Gulf of Mexico at 3 leagues from land. See *Texas Boundary Act, United States v. Louisiana et al.*

Act of Mar. 2, 1799.—See *Twelve-Mile Limit*.

Adjacent Sea.—See *Marginal Sea*.

Admiralty Mile.—The nautical mile used in Great Britain; its value is 6,080 feet or 1,853.2 meters. See *Nautical Mile, International Nautical Mile*.

Advice and Consent.—Art. II, sec. 2, cl. 2, of the Constitution provides that the President shall have power to make treaties by and with the *advice and consent* of the Senate if two-thirds of the Senators present concur. See *Optional Protocol of Signature*.

Aeronautical Chart.—A chart intended primarily for air navigation. Portrays all information (topographic features and aeronautical data) necessary for the safe conduct of aircraft. Also called an Air Navigation Chart. See *World Aeronautical Chart*.

A Fortiori.—With the greater force; all the more.

Aid to Navigation.—A device external to a boat or vessel designed to assist in determination of position, a safe course, or to warn of dangers. Examples are: Lighthouses, lights, buoys, daybeacons, radio beacons, and electronic devices.

Alabama Case.—See *Alabama v. Texas et al.*

Alabama Decision (1960).—See *United States v. Louisiana et al.*

Alabama v. Texas et al.—A suit filed by Alabama against Texas, Louisiana, Florida, and California, and certain officials of the Federal Government, challenging the constitutionality of Public Law 31. See *Public Law 31, Decision of Mar. 15, 1954.*

Alluvion.—The soil that is deposited along a river or the sea by gradual and imperceptible action of the sea. See *Accretion.*

Amicus Brief.—A friend-of-the-court brief. Filed by one not a party to the suit but is allowed to introduce argument to protect his interests or enlighten the court. Derived from *amicus curiae*, a friend of the court.

Amicus Curiae Brief.—See *Amicus Brief.*

Ancillary Problems.—Auxiliary or subordinate to a principal problem.

Anglo-Norwegian Fisheries Case.—Same as *United Kingdom v. Norway.*

Anglo-Venezuelan Treaty of 1942.—See *Gulf of Paria.*

Annexation.—The incorporation of newly acquired territory into the national domain as an integral part thereof. Texas was admitted into the Union through the process of annexation, whereas the States of California and Louisiana were created out of federal territory.

Appellate Jurisdiction.—The power and authority which courts have to hear cases on appeal from the decision of a lower court. Appellate courts do not hear evidence, but determine matters of law. The Supreme Court generally has appellate jurisdiction only, except in certain special cases enumerated in the Constitution over which it has original jurisdiction—jurisdiction in the first instance. See *Original Jurisdiction.*

Application of the Pollard Rule to the Marginal Sea.—The basis for the Supreme Court's interpretation of the grant of submerged lands made to the states under Public Law 31. See *Pollard Rule, Public Law 31.*

Arbitral Procedures.—Procedures for the settlement of disputes by arbitration.

Archipelago.—An area of water studded with many islands or with a group of islands; also, such a group of islands.

Arcs-of-Circles Method.—A method of constructing an *envelope line* by means of a series of arcs of fixed radius from points along the baseline, the most seaward arcs defining the line (fig. 27). See *Envelope Line.*

Art. IV, Sec. 3, Cl. 2.—The provision in the Constitution of the United States which gives Congress the power to dispose of property belonging to the United States. See *Decision of Mar. 15, 1954.*

Artificial Harbor.—One where protection is afforded through the construction of harborworks or breakwaters; for example, the outer harbor of San Pedro (fig. 10). See *Harbor.*

As It Exists at the Time of Survey.—An expression used by the Special Master in the *California* case to indicate that the boundary between federal and state jurisdiction is to be determined by the existing ordinary low-water mark regardless of whether changes resulted from accretion, from accretion induced by artificial structures, or from artificial causes. See *Riparian Boundaries, Report of Special Master.*

At the Time a State Became a Member of the Union.—See *Historic State Boundary*.

Attorney-General v. Chambers (4 De G. M. & G. 206).—An 1854 leading English case in which the word “ordinary,” as applied to tides, was first construed as meaning the medium high tides between the springs and the neaps, and that the landward limit of the seashore is the line of the medium high tides between the springs and the neaps. See *Ordinary Tides, Borax Consolidated, Ltd. v. Los Angeles*.

Avulsion.—The loss of lands bordering on the seashore by sudden or violent action of the elements, perceptible while in progress; a sudden and rapid change in the course and channel of a boundary river. Neither of these changes works a change in the riparian boundary. See *Accretion, Erosion, Reliction*.

Awash Rock.—Same as *Rock Awash*.

B

Baseline.—A term used in the international law of the sea to indicate the reference line from which the outer limits of the marginal sea and other offshore zones are measured; the dividing line between inland waters and the marginal sea. See *Rule of the Tidemark, Normal Baseline, Straight Baselines, Headland-to-Headland Line*.

Base Point 21.—A point on the Norwegian system of straight baselines (see fig. 14) located on a rock bare only at low tide. See *United Kingdom v. Norway*.

Bay (According to Geneva Convention).—A well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. The area of such an indentation must be as large as, or larger than the semicircle whose diameter is a line drawn across the mouth of the indentation. See *Semicircular Rule, Conventions on the Law of the Sea, Bay* (General).

Bay (General).—An indentation of the coast; an embayment; a subordinate adjunct to a larger body of water; a body of water between and inside of two headlands. See *Open Bay, Closed Bay, Bay* (According to Geneva Convention).

Beach.—Same as *Tidelands*.

Bering Sea Fur Seal Arbitration.—An arbitration in 1893, culminating in the treaty of July 7, 1911, between the United States, Great Britain, Russia, and Japan, to regulate the hunting of seals in the Pacific Ocean north of latitude 30° North, including the seas of Bering, Kamchatka, Okhotsk, and Japan.

Bilateral Arrangement.—An agreement between two parties containing mutual promises which do not affect other parties. The Anglo-Venezuelan Treaty of 1942 was an agreement by both parties not to claim rights in the submarine areas on the other side of a dividing line between the two countries. See *Gulf of Paria*.

Boggs Formula.—See *Reduced Areas*.

Bow-and-Beam Bearings.—A method of determining a vessel's position from observations on a single navigational aid by taking successive bearings of 45° and 90°.

Borax Case.—See *Borax Consolidated, Ltd. v. Los Angeles*.

Borax Consolidated, Ltd. v. Los Angeles (296 U.S. 10).—A 1935 landmark case in the law of tidal boundaries. Established for the Federal courts the doctrine that in construing a federal grant, the common-law term “ordinary high-water mark,” as the boundary between upland and tideland, is to be interpreted as “the mean high-tide line”; that is, as neither the mean of the spring tides nor the mean of the neap tides, but a mean of all the high tides. The case also established the first precise standard for the demarcation of the line of mean high water on the ground; that is, by using for the plane of mean high water a determination from “an average of 18.6 years” as near as possible (citing Tidal Datum Planes, Special Publication No. 135, U.S. Coast and Geodetic Survey (1927)). See *Attorney-General v. Chambers, Mean High-Water Line*.

Brief.—A written or printed document, prepared by counsel to serve as the basis for argument in a case, and usually filed for the information of the court. It embodies the points of law which counsel desires to establish, together with arguments and authorities upon which he rests his contention. See *Amicus Brief*.

Bynkershoek, Cornelius Van.—A Dutch jurist who is generally credited with having first advanced the concept (in 1702) that the distance of a cannon shot from shore is the distance that a littoral nation should be allowed to dominate. This gave rise to the so-called 3-mile limit, since the range of cannon at that time was approximately 3 nautical miles, or a marine league. See *Marginal Sea*.

C

California Case.—See *United States v. California*.

Cannon-Shot Rule.—The rule that a maritime nation has a right of dominion over the sea near its coast to the extent that it can defend itself. First propounded in 1702 when the range of cannon was approximately a marine league or 3 nautical miles. See *Bynkershoek, Marginal Sea*.

Capability-of-Use Principle.—The principle that a body of land to be regarded as an island must be capable of use. This principle was advanced by the U.S. delegation at the 1930 Hague Conference for the Codification of International Law. See *Island* (According to Geneva Convention).

Carte Blanche.—Literally, a blank card or a blank paper signifying unconditional terms or unlimited authority.

Cartographic History of San Pedro Bay.—A study made by the Coast and Geodetic Survey with respect to the historic limits of the bay and the origin and charting history of Point Lasuen. See *Letter of July 14, 1947*.

Ceases to Have the Configuration and Characteristics of a Bay.—An expression used in the North Atlantic Coast Fisheries Arbitration of 1910 to describe the place at coastal indentations from which the 3-mile limit of exclusion was to be measured. See *North Atlantic Coast Fisheries Arbitration of 1910, Semicircular Rule, Ten-Mile Rule*.

Chain-of-Title Theory.—One of the two theories on which the Government relied in the *California* case. The cession by Mexico of the territory of California, following the Mexican War, and the express reservation in the act admitting California to statehood that title to all public lands remained in the United States. See *National External Sovereignty*.

Change of the Moon.—The time of new moon. See *Full and Change of the Moon*.

Channel Areas.—The water areas between the mainland and the offlying islands along the southern California coast, the status of which (inland waters or open sea) the Special Master in the *California* case was to determine (fig. 13). See *Overall-Unit-Area*.

Chapman Line.—A tentative administrative line established by the United States for the coast of Louisiana, following the decision of June 5, 1950, as the dividing line between federal and state jurisdiction. The name follows the name of the then Secretary of the Interior, Oscar L. Chapman. See *Federal-State Boundary*.

Chart.—See *Nautical Chart*.

Chart Datum.—The tidal datum used on nautical charts for referencing the soundings (depth units). See *Tidal Datums*.

Chesapeake Bay.—Claimed as inland waters by the United States on historic grounds. See *Historic Bay*.

Civil Law.—The system of law that is based upon statutes and upon written codes, and has for its antecedents the Roman law, particularly the Justinian Code. It is distinguished from the common, or unwritten, law which is based upon judicial decisions and precedent. See *Common Law*.

Closed Bay.—An indentation of a coast that is part of the inland waters; one that conforms to the geometric criteria adopted for the determination of bays as inland waters. See *Semicircular Rule, Open Bay*.

Closed Sea.—See *Mare Clausum*.

Closing Line.—The dividing line between inland waters and the marginal sea across the entrance of a true bay. See *True Bay, Inland Waters, Marginal Sea*.

Coalesce.—See *Inseparability Doctrine*.

Coast.—A zone of land of indefinite width (perhaps 1 to 3 miles) bordering the sea; the land that extends inland from the shore. See *Shore*.

Coastal Fisheries.—In the United States, those under the control and regulation of the several states, under their inherent police powers, in the absence of conflicting federal legislation. See *Police Power*.

Coastal State.—A nation bordering on the open sea. See *Open Sea, Littoral State*.

Coast Guard Lines.—Lines established by the U.S. Coast Guard for separating areas of the sea where the Inland Rules of the Road apply from those where the International Rules apply. See *Inland Rules of the Road, International Rules of the Road*.

Coast Line (According to Public Law 31).—Defined as the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters (fig. 24). See *Line of Ordinary Low Water*.

Coastline.—The line of contact between land and sea. In the Coast Survey, the term is considered to be synonymous with shoreline. See *Coast Line* (According to Public Law 31), *Shoreline, Political Coastline*.

Coastline Rule.—See *Rule of the Tidemark*.

Coast Pilots.—Adjuncts to the nautical charts containing information of importance to the navigator most of which cannot be shown conveniently on the charts and is not readily available elsewhere. The Coast Pilots of the Coast and Geodetic Survey comprise 8

volumes and cover the coasts of continental United States, Hawaii, the Virgin Islands, and Puerto Rico.

Codification of International Law.—As defined in the statute of the International Law Commission, it is the more precise formulation and systematization of rules of international law in fields where there already have been extensive State practice, precedent, and doctrine. See *International Law Commission*.

Committee of Experts.—A technical committee which met at The Hague in April 1953, under the aegis of the International Law Commission, to study problems related to the delimitation of the territorial sea and to make recommendations thereon.

Common Law.—The body of judicial decisions developed in England and based upon immemorial usage. It is unwritten law as opposed to statute, or written, law. The English common law forms the foundation for the system of law in the United States. See *Civil Law*.

Comparison of Simultaneous Observations.—In tidal technology, a method of determining mean values by comparison of short-period observations at a station with simultaneous observations made at a station for which mean values, based on long-period observations, are available. See *Mean Values, Short-Period Observations*.

Competence Test.—See *Exploitability Test*.

Compromise Proposal.—See *United States Compromise Proposal*.

Congressional Power to Admit New States.—A power granted to Congress under Art. IV, sec. 3, cl. 1 of the Constitution, and carries with it the power to fix state boundaries.

Conjunctive Phrase.—A phrase that contains two conditions, both of which must be fulfilled to satisfy a definition or otherwise. See *Disjunctive Phrase*.

Connally Reservation.—Adopted in 1946 under Senate Resolution 196, in which the United States accepted generally the compulsory jurisdiction of the International Court of Justice but reserved the right to decide whether a certain matter is a domestic problem of the United States and not a matter upon which the Court has power to act. See *Optional Protocol of Signature, International Court of Justice*.

Constitutional System.—The dual sovereignty system in the United States, that is, the states and the Federal Government. The Federal Government is one of delegated, limited, and enumerated powers, and all powers not expressly granted or necessarily implied in the Constitution are reserved to the states. This has been held to apply to internal affairs rather than to external affairs. See *United States v. Curtiss-Wright Export Corp., National External Sovereignty*.

Conterminous, Coterminous.—Having a common boundary. Tidelands and inland waters have a common boundary with the marginal sea; the marginal sea has a common boundary with the high seas (fig. 2). See *Conterminous United States*.

Conterminous United States.—Comprises the 48 States of the United States and the District of Columbia; all of the states exclusive of Alaska and Hawaii. They have common boundaries and are not separated by foreign territory or the high seas. See *Conterminous, Continental United States*.

Contiguous Zones.—Zones beyond the marginal sea over which a nation exercises certain types of jurisdiction and control without affecting the character of the area as high seas. See *Zones Beyond the Marginal Sea*.

Continental Shelf.—The submerged portion of a continent which slopes gently seaward from the low-water line to a point where a substantial break in grade occurs, at which point the bottom slopes seaward at a considerable increase in slope until the great ocean depths are reached. The point of break defines the “edge” of the shelf, and the steeper sloping bottom the “continental slope.” Conventionally, the edge is taken at 100 fathoms (or 200 meters) but instances are known where the increase in slope occurs at more than 200 or less than 65 fathoms. See *International Committee on the Nomenclature of Ocean Bottom Features*.

Continental Slope.—The declivity from the outer edge of the continental shelf into great depths. See *Continental Shelf, Continental Terrace*.

Continental Terrace.—The zone around the continents, extending from low-water line to the base of the continental slope. See *Continental Shelf, Continental Slope*.

Continental United States.—Includes Conterminous United States plus the State of Alaska. See *Conterminous United States*.

Convention.—In international law, an agreement between sovereign States less formal than a treaty by which such States arrange for the regulation of matters affecting all of them. See *Conventions on the Law of the Sea*.

Conventional Line.—A method of delimiting the seaward boundary of the marginal sea. Usually associated with straight lines, but may be a combination of lines: straight lines along a concave coast and curved lines along a convex coast. See *Replica Line, Envelope Line*.

Convention on Fishing and Conservation of the Living Resources of the High Seas.—See *Conventions on the Law of the Sea*.

Convention on the Continental Shelf.—See *Conventions on the Law of the Sea*.

Convention on the High Seas.—See *Conventions on the Law of the Sea*.

Convention on the Territorial Sea and the Contiguous Zone.—See *Conventions on the Law of the Sea*.

Conventions on the Law of the Sea.—The four conventions adopted at Geneva in 1958, to wit: Convention on the Territorial Sea and the Contiguous Zone, Convention on the Continental Shelf, Convention on the High Seas, and Convention on Fishing and Conservation of the Living Resources of the High Seas. See *First Geneva Conference*.

Corfu Channel.—The body of water that separates the Greek Island of Corfu from Albania and the mainland of Greece (*see* fig. 15) and adjudicated in the *Corfu Channel* case. See *United Kingdom v. Albania*.

Corfu Channel Case.—Same as *United Kingdom v. Albania*.

Courbe Tangente.—Same as *Envelope Line*.

Cross Bearings.—A method of determining a vessel's position from observations on two or more aids to navigation.

Curvature of the Coast.—Any indentation in a coast that does not conform to a “true bay” and where the baseline follows the sinuosities of the coast. See *True Bay, Baseline*.

Customs-Enforcement Areas.—Areas, not more than 50 miles from customs waters, designated by the President, under Anti-Smuggling Act of 1935, upon a finding that

customs laws are being violated, and in which U.S. revenue officers may board foreign vessels. See *Twelve-Mile Limit*.

Customs Waters.—See *Twelve-Mile Limit, Customs-Enforcement Areas*.

D

Daily Tides.—Same as *Diurnal Tides*.

Datum.—A reference point, line, or plane used as a basis for measurements. See *Datum Plane*.

Datum Plane.—A surface used as a reference from which heights or depths are reckoned. The plane is called a Tidal Datum when defined by a phase of the tide, for example, high water or low water. See *Tidal Datums*.

Decision of Court.—The decision of a court usually embodies a statement of the facts, the conclusions of law, and the reasoning by which the court arrived at its judgment. See *Decree of Court*.

Decision of June 23, 1947 (332 U.S. 19).—The decision of the Supreme Court in which the doctrine of federal paramount rights in the submerged lands seaward of inland waters was first enunciated. See *United States v. California, Submerged Lands, Paramount Rights*.

Decision of June 5, 1950 (339 U.S. 699, 707).—The decision of the Supreme Court upholding federal paramount rights in the submerged lands off the Louisiana and Texas coasts. See *United States v. Louisiana, United States v. Texas*.

Decision of March 15, 1954 (347 U.S. 272).—The decision of the Supreme Court upholding the constitutionality of Public Law 31 as a valid exercise of the power of Congress to dispose of the territory or other property of the United States. See *Alabama v. Texas et al.; Rhode Island v. Louisiana et al.; Art. IV, Sec. 3, Cl. 2*.

Decision of May 31, 1960 (363 U.S. 1, 121).—The decision of the Supreme Court upholding the claims of Texas and Florida to a maritime boundary of 3 leagues (9 geographic miles) in the Gulf, which under Public Law 31 entitled them to a grant of submerged lands extending for that distance from the coastline, but denying to Louisiana, Alabama, and Mississippi rights beyond 3 geographic miles. See *Public Law 31, United States v. Louisiana et al., United States v. Florida et al.*

Declaration of Panama.—A declaration by the United States and other American Republics proclaiming a security zone 300 miles wide for the protection of neutral commerce of the Americas during World War II. See *Extraterritorial Jurisdiction, Zones Beyond the Marginal Sea*.

Declaratory Judgment.—A judgment of a court which simply declares the rights of the parties on a question of law.

Declaratory of International Law.—Expressive of existing law, or that which puts an end to a doubt as to what the law is.

Decree of Court.—A statement of the legal findings of the court and an order putting its decision into effect. In *United States v. Louisiana et al.*, the Supreme Court decision was announced on May 31, 1960, but its final decree was entered on Dec. 12, 1960. See *Decision of Court*.

De Facto.—Actually; in fact.

Delaware Bay.—Claimed as inland waters by the United States on historic grounds. See *Historic Bay*.

Demarcation Line.—A line through the high seas marking the allocation of territory between two countries, rather than a boundary line; for example, the line through Bering Strait and Bering Sea between Russia and Alaska.

De Novo.—Anew, afresh. In the *California* case, the term “ordinary low-water mark” required a *de novo* interpretation. See *Ordinary Low-Water Mark*.

Deposition.—Testimony taken under oath and in writing before a competent officer in response to interrogatories in lieu of court testimony.

Dereliction.—Same as *Reliction*.

Dictum, Dicta.—An abbreviated form of *obiter dictum* (a remark by the way) or *obiter dicta*. Any statement of the law enunciated by a court merely by way of illustration, argument, analogy, or suggestion not necessarily involved nor essential to the determination of the case in hand. *Dicta* lack the force of an adjudication.

Director's Letter to Solicitor General.—See *Letter of Feb. 8, 1952*.

Discontinuous Charts.—Charts that do not form part of a continuous series; for example, widely separated harbor charts.

Disjunctive Phrase.—A phrase set in the alternative and usually expressed by the word “or.” Opposed to conjunctive. See *Prior to or at the Time*.

Dissenting Opinion.—A minority opinion by a judge or judges denoting the explicit disagreement with the decision of the majority.

Diurnal Inequality.—The difference in height of the two high waters or of the two low waters of each day. See *Mixed Tides*.

Diurnal Tides.—Tides having a period or cycle of approximately one tidal day. Such tides exhibit only one high and one low water during a tidal day; the predominant type of tide in the Gulf of Mexico.

Doctrine of Accretion.—See *Accretion*.

Doctrine of Erosion.—See *Erosion*.

Domestic Purposes.—Not affecting the field of foreign relations or international law. In *United States v. Louisiana et al.*, the Supreme Court held the purposes of Public Law 31 to be purely domestic and therefore the extent of the grant of submerged lands to the states was not limited by the 3-mile national boundary. See *Decision of May 31, 1960, National Boundary*.

Dominium.—Ownership or proprietary rights as distinguished from *imperium* which refers to governmental powers of regulation and control. In the *Texas* case, the Court held that once low-water mark is reached the two coalesce and unite in the national sovereign.

Draft Articles of ILC.—The final articles of the law of the sea which the International Law Commission adopted at its 8th session in 1956 and which formed the basis for the conventions adopted at the First Geneva Conference in 1958. See *Final Report of International Law Commission*.

Drying Rock.—Terminology used in Final Report of International Law Commission but not defined. See *Low-Tide Elevation*.

Drying Shoal.—Terminology used in Final Report of International Law Commission but not defined. See *Low-Tide Elevation*.

E

Edge of Shelf.—See *Continental Shelf*.

Embayment.—Any indentation of a coast regardless of width at the entrance or depth of penetration into the land. See *Inland Waters*.

Enclave.—An area of high seas partly or entirely within the territorial sea.

End Points.—The points along a coast or on offshore islands that are used for drawing straight baselines. See *Straight Baselines*.

Envelope Line.—A form of line used to delimit the seaward boundary of the marginal sea, and the one incorporated in the Convention on the Territorial Sea and the Contiguous Zone adopted at Geneva in 1958 (see Appendix I). Defined as a line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the marginal sea. Geometrically, it is the locus of the center of a circle of fixed radius the circumference of which is always in contact with the baseline (see fig. 27). The name is derived from the fact that it forms a continuous series of intersecting arcs which are farthest seaward of all the possible arcs that can be drawn from the baseline with the same radius, thus enveloping all arcs that fall short of the seaward arcs. See *Baseline*.

Epicontinental Sea.—The waters overlying the continental shelf.

Equal Footing.—See *Equal-Footing Clause*.

Equal-Footing Clause.—A clause usually included in the statutes of admission of states entering the Union subsequent to the adoption of the Constitution which provides that the new states are admitted to the Union on an equal footing with the Original States. The clause has been held to refer to political rights and to sovereignty and not designed to wipe out diversities in economic standing. It has nevertheless been held to have a direct effect on certain property rights, as for example, ownership of the tide lands and the submerged lands under inland navigable waters. See *Inland Water Rule*.

Equidistant Line.—See *Principle of Equidistance*.

Eroding Processes.—See *Erosion*.

Erosion.—In riparian law, the gradual and imperceptible washing away of the land along the sea by natural causes. Also applied to the submergence of the land due to encroachment of the waters. See *Riparian Law, Riparian Boundaries*.

Estuary.—An arm of the sea at the wide lower end of a tidal river.

Exclusive Sovereignty.—An assertion of complete sovereignty. The type of sovereignty recognized in international law that would bring water areas into the category of inland waters which otherwise would be excluded, provided there has been acquiescence by foreign governments. See *Historic Bay, Historic Waters*.

Executive Branch.—All agencies of the Government (departments and independent agencies) that are under the direction of the President as the chief executive officer.

Executive Proclamation No. 2667 (59 Stat. 884).—Same as *Presidential Proclamation of Sept. 28, 1945* (Continental Shelf).

Exploitability Test.—Under the 1958 Geneva Convention on the Continental Shelf, a coastal nation may exercise sovereign rights beyond the conventional limit of 200 meters for the shelf if the area admits of the exploitation of the natural resources.

Extended Boundaries.—The seaward boundaries beyond 3 geographic miles which a state may have under Public Law 31. See *Federal-State Boundary* (Under Public Law 31), *Historic State Boundary*.

Extended Jurisdiction.—See *Zones Beyond the Marginal Sea*.

Exterior Boundaries.—Refers to the seaward boundaries of the marginal or territorial sea. In the United States this is considered to be 3 geographic or nautical miles from the seaward limits of inland waters. See *Marginal Sea, Seaward Limits of Inland Waters*.

Exterior Coastline.—See *Political Coastline*.

Exterior Limits of Inland Waters.—Same as *Seaward Limits of Inland Waters*.

Extraterritorial Jurisdiction.—Authority which a nation exercises on the high seas beyond the territorial sea. Generally associated with law enforcement and national security (see Appendix J). See *Zones Beyond the Marginal Sea*.

F

Federal-State Boundary (Under Public Law 31).—The seaward boundaries of the states. Along the Atlantic and Pacific coasts the boundary cannot exceed 3 geographic miles from the coastline of each state as defined in Public Law 31; along the Gulf coast it cannot exceed 9 geographic miles from the coastline. Federal jurisdiction begins at the seaward boundaries of the states. See *Historic State Boundary, Decision of May 31, 1960*.

Federal-State Boundary (Under Submerged Lands Cases).—The ordinary low-water mark and the seaward limits of inland waters along the coasts of California, Louisiana, and Texas, adjudicated by the Supreme Court as the beginning of federal paramount rights in the submerged lands. See *Decision of June 23, 1947, Decision of June 5, 1950*.

Fictitious Shoreline.—Refers to the line that divides inland waters from the open sea at indentations. The term "coast line" in the Submerged Lands Act includes the actual low-water line and the line marking the seaward limits of inland waters. See *Coast Line* (According to Public Law 31).

Fifteen-Mile Limitation.—The closing line for indentations recommended by the International Law Commission. See *Ten-Mile Rule, Twenty-Four-Mile Rule*.

Final Decree.—The decree entered by the Supreme Court in the case of *United States v. Louisiana et al.* on Dec. 12, 1960. See *Decree of Court*.

Final Report of International Law Commission.—The draft articles on the law of the sea adopted by the Commission at its 8th Session and submitted to the General Assembly of the United Nations in 1956. Identified as Official Records, U.N. General Assembly, 11th Sess., Supp. No. 9 (1956) (U.N. Doc. A/3159).

Findings of the Special Master.—The final recommendations made to the Supreme Court in the *California* case. See *Report of Special Master*.

First Geneva Conference.—The United Nations Conference on the Law of the Sea held at Geneva, Feb. 24 to Apr. 27, 1958.

Fisheries Case.—Same as *United Kingdom v. Norway*.

Fisheries Investigation of the U.S. Tariff Commission.—See *Semicircular Rule Applied*.

Florida Constitution of 1868.—The basis for the Supreme Court's holding that Florida is entitled to a 3-league boundary in the Gulf of Mexico under Public Law 31. See *United States v. Florida et al.*

Florida Decision (1960).—See *United States v. Florida et al.*

Flux and Reflux of the Tide.—The flow and ebb of the tide; more correctly, flow and ebb of the tidal movement.

Following the Sinuosities of the Coast.—Following the convolutions of a coast along the tidal line adopted as the baseline for measuring the marginal sea. In the Submerged Lands Cases and the Submerged Lands Act it is the ordinary low-water mark or line of ordinary low water. See *Rule of the Tidemark*.

Force Majeure.—Superior or irresistible force.

Foreshore.—In legal terminology, the strip of land between the high- and low-water marks that is alternately covered and uncovered by the flow of the tide. In coastal engineering work, it is defined as the part of the shore that lies between the crest of the berm and the ordinary low-water mark, which is ordinarily traversed by the uprush and backrush of the waves as the tide rises and falls; the foreshore would thus extend farther inshore than the shore. See *Shore*.

Foreshore Slope.—The inclination of the foreshore to the horizontal. See *Foreshore*.

Four Freedoms.—Under the broad doctrine of freedom of the high seas, they comprise the following: freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines, and freedom to fly over the high seas. See *Freedom of the Seas*.

Four-Mile Limit.—Norway's fisheries zone based on a "4-mile league" in use in Scandinavian States a half century before the 3-mile limit (1 marine league) entered into international practice. See *Norwegian Royal Decree of July 12, 1935*.

Freedom of Navigation.—The right of a State (coastal or not) to sail ships on the high seas under its flag.

Freedom of the Seas.—The Roman doctrine that the open sea cannot be appropriated for the exclusive use of any one nation. See *Mare Liberum, Four Freedoms*.

French Proposal.—See *Segmental Method*.

Full and Change of the Moon.—The times of the spring tides. See *Moon's Phase, Spring Tides*.

Fundamental Oceanographic Research.—Research into the phenomena of the ocean including the seabed and the ocean waters, but not the subsoil. See *Other Scientific Research*.

G

General Direction of the Coast.—A phrase used in the *Fisheries* case as one of the conditions under which straight baselines may be drawn; that is, they must not depart to any appreciable extent from the general direction of the coast (see fig. 14). No specific

criteria, however, were laid down by the Court for determining what constitutes an appreciable departure. See *United Kingdom v. Norway*.

General Trend Line of the Ordinary Low-Water Mark.—The general direction of the ordinary low-water mark on either side of a headland for determining the termini of the headland-to-headland line at the seaward limit of inland waters (fig. 12). See *Termini at Headlands*.

Geneva Conference (1958).—See *First Geneva Conference*.

Geneva Conference (1960).—See *Second Geneva Conference*.

Geneva Conventions (1958).—See *Conventions on the Law of the Sea*.

Geographical Strait.—A relatively narrow waterway connecting two larger bodies of water. Distinguished from an international strait. See *Strait as an International Highway*.

Geographic Mile.—Same as *Nautical Mile*.

Geological and Geophysical Explorations.—Under Public Law 212, it means exploration in the substructure of the earth using seismic or other methods. See *Public Law 212*.

Geometrical Method.—See *Semicircular Rule*.

Geometric Construction.—Used in the *Fisheries* decision as referring to straight baselines and independent of the low-water mark. See *United Kingdom v. Norway*.

Grotius, Hugo.—A Dutch jurist and author of a pamphlet published in 1609 under the title *Mare Liberum* in which he first expounded the doctrine of the freedom of the seas. See *Mare Liberum*.

Gulf of Paria.—Separates the British island of Trinidad from the mainland of Venezuela; the area involved in the Anglo-Venezuelan Treaty of Feb. 26, 1942, the first action taken by coastal nations to appropriate the mineral resources in submerged lands beyond the territorial sea.

H

Hague Conference of 1930 for the Codification of International Law.—A conference of nations convened under the aegis of the League of Nations, for the consideration of problems relating to the territorial sea.

Half-Tide Level (also called Mean Tide Level).—A tidal datum midway between mean high water and mean low water.

Harbor.—A place where ships may find shelter or refuge from the sea and the winds. According to Coast Survey terminology—for purposes of standardizing its use in surveying and charting—a natural or artificially improved body of water providing protection for vessels and generally anchorage and docking facilities. In legal terminology, it is a haven or a space of deep water so sheltered by the adjacent land as to afford a safe anchorage for ships. According to the Geneva Convention on the Territorial Sea, the outermost permanent harborworks which forms an integral part of a harbor system is regarded as forming part of the coast from which the territorial sea is measured. See *Natural Harbor, Artificial Harbor*.

Harborworks.—Structures erected along the seacoast at inlets or rivers for protective purposes, or for enclosing sea areas adjacent to the coast to provide anchorage and shelter. See *Harbor, Artificial Harbor*.

Harmonic Analysis.—The mathematical process by which the observed tide at a place is analyzed by breaking it down into a number of constituent tides of simple periodic forces, each having a fixed period. In this process, the sun and moon are replaced by a number of hypothetical tide-producing bodies which move in circular orbits around the earth in the plane of the equator. See *Harmonic Constant, Harmonic Constituent*.

Harmonic Constant.—The amplitude and epoch (the time, in angular measure, between the meridian passage of a hypothetical tide-producing body and the high water of its tide) of a harmonic constituent of the tide. See *Harmonic Constituent, Harmonic Analysis*.

Harmonic Constituent.—One of the elements in a mathematical expression for the tide-producing force and in corresponding formulas for the tide, each constituent representing a periodic change or variation in the relative positions of the earth, sun, and moon. See *Harmonic Analysis*.

Harvestable Stage.—The stage of life of organisms of the sea during which the resources are harvestable, and not the particular moment at which they are captured. See *Sedentary Species*.

Having Equal Significance in the Tidal Cycle.—An expression used in the letter of Feb. 8, 1952, from the Director, Coast and Geodetic Survey, to the Solicitor General, explaining tidal datums (see Appendix E). Refers to the two high waters and two low waters of unequal height that occur during a tidal day in the mixed type of tide, each of the two heights being given the same weight in the computation of mean values. See *Mixed Tides, Letter of Feb. 8, 1952*.

Headland.—In common usage, a land mass having a considerable elevation. In the context of the law of the sea, elevation is not an important attribute and a headland may be the apex of a salient of the coast, the point of maximum extension of a portion of the land into the water, or a point on the shore at which there is an appreciable change in direction of the general trend of the coast. See *Termini at Headlands*.

Headland Theory.—The superposition of a fictitious coastline on the geographic or physical coastline but having no contact with the actual coast except at salient points. See *Political Coastline, King's Chambers*.

Headland-to-Headland Line.—The line which joins the termini at the outer headlands of an indentation of the coast that has been determined to be inland waters by the semicircular rule or on historic grounds. It marks the seaward limit of inland waters. See *Termini at Headlands, Semicircular Rule*.

Hearings on S.J. Res. 13.—Hearings before the Senate Committee on Interior and Insular Affairs on a submerged lands act. See *S.J. Res. 13*.

Higher High Water.—The higher of the two high waters of a tidal day where the tide is of the semidiurnal or mixed type. The single high water occurring daily during periods when the tide is diurnal is considered to be a higher high water. See *Diurnal Tides, Lower High Water*.

Higher Low Water.—The higher of the two low waters of a tidal day where the tide is of the semidiurnal or mixed type. See *Lower Low Water*.

Highest Observed Water Level.—Results from tide and surge, and, strictly speaking, is not a highest observed *tide*.

High Seas.—The open sea beyond and adjacent to the territorial sea, which is subject to the exclusive jurisdiction of no one nation. Littoral nations frequently exercise limited jurisdiction over portions of the high seas adjacent to their coasts for purposes of enforcing customs and other regulations (fig. 51). The Geneva Convention on the High Seas defines it as “all parts of the sea that are not included in the territorial sea or in the internal waters of a state.” See *Open Sea, Contiguous Zones*.

High Water.—The maximum height reached by a rising tide. This may be due solely to the periodic tidal forces or it may have superimposed upon it the effects of prevailing meteorological conditions.

High-Water Line.—A generalized term associated with the tidal plane of high water but not with a specific phase of high water—for example, higher high water, lower high water. See *Mean High-Water Line*.

High-Water Mark.—Same as *High-Water Line*.

Historic Bay.—In international law, a bay over which there has been an exclusive assertion of sovereignty by a coastal nation and an acquiescence by foreign governments, which brings it into the category of inland waters. Historic bays are well-recognized exceptions to the rules applicable to ordinary bays and neither the semicircular rule nor the 10-mile limitation applies. Legality of claim does not depend upon the size of the area affected. Delaware and Chesapeake Bays are examples of historic bays in the United States. See *Ten-Mile Rule, Semicircular Rule, Inland Waters*.

Historic Limits.—Refers to a bay whose exterior limits have been established by long usage, as indicated on charts, maps, or in documents. Where an historic title to a bay has been established, it might become important to also establish its historic limits where such limits are not too well defined. See *Point Lasuen*.

Historic State Boundary.—Under Public Law 31, it is the seaward boundary of a state as it existed at the time it became a member of the Union, or as heretofore approved by Congress. As interpreted by the Supreme Court, “at the time it became a member of the Union” means at the time of admission in the light of the historic events surrounding the event of admission. See *Public Law 31*.

Historic Use.—See *Historic Bay*.

Historic Waters.—Waters, including historic bays, over which there has been an exclusive assertion of sovereignty by a coastal nation and an acquiescence by foreign governments. See *Historic Bay*.

Horizontal Jurisdiction.—A jurisdiction extending only to the seabed and subsoil under Public Law 212 and not to the waters over the continental shelf. See *Public Law 212*.

Hot Pursuit.—The right which international law accords a coastal nation to pursue a foreign vessel on the high seas that has committed an offense against its laws while in its territorial sea.

H.J. Res. 373.—A House resolution of the 82d Cong., 2d sess. (1952), declaring the boundaries of the inland waters of the United States to be as far seaward as is permissible under international law, and providing for a survey of such boundaries to be

made by the Coast and Geodetic Survey in the light of the *Anglo-Norwegian Fisheries* case. The resolution was not enacted into law. See *United Kingdom v. Norway*, *H. Res. 676*.

H. Rept. 2515.—An interim report submitted in the 82d Cong., 2d sess. (1952), pursuant to *H. Res. 676* for a study of the seaward boundaries of the United States. See *H. Res. 676*.

H. Res. 676.—A House resolution of the 82d Cong., 2d sess. (1952), naming a committee to study the seaward boundaries of inland waters and the seaward boundaries of the United States. See *H. Rept. 2515*.

Hydrographic Survey (Coast and Geodetic Survey).—A record of a survey, of a given date, of a water area, with particular reference to the submarine relief which is shown by means of soundings (depth units) and depth contours.

I

Imperceptible Process.—A change that takes place in the shoreline that cannot be perceived while the change is going on. See *Accretion, Erosion*.

Imperium.—See *Dominium*.

Implied Powers.—Those powers of the Federal Government that are necessarily implied from the express powers enumerated in the Constitution. They are derived from Art. I, sec. 8, cl. 18, which grants to Congress the power to make all laws necessary and proper for carrying into effect the express powers.

Including All Islands Within Three Leagues of the Coast.—A phrase used in the act admitting Louisiana into the Union, and interpreted by the Supreme Court to include the islands only and not the waters within that distance. See *Decision of May 31, 1960*.

Including All the Islands Within Six Leagues of the Shore.—A phrase used in the act admitting Mississippi and Alabama into the Union, and interpreted by the Supreme Court to include the islands only and not the waters within that distance. See *Decision of May 31, 1960*.

Indreleia.—A sailing route between the mainland of Norway and certain of its off-shore islands. Held in the *Anglo-Norwegian Fisheries* case not to be an international strait but rather a navigational route prepared as such by means of artificial aids to navigation by Norway. See *United Kingdom v. Norway, Strait as an International Highway*.

Infra.—Below, under. When used in text it refers to matter in a later part of the publication. See *Supra*.

Infrared Photography.—Utilizing only those rays of light which lie just beyond the red end of the visible spectrum, such as are emitted by a hot body. They are invisible and are detected by their thermal and photographic effects. See *Panchromatic Photography*.

Inland Navigable Waters.—See *Navigable Inland Waters*.

Inland Rules of the Road.—The rules of navigation that are applicable to the water areas landward of the lines established by the U.S. Coast Guard. See *Coast Guard Lines, International Rules of the Road, United States v. Newark Meadows Improvement Co.*

Inland Water Rule.—The doctrine laid down by the Supreme Court that the submerged lands under inland navigable waters and the tidelands belong to the states as an incident of sovereignty. The first was established in the case of *Martin v. Waddell*, 16 Pet. 367 (1842) and involved one of the Thirteen Original States, and the second was established in the case of *Pollard's Lessee v. Hagan*, 3 How. 212 (1845), and involved one of the subsequently admitted states. See *Tidelands, Equal-Footing Clause*.

Inland Waters (also called National Waters, Interior Waters, and Internal Waters).—The waters of a country, both tidal and nontidal, that lie landward of the marginal sea, as well as the waters within its land territory, such as rivers and lakes, over which the nation exercises complete sovereignty. Waters landward of the marginal sea are those landward of the low-water mark and those landward of the seaward limits of ports, bays, harbors, and rivers. The seaward limit of a bay is a headland-to-headland line where the bay constitutes inland waters, otherwise it is the low-water mark following the sinuosities of the shore (see fig. 2).

Innocent Passage.—As adopted at the 1958 Geneva Conference on the Law of the Sea, it is the right of navigation through the territorial sea which a foreign vessel has for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters, so long as the passage is not prejudicial to peace, good order, or security of the coastal State. The right of innocent passage also extends to straits used for international navigation that connect two parts of the high seas or the high seas with the territorial sea of another State, and to areas which formerly were part of the territorial sea or the high seas but through the use of straight baselines have become internal waters. See *Internal Waters, Strait as an International Highway, Strait of Tiran*.

Inseparability Doctrine.—The doctrine enunciated in the *Texas* case that with respect to the submerged lands seaward of low water on the open coast the *dominium* (proprietary rights) cannot be separated from the *imperium* (governmental rights) but that the two coalesce or unite in the national sovereign. See *Dominium, United States v. Texas*.

Insular Shelf.—Same as *Island Shelf*.

Inter Alia.—Among other things.

Interim Agreement.—An agreement entered into Oct. 12, 1956, between the United States and Louisiana to provide for continued oil operations in the Gulf pending a determination of the seaward boundary of the state. See *Decision of May 31, 1960, Coast Line* (According to Public Law 31).

Interior Waters.—Same as *Inland Waters*.

Internal Waters.—Same as *Inland Waters*.

International Boundary.—The boundary in the Great Lakes between the United States and Canada to which the rights of the adjoining states in the submerged lands extend under Public Law 31. See *Public Law 31*.

International Committee on the Nomenclature of Ocean Bottom Features.—A committee set up in 1948 at Oslo, Norway, for the purpose of standardizing the nomenclature of ocean bottom features. Adopted a number of definitions in 1952 among which were Continental Shelf, Island Shelf, Continental Slope, and Continental Terrace.

International Court of Justice.—A tribunal originating with the Charter of the United Nations, and successor to the Permanent Court of International Justice, for settling disputes between nations. Its decisions are binding on all nations that submit to its jurisdiction. See *Permanent Court of International Justice, Connally Reservation*.

International Domain.—The area seaward of low-water mark along the open coast and seaward of inland waters. In the *California* case, the Supreme Court held that once low-water mark is passed, the international domain is reached. As to the marginal sea, this does not mean that it belongs to the family of nations, as do the high seas, but that it is a creature of international law. See *Marginal Sea*.

International Law.—The body of rules and principles of action which civilized nations recognize as binding upon them in their dealings and relations with one another; the law of nations.

ILC.—International Law Commission.

International Law Commission.—A body created by the General Assembly under Art. 13 of the Charter of the United Nations to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification. See *Final Report of International Law Commission, Codification of International Law, Progressive Development of International Law*.

International Lights.—Defined by the International Hydrographic Conference of 1947 as those lights of international interest. The larger lights along a coast spaced a considerable distance apart. See *Secondary Lights*.

International Nautical Mile.—Equals 6,076.10333 feet or 1,852.0 meters. Adopted by the United States July 1, 1954. See *Nautical Mile*.

International Rules of the Road.—The rules of navigation that are applicable to the water areas seaward of the lines established by the U.S. Coast Guard. See *Coast Guard Lines, Inland Rules of the Road, United States v. Newark Meadows Improvement Co.*

International Strait.—A strait used for international navigation. See *Strait as an International Highway*.

Ipsa Facto.—By the fact itself. See *Ipsa Jure*.

Ipsa Jure.—By the law itself. See *Ipsa Facto*.

Island (According to Coast Survey usage).—A land area (smaller than a continent) extending above and completely surrounded by water at mean high water; an area of dry land entirely surrounded by water or a swamp; an area of swamp entirely surrounded by open water. See *Island (According to Geneva Convention)*.

Island (According to Geneva Convention).—A naturally formed area of land, surrounded by water, which is above water at high tide. See *Island (According to Coast Survey usage), Naturally Formed*.

Island Shelf.—The zone around an island or island group, extending from the low-water line to the depths at which there is a marked increase of slope to greater depths. Conventionally its edge is taken at 100 fathoms (or 200 metres). See *International Committee on the Nomenclature of Ocean Bottom Features*.

Islands Forming Part of a Land Form.—Islands that are so situated with respect to a characteristic land formation, such as a headland, which but for the intervening water areas would be part of such formation (see fig. 25).

J

Jefferson, Thomas.—Secretary of State under President Washington in 1793. Put forward the first official American claim for a 3-mile marginal belt. Cited by the Supreme Court in the *California* case as indicative of the fact that the Thirteen Original Colonies never acquired ownership of a 3-mile belt. See *Marginal Sea*.

Judicial Notice.—The act by which a court, in conducting a trial, or framing its decision, will, of its own motion, take cognizance of certain facts without proof which are regarded as established by common knowledge—the laws of the state, international law, historical events, main geographical features, etc. In *United States v. Romaine*, 255 Fed. 253 (1919), it was said a court might properly take judicial notice of the official plats of the Coast and Geodetic Survey, and in the *Borax* case the Supreme Court took judicial notice of the Bureau's definition of *mean high water* as given in *Tidal Datum Planes*. See *Borax Consolidated, Ltd. v. Los Angeles*.

Judicial Review.—The power of a court to pass on a decision of a lower court, an administrative body, or an act of a legislative body.

Juridical.—Legal. See *Juridical Bay*.

Juridical Bay.—A bay that conforms to the requirements of the law. A legal bay. See *Semicircular Rule*.

Jus Privatum.—Private law as distinguished from *jus publicum*, or public law. The law regulating the rights of individuals. The right, title, or dominion of a private owner. At common law, title to lands below high-water mark was in the King as the sovereign, but the dominion was vested in him as the representative of the people and for their benefit. See *Jus Publicum, Common Law*.

Jus Publicum.—Public law as distinguished from *jus privatum*, or private law. The right which a sovereign exercises in a public capacity for the benefit of the people, as distinguished from a right exercised in a proprietary capacity. See *Jus Privatum*.

Justiciable.—That which is proper to be brought before a court of law for determination.

K

King's Chambers.—The doctrine proclaimed by King James I in 1604, by which England claimed jurisdiction over an area formed by squaring off the British Isles between distant headlands.

L

Lambert Conformal Conic Projection.—One of the systems of representing a portion of the curved surface of the earth upon a plane surface. Provides for a nearly uniform scale over large areas and offers the best facilities for determining location, direction, and distance—the fundamentals of navigation—by aircraft. Widely used for aeronautical charts. See *World Aeronautical Charts*.

Landlocked.—Indentations along the open coast that are nearly cut off from access to the sea; almost completely surrounded by land—for example, San Francisco and San Diego Bays.

Landmark.—See *Termini at Headlands*.

Lands Beneath Navigable Waters.—The lands granted to the states under Public Law 31 and include lands within state boundaries covered by nontidal waters but navigable at time state entered the Union; lands permanently or periodically covered by tidal waters to a distance not exceeding 3 geographic miles on the Atlantic and Pacific coasts and 9 geographic miles in the Gulf of Mexico; and all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters. See *Public Law 31, Nontidal Waters*.

Large-Scale Chart.—A relative term, but generally one covering a small area on the ground. In Coast Survey usage, a scale of 1:80,000 (1 inch on chart=80,000 inches on the ground) would be the upper limit of such classification. See *Small-Scale Chart*.

Largess.—Liberality.

Las Siete Partidas.—The body of Spanish law written in the 13th century during the reign of Alphonso X.

Last Land Frontier.—The last course of a land boundary that reaches the sea.

Lateral Boundaries.—Side boundaries; boundaries between adjacent states extending from shore to their seaward boundaries under Public Law 31; boundaries between adjacent nations through the marginal sea and the contiguous zones.

Law of Prize.—The system of laws and rules applicable to the capture of vessels or cargo at sea belonging to one of two belligerent powers by a war vessel or privateer of the other belligerent and claimed as enemy property.

Legislative History of an Act.—The history of an act through the legislative body from its inception to its final passage; includes hearings, committee reports, and floor debate. See *Legislative Intent*.

Legislative Intent.—When the wording of an act of Congress is subject to more than one interpretation, courts will look to the discussions and debates on the measure for a guide as to which interpretation was intended. See *Legislative History of an Act*.

Letter of Feb. 8, 1952.—A memorandum from the Director, Coast and Geodetic Survey, to the Department of Justice (*see* Appendix E), explaining the uses of tidal datum planes and including a discussion of the term "ordinary low water" as it pertains to the California coast. See *Tidal Datums, Ordinary Low Water*.

Letter of July 14, 1947.—Letter from Attorney General Clark to Secretary of Commerce Harriman seeking assistance and services of the Coast and Geodetic Survey in preparing the technical aspects of the federal-state boundary problem along the California coast for presentation before a Special Master. See *Federal-State Boundary, Special Master*.

Line of Mean Higher High Tide.—Same as *Mean Higher-High-Water Line*.

Line of Ordinary High Water.—Same as *Ordinary High-Water Line*.

Line of Ordinary High-Water Mark.—Same as *Ordinary High-Water Line*.

Line of Ordinary Low Water.—Same as *Ordinary Low-Water Line*.

Littoral.—Pertaining to the shore, especially of the sea; a coastal region. Used co-extensively with "riparian." See *Riparian Lands*.

Littoral State.—One that borders on the sea or great lakes. Corresponds to Riparian State, which borders on a river. See *Riparian Lands*.

Littus (or Litus) Maris.—The seashore.

Lopphavet.—A water area along the skjaergaard coast of Norway (*see* fig. 14) across which the longest straight baseline was drawn (44 miles) under the Royal Decree of July 12, 1935. *See United Kingdom v. Norway.*

Louisiana Case.—*See United States v. Louisiana.*

Louisiana Decision (1960).—*See United States v. Louisiana et al.*

Louisiana Purchase.—A land acquisition from France in 1803. Bounded generally by the Mississippi River on the east, and on the west by a line which ran, approximately, along the present eastern boundary of Idaho, and through the center of what are now Colorado and New Mexico. The territory extended north to Canada, and south to the northern boundary of Texas.

Lower High Water.—The lower of the two high waters of any tidal day where the tide is of the semidiurnal or mixed type. *See Higher High Water.*

Lower Low Water.—The lower of the two low waters of any tidal day where the tide is of the semidiurnal or mixed type. The single low water occurring daily during periods when the tide is diurnal is considered to be a lower low water. *See Tidal Day, Diurnal Tides, Mixed Tides, Higher Low Water.*

Lowest Observed Water Level.—Results from tide and surge, and, strictly speaking, is not a lowest observed *tide*.

Low-Tide Elevation (According to Geneva Convention).—A *naturally formed* area of land surrounded by and above water at low tide but submerged at high tide. *See Rock Awash.*

Low Water.—The minimum height reached by a falling tide. This may be due solely to the periodic tidal forces or it may have superimposed upon it the effects of prevailing meteorological conditions.

Low-Water Line.—A generalized term associated with the tidal plane of low water but not with a specific phase of low water—for example, lower low water, higher low water. *See Mean Low-Water Line.*

Low-Water Line Survey of Louisiana Coast.—A cooperative undertaking between the Bureau of Land Management, the State of Louisiana, and the Coast and Geodetic Survey, by which the Survey mapped the mean low-water line from aerial photographs coordinated with an accurate tidal datum. *See Map Location.*

Low-Water Mark.—Same as *Low-Water Line.*

Lunar Day.—*See Tidal Day.*

Luttes v. State (324 S.W. 2d 167).—A 1958 decision by the Supreme Court of Texas, interpreting the Civil Law concept of seashore—in the light of modern conditions and the need for exact application—as extending to the line of mean higher high tide determined from a 19-year period. *See Civil Law.*

M

Mandate.—A command, order, or direction.

Mandatory.—Without power of choice; obligatory. *See Permissive.*

Map Location.—The location of a point or line on a map rather than its demarcation on the ground. *See Low-Water Line Survey of Louisiana Coast.*

Mare Clausum.—The sea closed. The title of a work by John Selden in 1635, intended as an answer to Grotius' *Mare Liberum*, in which he undertook to prove that the sea is capable of private dominion and defended the broad claims of England on the grounds of a good title based on long-standing usage backed by sufficient naval strength. See *Mare Liberum*.

Mare Liberum.—The sea free, or the sea open. The title of a work by Grotius in 1609 in which he contended that the sea was not capable of private dominion. He urged the Roman doctrine of freedom of the seas and against the Portuguese claim to an exclusive trade to the Indies, through the south Atlantic. See *Mare Clausum*.

Marginal Belt.—Same as *Marginal Sea*.

Marginal Sea (also called Territorial Sea, Adjacent Sea, Marine Belt, Maritime Belt, and 3-Mile Limit).—The water area bordering a nation over which it has exclusive jurisdiction, except for the right of innocent passage of foreign vessels. It is a creation of international law, although no agreement has thus far been reached by the international community regarding its width. It extends seaward from the low-water mark along a straight coast and from the seaward limits of inland waters where there are embayments. (See fig. 2.) The United States has traditionally claimed 3 nautical miles as its width and has not recognized the claims of other countries to a wider belt.

Marginal Sea Concept.—The concept that a nation bordering on the sea needs to exercise jurisdiction over the waters along its coasts to some distance from shore as a matter of self-defense. See *Marginal Sea*.

Marine Belt.—See *Marginal Sea*.

Marine League.—Equals 3 nautical or geographic miles. See *Nautical Mile*.

Marine Mile.—Same as *Nautical Mile*.

Maritime Belt.—Same as *Marginal Sea*.

Maritime Boundary.—A water boundary. See *National Boundary*.

Mean Diurnal High-Water Inequality.—One-half the average difference between the two high waters of each day over a 19-year period. It is obtained by subtracting the mean of all high waters from the mean of the higher high waters. See *Nineteen-Year Tidal Cycle*.

Mean Diurnal Low-Water Inequality.—One-half the average difference between the two low waters of each day over a 19-year period. It is obtained by subtracting the mean of the lower low waters from the mean of all low waters. See *Nineteen-Year Tidal Cycle*.

Mean Higher High Tide.—Same as *Mean Higher High Water*.

Mean Higher-High-Tide Line.—Same as *Mean Higher-High-Water Line*.

Mean Higher High Water.—The average height of the higher high waters over a 19-year period. See *Higher High Water, Nineteen-Year Tidal Cycle*.

Mean Higher-High-Water Line.—The intersection of the tidal plane of *mean higher high water* with the shore. See *Mean Higher High Water*.

Mean High Tide.—Same as *Mean High Water*.

Mean High Water.—The average height of the high waters over a 19-year period.

All high waters are included in the average where the type of tide is either semidiurnal or mixed. Where the type of tide is predominantly diurnal, only the higher high-water heights are included in the average on those days when the tide is semidiurnal. See *Mixed Tides, Semidiurnal Tides, Diurnal Tides, Nineteen-Year Tidal Cycle*.

Mean High-Water Line.—The intersection of the tidal plane of mean high water with the shore. See *Mean High Water, Shore*.

Mean High-Water Mark.—Same as *Mean High-Water Line*.

Mean Lower Low Water.—The average height of the lower low waters over a 19-year period. The tidal plane used on the Pacific coast as the datum for soundings on the hydrographic surveys and nautical charts of the Coast and Geodetic Survey. See *Mixed Tides, Lower Low Water*.

Mean Low Water.—The average height of the low waters over a 19-year period. All low-water heights are included in the average where the type of tide is either semidiurnal or mixed. Where the type of tide is predominantly diurnal, only the lower low-water heights are included in the average on those days when the tide becomes semidiurnal. See *Mixed Tides, Semidiurnal Tides, Diurnal Tides, Nineteen-Year Tidal Cycle*.

Mean Low-Water Line.—The intersection of the tidal plane of mean low water with the shore. See *Mean Low Water, Shore*.

Mean Low-Water Mark.—Same as *Mean Low-Water Line*.

Mean Sea Level.—The average height of the surface of the sea for all stages of the tide over a 19-year period, usually determined from hourly height readings. A determination of mean sea level that has been adopted as a standard for heights is called a *sea level datum*. The sea level datum now used for the Coast and Geodetic Survey level net is officially known as the *Sea Level Datum of 1929*, the year referring to the last general adjustment of the net, and is based upon observations taken over a number of years at various tide stations along the coasts of the United States and Canada. See *Nineteen-Year Tidal Cycle*.

Mean Tide Level.—Same as *Half-Tide Level*.

Mean Values.—In tidal technology, the values obtained from averaging tidal observations at a station over a long-period of time, a period of 19 years giving the best value. See *Comparison of Simultaneous Observations, Nineteen-Year Tidal Cycle*.

Median Line.—A geometric line adopted at the 1958 Geneva Conference on the Law of the Sea for designating the boundary through the territorial sea between two coastal nations. See *Median Line Defined*.

Median Line Defined.—A line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each of two coastal nations is measured (fig. 49). See *Median Line*.

Memorandum of Apr. 18, 1961.—A memorandum from the Director, Coast and Geodetic Survey, to the Department of Justice, setting forth recommendations (with commentaries) on the principles to be established in defining "coast line" as it applies to various geographic configurations along the Gulf coast, particularly the Louisiana coast. See *Coast Line* (According to Public Law 31).

Memorandum of Aug. 12, 1949.—Sets forth position of United States with respect to boundary line between inland waters and the open sea for seven areas along the Cali-

fornia coast, and includes a method of determining the termini of the boundary line at headlands, the semicircular method, and criteria for ascertaining "ordinary low-water mark." See *Seven Segments, Semicircular Rule, Ordinary Low-Water Mark*.

Memorandum of Feb. 14, 1953.—A memorandum from the staff counsel, Senate Committee on Interior and Insular Affairs, containing a chronology of the major background events in the submerged lands controversy from 1921 to 1953. Published in *Hearings on S.J. Res. 13*, at 1231. See *S.J. Res. 13*.

Memorandum on Mean Low Water.—Prepared in Coast and Geodetic Survey (May 26, 1949) to clarify the distinction between "plane of mean low water" and "line of mean low water" and the technical problems involved in the determination of each. See *Letter of July 14, 1947*.

Memorandum on Tidal Datums.—See *Letter of Feb. 8, 1952*.

Message From the President.—A message from the President of the United States to the Senate transmitting for ratification the four conventions on the law of the sea and the optional protocol of signature adopted at the First Geneva Conference. Identified as EXECUTIVES J to N, Inclusive (Senate), 86th Cong., 1st sess. (1959). See *First Geneva Conference*.

Meter.—A unit in the metric system of measures (a decimal system) and is equal to 39.37 inches in the United States.

Metes and Bounds.—The boundary lines or limits of a tract of land. One of the oldest methods of describing land and was used to transfer lands in the Thirteen Original Colonies. Defined variously in law dictionaries as: the boundary lines of land, with their terminal points and angles; the boundary lines and corners of a piece of land; and the boundary lines of lands with their terminating points or angles.

Mineral Leasing Act of 1920.—An act, recorded in 41 Stat. 437, setting out the conditions under which the Secretary of the Interior is authorized to issue mineral leases in the public lands. Act does not apply to the submerged lands of the outer continental shelf.

Mississippi Decision (1960).—See *United States v. Louisiana et al.*

Mixed Tides.—Tides in which the presence of a diurnal wave is conspicuous by a large inequality in either the high- or low-water heights, or in both, with two high waters and two low waters occurring each tidal day. Tides along the California coast are of the mixed type (fig. 17). See *Tidal Day, Diurnal Inequality*.

Moon in Quadrature.—Position of the moon when its longitude differs by 90° from the longitude of the sun. The corresponding phases are known as first quarter and last quarter (third quarter). See *Moon's Phase*.

Moon's Orbit.—The path of the moon relative to the earth. The angle which the moon's orbit makes with the plane of the earth's equator (its obliquity) varies from 18.3° to 28.6°, with an average of 23½°.

Moon's Phase.—A regularly recurring aspect of the moon with respect to the amount of illumination, as New Moon, First Quarter, Third Quarter, Full Moon.

Multilateral Agreement.—An agreement entered into by more than two parties containing mutual promises which do not affect other parties. See *Bering Sea Fur Seal Arbitration*.

Multimouthed Bay.—A bay having more than one entrance.

Municipal Law.—The branch of law that pertains to the internal or domestic affairs of a nation, as distinguished from international law. See *International Law*.

Mutatis Mutandis.—With the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like.

N

National Boundary.—The seaward boundary of the United States within which it exercises exclusive sovereignty except for the right of innocent passage of foreign vessels; the 3-mile limit. See *Marginal Sea*.

National External Sovereignty.—One of the two theories on which the Government relied in the *California* case. The sovereignty which the Federal Government exercises in external matters, for example, in foreign affairs. Such sovereignty is exclusive and includes the war-making power, the treaty-making power, and international boundary negotiations. The Supreme Court in *United States v. California* held that paramount rights in the offshore submerged lands run to the Federal Government by virtue of its national external sovereignty. The investment of the Federal Government with the powers of external sovereignty does not depend upon the affirmative grants of the Constitution. See *United States v. Curtiss-Wright Export Corp., Constitutional System, Chain-of-Title Theory*.

National Maritime Boundary.—See *National Boundary*.

National-State Boundary Identity Theory.—The theory advanced by the Government in *United States v. Louisiana et al.* that a state's seaward boundary cannot exceed the national boundary. See *National Boundary*.

National Waters.—See *Inland Waters*.

Natural Causes Induced by Artificial Structures.—Refers to situations where changes in the shoreline have resulted from gradual and imperceptible processes, but where the processes were set in motion by the building of artificial structures such as jetties or breakwaters (fig. 21). See *Accretion, Erosion*.

Natural Entrance Points.—The headlands of a true bay across which a closing line may be drawn. See *True Bay, Headland, Closing Line*.

Natural Harbor.—One where the configuration of the coast provides the protection necessary, for example, San Diego Bay (fig. 6). See *Harbor*.

Naturally Formed.—As applied to an island it is one formed by natural processes as distinguished from one artificially formed, such as a spoil bank resulting from dredging operations. See *Island (According to Geneva Convention)*.

Natural Resources.—Under Public Law 31 they include oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life. Under the Convention on the Continental Shelf adopted at Geneva in 1958, they include mineral and other nonliving resources of the seabed and subsoil and the living organisms belonging to sedentary species. See *Sedentary Species*.

Nautical Chart.—A printed reproduction of a compilation of data derived from topographic and hydrographic surveys and miscellaneous information for use in marine navigation (see fig. 10). The distinction between a survey and a chart is that the first is

an original record of a given date, whereas the second is a compilation of many surveys of different dates. See *Hydrographic Survey, Topographic Survey*.

Nautical Mile (also called Sea Mile and Geographic Mile).—A unit of distance used in marine navigation. The United States nautical mile is defined as equal to one-sixtieth of a degree of a great circle on a sphere whose surface equals the surface of the earth. Its value, calculated for the Clarke Spheroid of 1866, is 1,853.248 meters or 6,080.20 feet. It is 1.151 times as long as the statute or land mile of 5,280 feet and may be taken as equal to the length of a minute of arc along the equator or a minute of latitude on the map which is being measured. In 1954, the United States adopted the international nautical mile which is 1852.0 meters or 6,076.10333 feet. See *International Nautical Mile, Admiralty Mile*.

Navigability.—The actual navigable capacity of a waterway and not the extent of tidal influence.

Navigable Inland Waters.—Under federal law, those inland waters which are available for navigation in their natural condition, or which can be made available for navigation by reasonable improvements.

Navigational Servitude.—The rights which the United States retains over the area granted to the states under Public Law 31 by virtue of its control over the navigable waters of the United States, for the purpose of commerce, navigation, national defense, and international affairs. See *Public Law 31, Servitude*.

Neap Tides.—Tides of decreased range occurring semimonthly as the result of the moon being in quadrature; that is, when the tidal forces of sun and moon act at right angles to each other on the waters of the earth (see fig. 19). Tides during these periods do not rise as high nor fall as low as during the rest of the month. See *Moon in Quadrature*.

Nineteen-Year Tidal Cycle.—The period of time generally reckoned as constituting a full tidal cycle because the more important of the periodic tidal variations due to astronomical causes will have passed through complete cycles. The longest cycle to which the tide is subject is due to a slow change in the declination of the moon which covers 18.6 years. See *Mean Low Water, Mean High Water*.

Nonperiodic Forces.—Those forces that occur without regard to a fixed cycle. The effect of wind and weather upon the waters is the result of nonperiodic forces. See *Periodic Forces*.

Nontidal Waters.—Waters not subject to tidal influence. Under Public Law 31, lands beneath such waters of a state which were navigable when the state entered the Union are granted to the state. See *Lands Beneath Navigable Waters*.

Normal Baseline.—The line following the sinuosities of the low-water mark, except where indentations are encountered that fall within the category of true bays, when the baseline becomes a straight line between headlands (fig. 24). See *Baseline, Bay*.

North Atlantic Coast Fisheries Arbitration of 1910.—An arbitration by the Permanent Court of Arbitration at The Hague of a dispute between the United States and Great Britain over the interpretation of the clause "to within three marine miles of any of the coasts, bays, creeks, or harbours" of the British dominions in America in the Treaty of 1818. The tribunal interpreted the clause to mean that the 3 marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay.

Norwegian Royal Decree of July 12, 1935.—A decree defining a fisheries zone of 4 miles measured from straight baselines along the skjaergaard coast of Norway and adjudicated by the International Court of Justice in the *Fisheries* case. See *United Kingdom v. Norway*.

Norwegian System.—Norway's method of drawing straight baselines for its territorial sea. See *United Kingdom v. Norway*.

Notes Verbale.—Unsigned memoranda or notes, used in diplomacy, in order to avoid an appearance of urgency which is not required.

Notice to Mariners.—In the United States, a weekly pamphlet published by the Government and containing information affecting the safety of navigation, such as changes in aids to navigation.

O

Obliquity of Moon's Orbit.—See *Moon's Orbit*.

Ocean Industries, Inc. v. Superior Court (252 Pac. 722).—A 1927 California case which held that a vessel anchored in Monterey Bay (19 miles across headlands and indenting the coast about 9 miles) $3\frac{1}{2}$ miles from shore was within the boundaries of California on the basis that the word "bays" in the California Constitution of 1849 embraced all bays regardless of size (see fig. 1). Cited by California in the case before the Special Master to support its claim that Monterey Bay is a historic bay. See *Historic Bay, Seven Segments*.

Ocean Rule.—The rule laid down in the *California* case regarding federal paramount rights in the submerged lands of the open sea. The counterpart of the inland-water rule of state ownership. See *Inland-Water Rule, Open Sea*.

Offshore Submerged Lands.—Lands beyond the low-water mark along the open coast that are covered with water. See *Submerged Lands, Submerged Lands Cases*.

"Of Proprietorship."—Words struck by the Court from the decree proposed by the United States in the *California* case, which led to the belief that the Court was adjudicating something less than ownership. See *Dominium, Alabama v. Texas et al.*

One Hour's Run From Shore.—The limiting distance from the coast (measured by speed of suspected vessel) at which vessels suspected of violating the National Prohibition Act of 1920 could be boarded by U.S. officers, under a 1924 convention between the United States and Great Britain.

Open Bay.—An indentation of a coast that is part of the open sea; one that does not conform to the geometric criteria adopted for the determination of bays as inland waters. See *Semicircular Rule, Closed Bay*.

Open Coast.—The coast that fringes the marginal sea as distinguished from the coast that fringes inland waters. See *Open Sea, Marginal Sea, Inland Waters*.

Open Roadstead.—A roadstead with relatively little protection from the sea. See *Roadstead*.

Open Sea.—The water area seaward of the ordinary low-water mark, or seaward of inland waters. See *Mare Liberum*.

Operative.—To take effect. The conventions on the law of the sea become operative on the 30th day following the date of deposit with the United Nations of the 22d instrument of ratification or accession. See *Ratification, Accession*.

Optional Protocol of Signature.—An agreement (subject to ratification), adopted at the Geneva Conference on the Law of the Sea, for submission by the signatories to the compulsory jurisdiction of the International Court of Justice any dispute arising out of the interpretation or application of any of the conventions adopted by the Conference. The United States failed to ratify the Protocol. See *Connally Reservation*.

Op. Cit. Supra.—An abbreviation for *opus citum supra* meaning “in the work cited above.” Used when referring to a book previously cited to avoid repeating the full citation.

Opus Citum Supra.—See *Op. Cit. Supra*.

Ordinary High Water.—A nontechnical term considered by the Coast and Geodetic Survey to be the same as the tidal plane of mean high water. See *Ordinary Tides; Mean High Water; Borax Consolidated, Ltd. v. Los Angeles*.

Ordinary High-Water Line.—Same as *Mean High-Water Line*. See *Ordinary Tides*.

Ordinary High-Water Mark.—Same as *Ordinary High-Water Line*.

Ordinary Low Water.—A nontechnical term considered by the Coast and Geodetic Survey to be the same as the tidal plane of mean low water. See *Ordinary Tides, Mean Low Water*.

Ordinary Low-Water Line.—Same as *Mean Low-Water Line*. See *Ordinary Tides*.

Ordinary Low-Water Mark.—A term used by the Supreme Court in the submerged lands cases to indicate where federal paramount rights begin in the offshore submerged lands, and which the Special Master in the *California* case was called upon to interpret with respect to the type of tide found along the California coast (see fig. 17). The intersection of the tidal plane of mean low water with the shore (see fig. 20). See *Ordinary Tides, Mean Low Water, Mixed Tides*.

Ordinary Tides.—This term is not used in a technical sense by the Coast and Geodetic Survey, but the word “ordinary” when applied to tides may be taken as the equivalent of the word “mean.” See *Ordinary High Water; Ordinary Low Water; Attorney-General v. Chambers; Borax Consolidated, Ltd. v. Los Angeles*.

Original Jurisdiction.—The jurisdiction which a court has to hear a case or controversy in the first instance, rather than on appeal. Most courts of original jurisdiction determine the facts through the presentation of evidence. See *Appellate Jurisdiction, Special Master*.

Original States.—Same as *Thirteen Original States*.

Other Scientific Research.—A phrase included in the Geneva Convention on the Continental Shelf to broaden the provision for noninterference with fundamental oceanographic research to include research into the subsoil, such as coring and sampling. See *Fundamental Oceanographic Research*.

Outer Coastline.—See *Political Coastline*.

Outer Continental Shelf.—Under Public Law 212 (the Outer Continental Shelf Lands Act) it is that portion of the continental shelf which lies seaward of state boundaries as defined in Public Law 31 (the Submerged Lands Act). See *Continental Shelf, Historic State Boundary, Public Law 31*.

Outer Continental Shelf Lands Act.—Same as *Public Law 212*.

Outer Edge of Continental Shelf.—Same as *Edge of Shelf*. See *Continental Shelf*.

Overall-Unit-Area.—The area along the southern California coast between the mainland and a line running from Point Conception to Point Loma around the seaward side of all the islands and claimed by California to be part of the inland waters of the state (fig. 13). See *Channel Areas*.

P

Pacific Coast Pilot of 1889.—A comprehensive descriptive record of the topography, hydrography, and navigational information of the Pacific coast for use of the mariner. Extracts of this work were introduced at the hearing before the Special Master in the *California* case for identifying the southeastern extremity of San Pedro Bay.

Panchromatic Photography.—Sensitive, as a film or plate emulsion, to light of all colors. See *Infrared Photography*.

Paramount Rights.—Superior rights. A term used by the Supreme Court in the submerged lands cases to designate the rights of the Federal Government in the submerged lands seaward of the inland waters of California, Louisiana, and Texas. See *Decision of June 23, 1947*; *Decision of June 5, 1950*.

People v. Stralla et al. (96 P. 2d 941).—A 1939 California case which held that a vessel anchored in Santa Monica Bay 6 miles landward of the line Point Dume-Point Vicente (see fig. 13) was within the territorial waters of California on the basis that the word "bays" in the California Constitution included all bays without limitation as to distance between headlands. Cited by California in the case before the Special Master to support its claim that Santa Monica Bay is a historic bay. See *Historic Bay, Seven Segments*.

Per Curiam Opinion.—An opinion by the court as distinguished from an opinion written by any one judge. The *Alabama* case was a *per curiam* opinion with two judges dissenting. See *Decision of Mar. 15, 1954*.

Periodic Forces.—Those forces that recur with regularity; the tide-producing forces of sun and moon. See *Tide-Producing Force*.

Permanent Court of Arbitration.—A Hague tribunal established by the Hague Convention of 1899 (concluded between a number of countries) for the settlement of disputes arising from differences of a legal nature, or relating to the interpretation of treaties not possible to settle by diplomacy. The North Atlantic Coast Fisheries dispute between the United States and Great Britain was submitted to the tribunal for settlement. See *North Atlantic Coast Fisheries Arbitration of 1910*.

Permanent Court of International Justice.—A court set up in 1921 under the Covenant of the League of Nations. Also called *World Court*. See *International Court of Justice*.

Permissive.—Giving a power of choice, but not compelling. See *Mandatory*.

Per Se.—Of itself; taken alone.

Phase.—Any recurring aspect of a periodic phenomenon, as "new moon," "high water," etc. See *Moon's Phase*.

Phase Age.—The time between the occurrence of spring or neap tides and the corresponding phases of the moon; that is, spring tides do not usually occur on the days of

new and full moon, and neap tides do not usually occur on the days of first and third quarters. See *Spring Tides, Neap Tides*.

Photogrammetric Bridging.—The process by which photogrammetric surveys are extended and adjusted between bands of ground control. See *Photogrammetric Survey*.

Photogrammetric Survey.—In Coast Survey usage, a survey of a portion of the land surface utilizing aerial photographs and reduced to map form by stereoscopic or other instrumental equipment. See *Topographic Survey*.

Physical Coastline.—A term used in the proceedings before the Special Master in the *California* case to designate the line where the land and water meet along the open coast, irrespective of coastal indentations, and to distinguish it from a “political coastline.” See *Shoreline, Political Coastline*.

Physical Line of the Coast.—A term used in the *Anglo-Norwegian Fisheries* decision to designate the line following the low-water mark. See *Physical Coastline, Rule of the Tidemark*.

Planimetric Map.—A map which presents the horizontal positions only for the features represented; distinguished from a topographic map by the omission of relief.

Plenary Session.—One in which the full membership is represented, as opposed to a committee session.

Plenipotentiary.—One vested with full power to negotiate, subject to ratification, for the government he represents.

Point Lasuen.—A feature near present-day Huntington Beach and first named by the English explorer Vancouver in 1793 (see fig. 10). The location of the point was the subject of considerable testimony in the *California* case before the Special Master, in an effort to establish the historic limits of San Pedro Bay.

Police Power.—The inherent power which a sovereign has (to wit, a state in the United States) over persons and property to promote the safety and welfare of the people. See *Coastal Fisheries*.

Political Agencies of Government.—The legislative and executive branches of the Federal Government, as distinguished from the judicial branch.

Political Coastline.—A term used in the proceedings before the Special Master in the *California* case to designate the limits of inland waters in the vicinity of islands, and to distinguish it from the term “physical coastline.” Also referred to as “outer or exterior” coastline. See *Overall-Unit-Area, Physical Coastline*.

Pollard Rule.—The doctrine of state ownership of the tidelands and the submerged lands under inland navigable waters. See *Inland Water Rule, Pollard's Lessee v. Hagan, Decision of May 31, 1960*.

Pollard's Lessee v. Hagan (3 How. 212).—An 1845 case in which the Supreme Court established the doctrine that ownership of the tidelands is an incident of state sovereignty. See *Tidelands*.

Preadmission Status.—The status of a state prior to its admission to the Union—may be a territory, as in the case of Alaska, or an independent republic, as in the case of Texas.

Preamble.—The introductory part of a statute or convention which states the reasons and intent of the law. See *Convention*.

Predominantly Diurnal.—Where the dominant feature of the tide is diurnal, that is, where the diurnal wave is the dominant one. See *Diurnal Tides*.

Prescription.—In international law, the acquisition of sovereignty over territory through continuous and undisputed exercise of sovereignty over it during a long period of time. See *Historic Bay*.

Presidential Proclamation of Sept. 28, 1945 (Coastal Fisheries).—A proclamation issued by President Truman setting forth the policy of the United States with regard to the protection of the fishery resources of the high seas adjacent to its coast, and regarding it as proper to establish conservation zones in those areas (59 Stat. 885). See *Coastal Fisheries*.

Presidential Proclamation of Sept. 28, 1945 (Continental Shelf).—A proclamation issued by President Truman extending jurisdiction and control of the United States over the natural resources of the subsoil and seabed of the continental shelf, but not affecting the waters above as high seas (*see* Appendix F).

Principle of Equidistance.—A principle applied in drawing a seaward boundary between two adjacent coastal nations through the territorial sea in such a manner that the sea area will be equitably divided between them (figs. 48 and 50). See *Median Line Defined*.

Principle of the Semicircular Rule for Bays.—This postulates that a bay whose area is equal to a semicircle, the diameter of which is a line joining the headlands, is on the borderline between an open and a closed bay (fig. 3). See *Semicircular Rule, Open Bay, Closed Bay*.

Prior to or at the Time.—A phrase used in Public Law 31 in relation to the seaward boundaries of the states; interpreted by the Supreme Court to mean that congressional action surrounding the event of admission was relevant to a determination of present boundaries, that is, by the historic action taken with respect to them jointly by Congress and the state, and does not mean preadmission boundaries alone nor does it mean at the moment of admission. See *Decision of May 31, 1960*.

Procedural.—That which goes to the form rather than to the substance or merits of a controversy.

Proceedings Before the Special Master.—Hearings held during Feb., Mar., and Apr. of 1952, in Washington, D.C., and Los Angeles, Calif., at which expert and fact witnesses appeared for the purpose of establishing the federal-state boundary along the coast of California under the *California* decision. See *Report of Special Master, Decision of June 23, 1947*.

Progressive Development of International Law.—As defined in the statute of the International Law Commission, it is the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. See *International Law Commission, Convention*.

Projet.—A draft of a proposed treaty.

Property Rights.—Rights growing out of the ownership of land.

Proprietary Interest.—An interest that grows out of ownership, as distinguished from a governmental interest which would not necessarily imply ownership. The con-

trol of navigation in inland navigable waters is a function of the Federal Government, but under Public Law 31 the states have a proprietary interest in the submerged lands under such waters within their boundaries. See *Public Law 31*.

Prospective Operation.—Begins to operate in the future, usually upon a condition being fulfilled. Opposed to retroactive operation.

Public Domain.—Those areas of land that were turned over to the General Government by the Original States and such other lands as were later acquired by treaty, purchase, or cession, and are disposed of under authority of Congress. The submerged lands granted to the states under Public Law 31 have been held to be part of the public domain. See *Public Law 31, Decision of Mar. 15, 1954*.

Public Land.—Same as *Public Domain*.

Public Law 31 (Submerged Lands Act).—An act passed during the 1st session of the 83d Congress and signed into law on May 22, 1953 (see Appendix G). Confirms and establishes the titles of the states to lands beneath navigable water within their boundaries and to the natural resources within such lands and water. The act also establishes jurisdiction and control of the United States over the natural resources of the seabed of the continental shelf seaward of state boundaries. See *Public Law 212*.

Public Law 212 (Outer Continental Shelf Lands Act).—An act passed during the 1st session of the 83d Congress and signed into law on Aug. 7, 1953 (see Appendix H). Provides for the jurisdiction, control, and administration by the United States over the submerged lands seaward of the states' boundaries as defined in Public Law 31; that is, over the outer continental shelf. See *Public Law 31, Continental Shelf, Outer Continental Shelf*.

Q

Quitclaim Title.—A title to property that extends no further than the title released by the grantor; a claim one may have in property without professing that the title is valid.

R

Rapporteur.—An official charged with drawing up and presenting reports to a main body.

Ratification.—The approval of an act which has already been taken by an agent. At the Geneva Conference on the Law of the Sea, the conventions adopted were signed by the representative of the United States, subject to ratification by the Senate. See *Accession*.

Rationale.—The legal principle underlying a decision of a court. The rationale of the submerged lands cases was the national external sovereignty of the United States. See *National External Sovereignty*.

Reconstruction Acts of 1867.—The acts passed by Congress after the Civil War reorganizing the governments of the seceded states.

Reduced Areas.—A technique used in applying the semicircular rule to an indentation by which the shape of the indentation is generalized and a comparison of areas made easier. Arcs of circles are drawn around the shore of the indentation using as a radius a proportionate part of the distance between headlands, for example, one fourth, one fifth,

etc. The area enclosed by the envelope of the arcs is then compared with the area of the semicircle whose radius is correspondingly reduced. See *Semicircular Rule, Envelope Line*.

Reliction (also known as *Dereliction*).—The gradual and imperceptible recession of the water resulting in an uncovering of land once submerged. See *Accretion*.

Replica Line (also known as *Tracé Parallèle*).—A method of delimiting the seaward boundary of the marginal sea by lifting the low-water line bodily from its existing position, moving it seaward a distance equal to the width of the marginal sea, and laying it down parallel to its former position. See *Conventional Line, Envelope Line*.

Report of Special Master.—The final report of the Special Master (dated Oct. 14, 1952) in the *California* case setting forth his findings and recommendations on the three questions submitted to him by the Supreme Court. Ordered filed Nov. 10, 1952 (344 U.S. 872) (see Appendix C). See *Proceedings Before the Special Master, Seven Segments*.

Res Communis.—The property of all nations; things common to all and not subject to exclusive acquisition.

Res Nullius.—The property of no one and therefore capable of being appropriated by the first occupier.

Rhode Island Case.—See *Rhode Island v. Louisiana et al.*

Rhode Island v. Louisiana et al. (347 U.S. 272).—A suit filed by Rhode Island against Louisiana, Texas, Florida, and California, and certain officials of the Federal Government, challenging the constitutionality of Public Law 31. See *Public Law 31, Decision of Mar. 15, 1954*.

Rio Bravo del Norte.—Rio Grande.

Ripa.—The bank of a river.

Riparian Boundaries.—Water boundaries, or boundaries formed by the sea or a river. The general rule is that riparian boundaries shift with changes due to accretion or erosion but retain their original location if brought about by avulsion or by artificial causes. See *Accretion, Avulsion, Erosion, Riparian Lands*.

Riparian Lands.—In strictness, lands bordering on a river. The term “riparian” is also used as relating to the shore of the sea or other tidal water, or of a lake or other considerable body of water not having the character of a watercourse. See *Ripa*.

Riparian Law.—The branch of the law which deals with the rights in land bordering on a river or the sea. See *Riparian Owner, Riparian Rights*.

Riparian Owner.—One who owns land bordering on the bank of a river. Usage has broadened the concept to include land along the sea or other tidal water, but strictly speaking the proper designation for such situations is “littoral.” See *Ripa, Littoral State*.

Riparian Rights.—The rights of an owner of land bordering a river or the sea and relates to the water (its use), ownership of the shore, right of ingress and egress, accretions, etc. See *Riparian Owner*.

Roadstead.—Sea areas used for loading, unloading, and anchoring of ships; usually a shallow indentation in the coast.

Rock Awash.—In Coast Survey terminology it is a rock exposed at any stage of the tide between the datum of mean high water and the sounding datum, or one just bare at these datums. See *Sounding Datum, Low-Tide Elevation*.

Rock Rampart.—See *Skjaergaard, United Kingdom v. Norway*.

Rule of the Tidemark.—The rule that where a coastline is relatively straight, or where slight curvatures exist, the baseline follows the sinuosities of the coast as defined by a tidal plane. See *Baseline*.

Rules of the Road.—See *Inland Rules of the Road, International Rules of the Road*.

S

Safety Zones.—The zones which a coastal nation may establish for protective purposes around installations on the continental shelf. Under the Geneva Convention on the Continental Shelf such zones may not exceed 500 meters.

Sailing Lines.—Lines shown on nautical charts of the Coast and Geodetic Survey by a red overprint, giving the course and distance between turning points as the recommended routes to be followed by seagoing vessels.

San Pedro Bay.—One of the seven segments on which the Special Master in the *California* case was called upon to make recommendations as to its status (inland waters or open sea). See *Point Lasuen*.

Saving Clause.—A provision in a statute preserving rights which ordinarily would not be preserved but for the clause. Public Law 31 (the Submerged Lands Act) and Public Law 212 (the Outer Continental Shelf Lands Act) contain such a clause.

Seabed.—The bottom of the sea and the beginning of the subsoil; associated with “depth of water.” See *Subsoil*.

Sea Level Datum.—See *Mean Sea Level*.

Sea Level Datum of 1929.—See *Mean Sea Level*.

Sea Mile.—Same as *Nautical Mile*.

Seaward Boundaries of a State.—See *Historic State Boundary*.

Seaward Limits of Inland Waters.—The beginning of the marginal sea; that is, at the line of ordinary low water along a straight or slightly curving coast, and a headland-to-headland line in the case of indentations that fall into the category of true bays. Where straight baselines are permissible, such lines mark the seaward limits of inland waters. See *Marginal Sea, True Bay, Straight Baselines*.

Secondary Lights.—The smaller lights along a coast spaced relatively close together and used for coastal navigation. See *International Lights*.

Secondary Tides.—Refers to those additional tides—higher low waters and lower high waters—that occur twice a month (when the moon is over the equator) in a general pattern of diurnal tides. See *Diurnal Tides*.

Second Geneva Conference.—The United Nations Conference on the Law of the Sea held at Geneva, Mar. 17 to Apr. 26, 1960.

Secretary of the Interior.—The officer of the Federal Government who is clothed with authority for administering and leasing the submerged lands of the outer continental shelf. See *Public Law 212, Outer Continental Shelf*.

Sedentary Species.—Under the Convention on the Continental Shelf, adopted at Geneva in 1958, they are organisms which, at the harvestable stage, are either immobile on or under the seabed, or are unable to move except in constant physical contact with the

seabed or subsoil. Organisms belonging to sedentary species include coral, sponges, oysters, pearl-oysters, pearl-shell, clams, but not shrimp, lobsters, and finny fish. See *Natural Resources, Harvestable Stage*.

Segmental Method.—A method for determining the status of a bay by utilizing the segment of a circle as the borderline case. The area between the curve of the coast and its chord is equal to the area of a segment of the circle the center of which is situated on the perpendicular to the chord in its middle at a distance from the chord equal to one-half the length of the chord and of which the radius is equal to the distance which separates this point from one end of the curve (*see* fig. 7). Proposed by the French delegation at the 1930 Hague Conference for the Codification of International Law. See *Semicircular Rule*.

Self-Executing.—Providing for its own carrying out.

Semicircle Test.—A test to determine whether an indentation is a true bay or not by applying the semicircular rule for bays. See *True Bay, Semicircular Rule*.

Semicircular Rule.—A geometric method, using the pattern of a semicircle, for determining when an indentation of a coast should be regarded as part of the inland waters of a country, and when it should be regarded as part of the open sea. The borderline case is a semicircle with a diameter equal to the distance between the headlands of the indentation; if the area of the indentation is greater than the area of the semicircle, the indentation is part of the inland waters; if it is less, the indentation is part of the open sea. (*See* fig. 4.) This method was first proposed in 1930 by the Director of the Coast and Geodetic Survey (Rear Admiral Patton), and was submitted by the United States delegation for consideration at the 1930 Hague Conference for the Codification of International Law. See *Inland Waters, Open Bay, Closed Bay, Segmental Method*.

Semicircular Rule Applied.—The U.S. Tariff Commission in 1930 applied the rule for determining the dividing line between the territorial sea and the high seas in connection with a fisheries investigation; the Bureau of the Census in 1940 for determining the area of the United States and of the individual states as part of the 1940 census; and the Interior Department in 1950 for establishing an administrative line along the Louisiana coast under the Supreme Court's decree of Dec. 11, 1950. See *Semicircular Rule*.

Semidaily Tides.—Same as *Semidiurnal Tides*.

Semidiurnal Tides.—Tides having a period of approximately one-half a tidal day; the type of tide that is predominant throughout the world, with two high waters and two low waters each tidal day. Tides along the Atlantic coast are of this type.

S. J. Res. 13.—Senate joint resolution introduced in the 83d Cong., 1st sess., and enacted as Public Law 31 (1953), which confirms and establishes titles of the states to lands beneath navigable waters within their boundaries and to the natural resources within such areas. See *Public Law 31*.

S. 1901.—Senate bill introduced in the 83d Cong., 1st sess., and enacted as Public Law 212 (1953), which provides for the jurisdiction of the United States over the submerged lands of the outer continental shelf. See *Outer Continental Shelf, Public Law 212*.

S. Rept. 411.—The Senate committee report on S. 1901, 83d Cong., 1st sess. (1953), which became Public Law 212 (Outer Continental Shelf Lands Act). See *S. 1901*.

S. Rept. 133.—The Senate committee report on S. J. Res. 13, 83d Cong., 1st sess. (1953), which became Public Law 31 (Submerged Lands Act). See *S. J. Res. 13*.

Separability Clause.—A provision in a statute which allows a court to declare any portion invalid without invalidating the entire statute.

Servitude.—The right in respect to land owned by one person by virtue of which it is subject to a certain use or enjoyment by another person. Frequently applied to the right which foreign vessels have to travel through the marginal sea of another country. See *Marginal Sea, Navigational Servitude*.

Seven Seas.—Figuratively, all the waters or oceans of the world. Applied generally to the seven oceans—Arctic, Antarctic, North Atlantic, South Atlantic, North Pacific, South Pacific, and Indian.

Seven Segments.—The segments along the California coast adjudicated by the Special Master and comprising Crescent City Bay, Monterey Bay, San Luis Obispo Bay, Point Conception to Point Hueneme, Santa Monica Bay, San Pedro Bay, and Area east of San Pedro Bay.

Shore.—Same as *Tidelands*.

Shoreline.—The line of contact between the land and a body of water. On Coast and Geodetic Survey nautical charts and surveys the shoreline approximates the mean high-water line. In Coast Survey usage the term is considered synonymous with “coastline.” See *Coastline*.

Short-Period Observations.—In tidal technology, observations obtained at a station over a period of time less than is necessary for obtaining mean values. See *Mean Values, Nineteen-Year Tidal Cycle*.

Sinuosities of the Coast.—See *Following the Sinuosities of the Coast*.

Skjaergaard.—The highly broken coast of Norway, north of latitude $66^{\circ}28'48''$ N. (the Arctic Circle), consisting of about 120,000 islands, islets, and rocks, that was adjudicated in the *Anglo-Norwegian Fisheries* case. See *United Kingdom v. Norway*.

Slight Curvature.—An indentation in the coastline that does not satisfy the semi-circle test (fig. 4). See *Semicircular Rule, Open Bay*.

Small-Scale Chart.—A relative term, but generally one covering a large area on the ground. In Coast Survey usage, a scale of 1:100,000 (1 inch on chart=100,000 inches on the ground) or smaller would fall in this classification. See *Large-Scale Chart*.

Sounding Datum.—Same as *Chart Datum*.

Sovereign Rights.—Under the 1958 Geneva Convention, the rights which a coastal nation exercises over its continental shelf for the purpose of exploring it and exploiting its natural resources, without affecting the freedom of the superjacent waters and the airspace above. See *Convention on the Continental Shelf*.

Special Master.—An umpire or referee appointed by a court to take evidence and to make recommendations to the court based on his findings. In the *California* case, the Supreme Court named a Special Master to take evidence and make recommendations for determining the federal-state boundary along the California coast under *United States v. California*. See *Report of Special Master, Decision of June 23, 1947*.

Spring Tides.—Tides of increased range occurring semimonthly as the result of the moon being new or full; that is, when sun, moon, and earth are in line (see fig. 19). Tides during these periods rise higher and fall lower than during the rest of the month. See *Moon's Phase*.

Stare Decisis.—Literally, to stand by decided matters, or let the decision stand. The doctrine of *stare decisis* or precedent is a creation of the common law system of jurisprudence and is based on the theory that the principle underlying the decision in one case should control decisions in like cases in the same court or in lower courts within the same jurisdiction. International law does not recognize this principle and decisions of the International Court of Justice (the *Anglo-Norwegian Fisheries* decision, for example) have no binding force except between the parties to the proceeding, as laid down in Art. 59 of the Court's Statute.

State Department Letter of Feb. 12, 1952.—Sets forth Department's position with regard to delimitation of territorial waters, in the light of the *Anglo-Norwegian Fisheries* case (see Appendix D). The letter was made a part of the record of the hearings before the Special Master in the *California* case. See *Baseline, Anglo-Norwegian Fisheries Case, State Department Letter of Nov. 13, 1951*.

State Department Letter of Nov. 13, 1951.—Sets forth position of the United States as to principles governing the delimitation of territorial waters of the United States (see Appendix D). The letter was made a part of the record of the hearings before the Special Master in the *California* case. See *Baseline, State Department Letter of Feb. 12, 1952*.

Status Quo.—The existing state.

Statute Mile.—5,280 feet or 1,609.3 meters.

Statutory Interpretation.—An interpretation of the meaning of a legislative act based upon the wording and the legislative history of the act in order to arrive at the intent of the legislative body where the act on its face is inconclusive.

Straight Baselines.—A system of straight lines drawn along a coast between salient points—without following the sinuosities of the low-water mark—from which the territorial sea is measured (see fig. 14). The system is permissible where certain geographic situations obtain. See *United Kingdom v. Norway*.

Strait as a Channel of Communication to an Inland Sea.—Rules regarding bays apply according to United States position (Appendix D). See *Strait as an International Highway*.

Strait as an International Highway.—A strait connecting two parts of the high seas and used for international navigation (see fig. 15). Does not depend upon the volume of traffic nor on its relative importance to international navigation. So held in the *Corfu Channel* case. The 1958 Geneva Conference on the Law of the Sea extended this concept to include straits that connect the high seas with the *territorial sea* of a foreign State (fig. 38). See *United Kingdom v. Albania, Strait of Tiran*.

Strait, Geographical.—See *Geographical Strait*.

Strait, International.—See *International Strait*.

Strait Leading to Inland Water.—See *Strait as a Channel of Communication to an Inland Sea*.

Strait of Tiran.—A narrow waterway at the entrance to the Gulf of Aqaba, which is bordered by Egypt, Saudi Arabia, Jordan, and Israel. The strait was the background for the 1958 Geneva Conference adopting a provision extending the right of innocent passage to straits connecting the high seas and the territorial sea of a foreign State. See *Strait as an International Highway, Innocent Passage*.

Subject to the Regime of Internal Waters.—Subject to the rules and regulations governing internal waters. A phrase used by the Court in the *Anglo-Norwegian Fisheries* case as an element of justification for the use of straight baselines by Norway for defining its marginal belt. See *United Kingdom v. Norway, Inland Waters*.

Subjoinder.—An additional remark placed after a main provision in a convention, arbitration, etc.

Subjoined.—See *Subjoinder*.

Submarine Valley (also called Seavalley).—A depression in the sea bottom of broad valley form without the steep side slopes which characterize a canyon (see fig. 11).

Submerged Lands.—Lands covered by water at any stage of the tide, as distinguished from tidelands which are attached to the mainland or an island and cover and uncover with the tide. Tidelands presuppose a high-water line as the upper boundary, submerged lands do not. See *Tidelands, Submerged Lands Cases, Offshore Submerged Lands*.

Submerged Lands Act.—Same as *Public Law 31*.

Submerged Lands Cases.—The three cases involving rights in submerged lands underlying the ocean and outside the inland waters of California, Louisiana, and Texas. See *Decision of June 23, 1947, Decision of June 5, 1950*.

Subsequently Admitted States.—States admitted to the Union after the Union was formed, for example, Louisiana, California, and Texas.

Subsoil.—The indefinite penetration below the seabed. See *Seabed*.

Substantive.—Matters which affect the fundamental rights of a controversy as distinguished from matters which affect the form only. See *Procedural*.

Summary Denial.—A denial by a court of the right of a party to file a complaint. In the *Alabama* and *Rhode Island* cases, the Supreme Court denied the motions of Alabama and Rhode Island for leave to file complaints challenging the constitutionality of Public Law 31. See *Decision of Mar. 15, 1954*.

Superjacent Waters.—Refers to the waters above the continental shelf. See *Epi-continental Sea*.

Supra.—Above. The word when used in a book has reference to a previous part of the book—for example, a reference in note 12 to note 6 would be given as “*supra* note 6.” See *Infra*.

T

Tellurometer Traverse.—Measuring the distance between points with a tellurometer—an instrument utilizing electronic methods.

Ten-Mile Rule.—The rule which limits inland waters at coastal indentations to a 10-mile headland distance. For indentations 10 miles or less at the entrance a headland-to-headland line would mark the limits; for indentations wider than 10 miles, the limits would be a line drawn across the bay in the part nearest the entrance at the first point where the width does not exceed 10 miles. See *Inland Waters, Semicircular Rule, Twenty-Four-Mile Rule*.

Termini at Headlands.—The points on shore (the low-water mark in the international law of the sea) between which the closing line at indentations is drawn to mark

the seaward limits of inland waters (fig. 12). See *Closing Line, Headland-to-Headland Line, Inland Waters*.

Territorial Limits.—The seaward limits of a littoral nation over which it has exclusive jurisdiction. See *Marginal Sea*.

Territorial Sea.—Same as *Marginal Sea*.

Territorial Waters.—Includes the territorial sea (marginal sea) and the inland waters of a country (lakes, rivers, bays, etc.). Sometimes used as synonymous with Territorial Sea.

Texas Boundary Act.—An act passed by the Texan Congress, Dec. 19, 1836, describing its seaward boundary as extending 3 leagues from land. This, together with the 3-league provision in the Treaty of Guadalupe Hidalgo, was the basis for the Supreme Court's holding that Texas was entitled to a grant of submerged lands extending a distance of 3 leagues from its coastline under Public Law 31. See *Treaty of Guadalupe Hidalgo, Decision of May 31, 1960*.

Texas Case.—See *United States v. Texas*.

Texas Decision (1960).—See *United States v. Louisiana et al.*

Thalweg Doctrine.—An international law concept which defines water boundaries between States by the middle of the deepest or most navigable channel, as distinguished from the geographic center or a line midway between the banks.

Theory of Equivalence.—An area equivalence used in connection with the semi-circular rule. See *Semicircular Rule*.

Thirteen Original Colonies.—See *Thirteen Original States*.

Thirteen Original States.—The Thirteen Original Colonies who upon revolt from the British Crown became sovereign, independent states. They include New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Three-League Boundary.—The maximum seaward boundary allowable for any state along the Gulf coast under Public Law 31. See *Marine League, Decision of May 31, 1960*.

Three-Mile Limit.—See *Marginal Sea*.

Three-Mile Marginal Belt.—Same as *Three-Mile Limit*.

Three-Mile Marine Belt.—Same as *Three-Mile Limit*.

Three-Mile National Boundary.—Same as *National Boundary*.

Tidal Boundary.—A boundary of land determined by the course of the tide and tied in with a specific phase of the tide; for example, *mean high water*. See *Phase, Mean High-Water Line, Mean Low-Water Line*.

Tidal Characteristics.—Primarily refers to the type of tide in a locality, that is, whether it is diurnal, semidiurnal, or mixed, for purposes of reducing short period observations to mean values. In considering the characteristics at a particular place, they would include the range and the time. See *Type of Tide*.

Tidal Datums.—Vertical datums defined by a phase of the tide—for example, high water—and used as a reference plane for heights on land and depths in the sea, and in the demarcation of waterfront boundaries. The Coast and Geodetic Survey level net is based

on the datum of mean sea level, but in its hydrographic work, including soundings on charts and tidal predictions, a low-water datum is used—mean low water for the Atlantic and Gulf coasts and mean lower low water for the Pacific coast. For defining tidal boundaries, mean high water and mean low water are used. See *Mean Sea Level, Mean Low Water, Mean High Water, Mean Lower Low Water*.

Tidal Day (also called Lunar Day).—The time of the rotation of the earth with respect to the moon, or the interval between two successive upper transits of the moon over the meridian of a place. The mean tidal day is approximately 24.84 solar hours in length.

Tidal Plane.—See *Tidal Datums*.

Tide.—The periodic rising and falling of the waters of the earth that result mainly from the gravitational attraction of the moon and sun acting upon the rotating earth. See *Tide-Producing Force*.

Tidelands.—The land that is covered and uncovered by the daily rise and fall of the tide. More specifically, it is the zone between the mean high-water line and the mean low-water line along a coast, and is commonly known as the “shore” or “beach.”. Referred to in legal decisions as between ordinary high-water mark and ordinary low-water mark. Tidelands presuppose a high-water line as the upper boundary. See *Ordinary Tides, Submerged Lands, Borax Consolidated, Ltd. v. Los Angeles*.

Tide-Producing Force.—That part of the gravitational attraction of a heavenly body which is effective in producing the tides on earth. The sun and moon are the principal astronomic bodies that have a tide-producing effect. The force varies approximately as the mass of the attracting body and inversely as the cube of its distance. The tide-producing force exerted by the sun is a little less than one-half that of the moon. See *Tide*.

Tide Tables.—Tables which give daily predictions of the times and heights of the tide at various reference stations, and tidal differences and constants by which additional predictions can be obtained for numerous other places.

Tidewaters.—Waters subject to the rise and fall of the tide. Sometimes used synonymously with tidelands, but would be better to limit tidewaters to areas always covered with water. The amount of tide is immaterial. See *Tidelands*.

Topographic Survey (Coast and Geodetic Survey).—A record of a survey, of a given date, of the natural features and the culture of a portion of the land surface and their delineation by means of conventional symbols. The topographic survey is the authority for the high-water line and all information inshore of that line including geographic names of topographic features. See *Photogrammetric Survey*.

Tracé Parallèle.—See *Replica Line*.

Traditional Position of the United States.—Refers to the fixing of the baseline for the marginal sea, and to the 3-mile width of the sea (Appendix D). See *Marginal Sea, Baseline, Strait as a Channel of Communication to an Inland Sea*.

Treaty of 1818.—The Treaty of Oct. 20, 1818, between the United States and Great Britain, which contained a provision relative to fishing by United States nationals in the waters adjacent to the British dominions in America. See *North Atlantic Coast Fisheries Arbitration of 1910*.

Treaty of Guadalupe Hidalgo.—A treaty of peace between the United States and Mexico, consummated Feb. 2, 1848. Contained a provision that the boundary line between

the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande. See *Texas Boundary Act*.

Treaty of July 20, 1912.—Entered into between the United States and Great Britain accepting the award and recommendation of the tribunal in the North Atlantic Coast Fisheries Arbitration of 1910. See *North Atlantic Coast Fisheries Arbitration of 1910*.

Treaty of Paris.—The treaty of Sept. 3, 1783, by which Great Britain recognized the independence of the United States.

Triangulation.—A method of surveying in which the stations are points on the ground at the vertices of a chain or network of triangles, whose angles are observed instrumentally and whose sides are derived by computation from selected triangle sides called base lines, the lengths of which are obtained from direct measurement on the ground.

Tributary Waterway.—Any body of water that flows into a larger body.

True Bay.—An indentation of a coast of such configuration as to become a part of the inland waters of a country. See *Closed Bay, Semicircular Rule, Inland Waters*.

Truman Proclamation.—See *Presidential Proclamation of Sept. 28, 1945*.

Trust Doctrine.—The doctrine that the Federal Government holds the submerged lands under the open sea in trust for all the people of the United States. Advanced in the *Alabama* case challenging the constitutionality of Public Law 31, but Supreme Court held that Congress could grant away such lands. See *Decision of Mar. 15, 1954*.

Twelve-Mile Limit.—The limiting distance (4 leagues) from the coast at which U.S. revenue officers, under the Act of Mar. 2, 1799, may board vessels bound for a U.S. port to determine the character of the cargo. See *Zones Beyond the Marginal Sea*.

Twenty-Four-Mile Rule.—The rule adopted by the First Geneva Conference as the closing line for bays in place of the Ten-Mile Rule. See *Ten-Mile Rule, Closing Line*.

Type of Tide.—The characteristic form of the tide with special reference to the relation of the diurnal and semidiurnal waves. Tides are usually classified as *diurnal*, *semidiurnal*, and *mixed*, but there are no sharply defined limits separating the groups. See *Diurnal Tides, Semidiurnal Tides, Mixed Tides*.

U

Unclaimed Land.—Applied to submerged lands under the marginal belt by Justice Frankfurter in the *California* case. As such, a determination to claim by the United States becomes a political decision and not for the courts to decide.

Unilateral Action.—A one-sided action without formal agreement of other parties of equal standing—for example, the Presidential Proclamation of Sept. 28, 1945, relative to the continental shelf. See *Presidential Proclamation of Sept. 28, 1945*.

Unilaterally.—A one-sided action—for example, where a state extends its boundaries by the act of its own legislature without congressional approval.

United Kingdom v. Albania (I.C.J. Rept., 1949).—The case in which the International Court of Justice found Albania responsible for damages sustained by two British warships, which struck mines while proceeding through the North Corfu Channel at a point within the territorial waters of Albania, on the ground that the Corfu Channel is a strait used for international navigation between two parts of the high seas (*see fig. 15*). The

decision was invoked by the Government in the *California* case to uphold its contention that the channels along the southern California coast are straits connecting two parts of the high seas (*see* fig. 13) and therefore not part of the inland waters of California. See *Overall-Unit-Area, Decision of June 23, 1947*.

United Kingdom v. Norway (I.C.J. Rept., 1951).—The case in which the International Court of Justice on Dec. 18, 1951, upheld Norway's method of drawing straight baselines along its skjaergaard coast north of latitude 66°28'48" N. for delimiting the inshore limits of its territorial sea (*see* fig. 14). The decision was invoked in the *California* case to justify the contention that the baseline for the marginal sea around the southern California coast should be drawn around the offshore islands (fig. 13). See *Overall-Unit-Area, Decision of June 23, 1947*.

United Nations Conferences on the Law of the Sea.—See *First Geneva Conference, Second Geneva Conference*.

United States-Canadian Compromise Proposal.—A joint proposal made by the two countries at the Second Geneva Conference which provided for a 6-mile territorial sea and an additional exclusive fishing zone of 6 miles after an interim 10-year period subject to certain conditions. See *United States Compromise Proposal*.

U.S. Coast Guard Lines.—See *Inland Rules of the Road, International Rules of the Road*.

United States Compromise Proposal.—The proposal offered by the United States at the First Geneva Conference and provided for a 6-mile territorial sea with the right of a coastal State to regulate fishing for an additional 6 miles, subject to certain historical fishing rights for foreign vessels. The compromise was between those desiring a 12-mile territorial sea and those wishing to continue with a 3-mile sea. See *United States-Canadian Compromise Proposal*.

United States v. California (332 U.S. 19).—The first of three Supreme Court cases involving rights in the submerged lands seaward of inland waters. See *Decision of June 23, 1947*.

United States v. Carrillo (13 F. Supp. 121).—A 1935 case which held that a crime committed inshore of the line Point Fermin-Huntington Beach (*see* fig. 10) was not committed on the high seas but within the limits of San Pedro Bay. Cited by California in the case before the Special Master to support its claim that San Pedro Bay was a historic bay. See *Historic Bay, Seven Segments*.

United States v. Curtiss-Wright Export Corp. (299 U.S. 304).—A 1936 case which laid down the doctrine that after the American Revolution the powers of external sovereignty passed from the Crown to the colonies in their collective capacity and not to them severally. Cited by the Court in the *California* case as the basis for the holding that the Thirteen Original Colonies did not acquire ownership of the 3-mile belt or soil under it. See *Decision of June 23, 1947, National External Sovereignty*.

United States v. Florida et al. (363 U.S. 121).—The separate opinion which the Supreme Court wrote upholding the 3-league Gulf boundary for Florida under Public Law 31. See *Public Law 31, Decision of May 31, 1960*.

United States v. Louisiana (339 U.S. 699).—The second of three Supreme Court cases involving rights in the submerged lands seaward of the inland waters. See *Decision of June 5, 1950, United States v. California*.

United States v. Louisiana et al. (363 U.S. 1).—The case against the States of Louisiana, Texas, Mississippi, Alabama, and Florida, arising under Public Law 31, in which the United States sought to establish its right to the submerged lands in the Gulf of Mexico beyond 3 geographic miles from the coastline. See *Public Law 31, Decision of May 31, 1960*.

United States v. Newark Meadows Improvement Co. (173 Fed. 426).—A 1909 case which held that the lines established by the U.S. Coast Guard to separate the areas where the Inland Rules of the Road apply from those where the International Rules apply have no application other than the purpose of determining what rules of navigation are to be followed. They do not define the limits of inland waters. See *Inland Waters, Inland Rules of the Road, International Rules of the Road*.

United States v. Texas (339 U.S. 707).—The third of three Supreme Court cases involving rights in the submerged lands seaward of inland waters. See *United States v. California, United States v. Louisiana, Decision of June 5, 1950*.

Upland.—Land above mean high-water mark and subject to private ownership, as distinguished from tidelands, the ownership of which is prima facie in the state but also subject to divestment under state statutes. See *Tidelands*.

V

Vancouver, George.—The English explorer who, during his voyage of discovery to the North Pacific Ocean, anchored off San Pedro Bay on Nov. 25, 1793, and took a bearing to a point on shore which he named Point Lasuen (fig. 9). See *Point Lasuen*.

Vertical Datum.—A reference point or plane to which elevations of the land or depths of the sea are tied. See *Tidal Datums*.

Vis-a-Vis.—As against, or opposite each other.

Vital Interest Concept.—A view advanced to sustain the right to a bay on historic grounds. Includes such elements as geographical configuration, economic interests, and the requirements of self defense. In the *Anglo-Norwegian Fisheries* case, the Norwegian system of straight baselines was approved on the grounds, among other things, of the rights founded on the vital needs of the population and attested by very ancient and peaceful usage. See *Historic Bay, United Kingdom v. Norway*.

W

Waterfront Boundaries.—See *Riparian Boundaries*.

Wave Refraction.—The process by which the direction of a wave is changed while moving in shallow water at an angle to the contours. The part of the wave advancing in shallower water moves more slowly than the part still advancing in deeper water, causing the wave crest to bend toward alinement with the underwater contours. Advanced by California in the case before the Special Master to show the effect of wave refraction in reducing the energy of waves entering the overall-unit-area claimed by California to be part of the inland waters of the state. See *Overall-Unit-Area, Seven Segments*.

World Aeronautical Charts.—A standard series of aeronautical charts for use in air navigation. Constructed on the Lambert conformal conic projection at a uniform scale of 1:1,000,000 and covering the land areas of the world. Charts 52 and 90, covering the northwest coast of Norway, and chart 404, covering the southern California coast, were introduced by the Government in the case before the Special Master to show the physiographic differences between the two coasts (fig. 16). See *Seven Segments, Overall-Unit-Area*.

World Court.—Same as *International Court of Justice*.

Z

Zones Beyond the Marginal Sea.—Areas beyond the 3-mile belt over which the United States has exercised jurisdiction for special purposes—for example, in connection with enforcement of customs regulations, and the National Prohibition Act of 1920 (see Appendix J). See *Twelve-Mile Limit, One Hour's Run From Shore, Customs-Enforcement Areas*.

APPENDIX B

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APPENDIX C

Special Master's Report

(This report of the Special Master in United States v. California (332 U.S. 19), is identified as No. 6, Original, October Term, 1952. It was submitted to the Supreme Court on October 14, 1952, and ordered filed on November 10, 1952. The numbers in brackets correspond to the pagination in the published report and are so cited in the text of this volume.)

On December 3, 1951, the Court entered its order continuing the order of February 12, 1949, by which I was appointed Special Master herein and directing the Special Master "to conduct hearings and to submit to this Court with all convenient speed his recommended answers to the following questions, with a view to securing from this Court an order for his further guidance in applying the proper principles of law to the seven coastal segments enumerated in Groups I and II of the Master's Report of May 31, 1949, ordered filed June 27, 1949, pp. 1 and 2 of said Report." The three questions are:

Question 1. What is the status (inland waters or open sea) of particular channels and other water areas between the mainland and offshore islands, and, if inland waters, then by what criteria are the inland water limits of any such channel or other water area to be determined? [2]

Question 2. Are particular segments in fact bays or harbors constituting inland waters and from what landmarks are the lines marking the seaward limits of bays, harbors, rivers and other inland waters to be drawn?

Question 3. By what criteria is the ordinary low water mark on the coast of California to be ascertained?

Hearings have been held and testimony taken in Washington, D.C., and Los Angeles, Calif., during January, February, March, and April of this year. No oral testimony offered by either side was excluded. Some proffered documents were excluded as within the reach of judicial notice. However, the order of December 3, 1951 provided that any documents so excluded by the Special Master could be submitted in written form to the Court, to accompany, but not to be part of, the record of proceedings upon which the Master acted. By this procedure, no proffered documents were excluded from the Master's consideration. All proffered documents were either on the record or reached by the Master by way of judicial notice. Both parties have thus had unrestricted opportunity to present all the evidence, oral or written, that their own judgment dictated.¹

¹ The documents to which the respective parties have particularly directed the attention of the Master are listed at pages VI, VIII, IX, X, XI and XII of the Brief for the United States Before the Special Master, hereinafter referred to by the letters "U.S." followed by the page reference; at pages II, III and IV of the Reply Brief for the United States, hereinafter referred to as "U.S.R.," with the page reference; and at pages VI, VII and VIII of the Brief for the State of California in the Proceedings Before the Special Master, hereinafter referred to by the abbreviation "Cal." followed by the page reference.

After full and painstaking consideration of the oral testimony and of the documents referred to as well as many other documents in the field of international law, and of the briefs and the authorities cited therein, I recommend answers to the three questions as follows:

Question 1: The channels and other water areas between [3] the mainland and the offshore islands within the area referred to by California as the "over-all unit area"² are not inland waters. They lie seaward of the baseline of the marginal belt of territorial waters, which should be measured in each instance along the shore of the adjoining mainland or island, each island having its own marginal belt.

Question 2: No one of the seven particular coastal segments now under consideration for precise determination and adjudication³ is a bay constituting inland waters. The landmarks from which the lines marking the seaward limits (the straight-line segments of the baseline of the marginal belt) of bays, harbors, rivers and other inland waters are to be drawn as follows:

Bays

The extreme seaward limit of inland waters of a bay is a line ten nautical miles long. For indentations having pronounced headlands not more than ten nautical miles apart, and having a depth as hereinafter defined, a straight line is to be drawn across the entrance. Where the headlands are more than ten nautical miles apart, the straight line is to be drawn across the indentation at the point nearest the entrance at which the width does not exceed ten nautical miles. In either case the requisite depth is to be determined by the following criterion: The envelope of all arcs of circles having a radius equal to one-fourth the length of the straight line shall be drawn from all points around the shore of the indentation; if the area enclosed by the straight line across the entrance and the envelope of the arcs of the [4] circles is greater than that of a semicircle with a diameter equal to one-half the length of the line across the entrance, the waters of the indentation shall be regarded as inland waters; if otherwise, the waters of the indentation shall be regarded as open sea.

Harbors (Ports)

In front of harbors the outer limit of inland waters is to embrace an anchorage reasonably related to the physical surroundings and the service requirements of the port, and, absent contrary evidence, may be assumed to be the line of the outermost permanent harbor works.

River Mouths

Where rivers empty into the sea, the seaward limit of inland waters is a line following the general direction of the coast drawn across the mouth of the river whatever its width. If the river flows into an estuary, the rules applicable to bays apply to the estuary.

2. Second chart opposite p. 30 of California's brief in this Court of July 31, 1951, entitled "Brief in Relation to Report of Special Master of May 22, 1951," and Chart Cal. Exhs. A and B.

3. See Appendix I, Report of Special Master under Order of June 27, 1949.

Landmarks

Where pronounced headlands exist at tributary waterways, the appropriate landmark is the point of intersection of the plane of ordinary low water with the outermost extension of the natural headland. Where there is no pronounced headland, the landmark is the point of intersection of the ordinary low-water mark with a line bisecting the angle between the general trend line of the ordinary low-water mark along the open coast and the general trend line of the ordinary low-water mark along the shore of the tributary waterway.

Question 3: The "ordinary low-water mark on the coast of California" is the intersection with the shoreline (as it exists at the time of survey) of the plane of the mean of all [5] low waters, to be established, subject to the approval of the Court, by the United States Coast & Geodetic Survey from observations made over a period of 18.6 years.

The occasion for determination of these three questions by judgment of the Court arises in this way:

It had long been settled that individual states of the Union own in trust for their people the navigable tidewaters between high and low-water mark, and the soil or "tidelands" under them—*i.e.*, the shore that is covered and uncovered by the regular flow and ebb of the tides (*United States v. California*, 332 U.S. 19, 30; *Pollard v. Hagan*, 3 How. 212). California sought to have the *Pollard* rule of State ownership extended beyond the tidelands out into the soil beneath the marginal belt of territorial sea. The Court, refusing to thus transplant the *Pollard* rule, held that the Federal Government rather than the State has paramount rights in and power over the marginal belt, and full dominion of the resources of the soil under it. In its decree the Court defined the things embraced within this Federal right as "the lands, minerals and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters." Thus the line of demarcation between the tidelands owned by the State and the soil under the marginal belt over whose resources the United States has full dominion, is, under the Court's decision, "the ordinary low-water mark on the coast of California," subject only to the exception that wherever this low-water mark is interrupted by inland waters the seaward boundary of the inland water replaces the low-water line as an interpolated straight-line segment of the line of demarcation.

When the Court has answered Question 3 above as to how the low-water mark is to be chosen, the precise locations of those portions of the desired line of demarcation which are [6] the low-water marks can readily be fixed by appropriate survey. It is the fixing of the interpolated segments where the low-water mark is interrupted by inland waters that calls for adjudication of Questions 1 and 2.

As to Questions 1 and 2, the parties agree in recognizing that the determination of the demarcation line at which inland waters end and the marginal sea begins also determines the exterior limit of the marginal belt and therefore involves a question of the territorial jurisdiction of the United States as against foreign nations, *i.e.*, a question of external sovereignty.⁴ In my consideration of appropriate answers to these questions I have understood that there is no controversy here as to the State's ownership—the status as inland waters—of bays not more than ten nautical miles wide and deep enough to meet

4. U.S. 20; Cal. Brief of July 31, 1951, p. 11.

the geometric formula (the Boggs formula) adopted in this case by the United States to measure its disclaimer.⁵ And in formulating my recommendations I have assumed that appropriate answers to these questions of external sovereignty, involving as they do the degree of encroachment by the United States upon the open sea, depend upon whether any greater area of inland waters than is here conceded by the United States exists on the coast of California either by (1) any customary, generally recognized rule of international law which, like the three-mile marginal belt rule, for instance, exists for each country without needing the support of any particular assertion of right, or by (2) effective assertion by the United States on its own behalf in its international relations.⁶

[7] Except for the special case of historical bays, and a minor point not now in significant controversy here as to an appropriate measure of the depth of indentation of a "bay" (see post pp. 25-26), it is implicit in the positions taken by each of the parties, and in the documentary records to which they direct attention, that there is no customary, generally recognized rule of international law which establishes automatically as a matter of common right the criteria by which the baseline of the marginal belt is to be located.

Counsel for the United States, in support of the criteria they propose, stand fundamentally on the ground that the United States by effective assertion on its own behalf has established in its international relations the rule that the marginal belt is measured from the physical shore of the mainland, or of offshore islands, not from straight lines drawn from headland to headland or from point to point, but following the sinuosities of the coast except for deep indentations, such as bays, gulfs or estuaries, no more than ten miles wide. They do not, however, advance these criteria on the ground that they have acquired the authority of general rules of international law. Their position is that these criteria are in accord with the present and the traditional policy of the United States; that they are not in conflict with any established principles of international law; [8] that international law leaves the method of delimiting territorial waters to the national state within wide limits, and that these allowable limits clearly embrace the criteria here relied upon by the United States (U.S. 90). They say, correctly enough, that California's insistence upon more extensive areas of inland waters amounts to recognition that the criteria proposed by the United States *do not go beyond* what is permissible under international law.

California, on the other hand, proposes that the United States now adopt as the baseline of its marginal belt a line, referred to as the "exterior" or "political" coastline, running outside "all ports, bays, harbors, and other bodies of inland waters and along the seaward side of the outlying rocks and islands"; but it does not contend that any customary, generally recognized rule of international law *requires* such a line. Its position is not that

5. In any case, the areas disclaimed would be held inland waters under the ruling recommended in this report.

6. In recommending answers to the three propounded questions for "guidance in applying the appropriate principles of law to the seven coastal segments enumerated," I have assumed that the purpose in hand is the judicial determination of applicable principles of law to serve as guides in the physical locating of the line of demarcation between the State-owned tidelands and the federally owned submerged bottom of the marginal belt; not the determination of what might or might not be a wise policy for the nation to adopt within this field for which the political, not the judicial, agencies of government are responsible (*cf. United States v. California*, 332 U.S. 19, 40; *The Paquette Habana*, 175 U.S. 677, 700). I remain of the conviction (reflected in my report of May 31, 1949 at page 5, and again in my report of May 22, 1951 at page 2) that the Court has already held that the location of the exact coastal line is a justiciable matter (332 U.S. 26). Counsel's argument that the Court's act in referring these questions back to the Special Master for recommended answers carries the implication that I should base my recommendations on what I think might be a wise policy for the United States to pursue within the limits of international law, has not appealed to me at all (*cf. post pp. 29, 40, 42-43*).

international law imposes an obligation on the United States to adopt the criteria California proposes, but rather that there is no rule of international law that would prevent the United States from adopting those criteria if it should desire to do so. Thus California's position as to the non-existence of any customary, generally recognized, and limiting rule of international law on this point coincides with the position of the United States.

The absence from international law of any customary, generally accepted rule or rules fixing the baseline of the marginal belt is, indeed, conspicuous. At The Hague Conference of 1930, a carefully prepared attempt was made to reach agreement on some such rules among the maritime nations there represented, but the attempt failed. The recent decision of the International Court in the United Kingdom-Norway controversy seems to make a step in that direction, and it may be that by such judicial procedure further progress may eventually be made in this presently [9] undefined area of international law. But for the time being it must be conceded that no such customary or generally recognized rule exists.

Under these circumstances, adjudication of the status of the water areas here in controversy must depend upon whether there has been effective assertion by the United States in its international relations of the criteria proposed by California; and this question will be answered by judicial examination of prior actions of the United States, having due regard to relevant principles of international and domestic law (*Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 380-381).

The Present and Past Position of the United States

Turning, then, to the question whether the criteria proposed by California are supported by any effective assertion by the United States on its own behalf in international relations, we have first to examine the testimony and the documentary records in this regard.

Counsel for the United States put into the record before the Special Master a letter dated November 13, 1951, and a supplementing letter of February 12, 1952, from the Secretary of State to the Attorney General (U.S. Appendix pp. 167-175).

The first of these letters is a statement from the Department of State in response to a request from the Attorney General, of the position of the United States as to principles or criteria which govern the delimitation of the territorial waters of the United States. The Attorney General asked in particular how such delimitation is made in the case of:

- (a) A relatively straight coast, with no special geographic features, such as indentations or bays;
- (b) A coast with small indentations not equivalent to bays; [10]
- (c) Deep indentations such as bays, gulfs or estuaries;
- (d) Mouths of rivers which do not form an estuary;
- (e) Islands, rocks or groups of islands lying off the coast;
- (f) Straits, particularly those situated between the mainland and offshore islands.

The supplementing letter was in response to an inquiry from the Attorney General as to whether, in the light of the decision of the International Court of Justice in the Fisheries case in December 1951 (*United Kingdom v. Norway*), the State Department adheres to the statement of position in its letter of November 13, 1951.

The letter of November 13, 1951, after noting that the Department of State, in the formulation of United States policy with respect to territorial waters and their delimitation, "has been and is guided by generally accepted principles of international law and by the practice of other states in the matter" (167-168), said, with respect to item (a)—a relatively straight coast, with no special geographic features, such as indentations or bays—that the Department of State "has traditionally taken the position that territorial waters should be measured from the low-water mark along the coast" (168).⁷ As to item (b)—a coast with small indentations not equivalent to bays—the letter says that the Department of State has taken the position that "the base line follows the indentations or sinuosities of the coast, and is not drawn from headland to headland" (169). As to item (c)—a coast presenting deep indentations—the letter says (169) that the determination of the baseline in such cases has frequently given rise to controversies, but:

"The practice of states, nevertheless, indicates substantial agreement with respect to bays, gulfs or [11] estuaries no more than 10 miles wide; the base line of territorial waters is a straight line drawn across the opening of such indentations, or where such opening exceeds 10 miles in width, at the first point therein where their width does not exceed 10 miles."

And the Department notes that the 10-mile rule is subject to the special case of historical bays (169-170). As to item (d)—mouths of rivers which do not flow into estuaries—the Department mentions the report of the Second Sub-Committee at The Hague Conference of 1930 as having "agreed to take for the baseline a line following the general direction of the coast and drawn across the mouth of the river, whatever its width (*Acts of Conference*, 220)." There is no dispute between the parties as to this item. As to item (e)—islands, rocks or groups of islands lying off the coast—the letter says (171) that at The Hague Conference of 1930 the United States took the position that "Each island, as defined, was to be surrounded by its own belt of territorial waters measured in the same manner as in the case of the mainland (*Acts of Conference*, 200)." As to the definition of an island the letter says that "separate bodies of land which were capable of use should be regarded as islands," and notes that the report of the Second Sub-Committee defined an island "as a separate body of land, surrounded by water, which was permanently above high water mark, and approved the principle that an island, so defined, had its own belt of territorial sea (*Acts of Conference*, 219)." As to item (f)—straits, particularly those situated between the mainland and offshore islands—the letter (172) says that the United States took the position at the Conference that "if a strait connected two seas having the character of high seas, and both entrances did not exceed six nautical miles in width, all of the waters of the strait should be considered territorial waters of the coastal state. In the case of openings [12] wider than six miles, the belt of territorial waters should be measured in the ordinary way (*Acts of Conference*, 200-201)." The straits here in controversy are of this character, i.e., the openings are wider than six miles. The Department noted that the Second Sub-Committee:

"* * * specified in its observations on this subject that the waters of a strait were not to be regarded as inland waters, even if both belts of territorial waters and both shores belonged to the same state (*Acts of Conference*, 220). In this, it supported the policy of the United States to oppose claims to exclusive control of

7. Each of the assertions of this letter is fortified by references to specific instances in which the position is said to have been asserted or maintained.

such waters by the nation to which the adjacent shore belonged. * * * With respect to a strait which is merely a channel of communication to an inland sea, however, the United States took the position, with which the Second Sub-Committee agreed, that the rules regarding bays should apply (*Acts of Conference*, 201, 220)."

And here again, the Department noted that the principles applicable to bays and straits "have no application with respect to the waters of bays, straits, or sounds, when a state can prove by historical usage that such waters have been traditionally subjected to its exclusive authority."

In the supplementary letter of February 12, 1952, with reference to the decision of the International Court of Justice in the *Fisheries* case, the Department said that it adheres to the statement of position given in the letter of November 13, 1951. The Department noted that in the *Fisheries* case the International Court of Justice held that Norway's fixing of the baselines for the delimitation of Norwegian fisheries by applying the straight baselines method had not violated international law, especially in view of the peculiar geography of the Norwegian coast and of the consolidation of this method by a constant and sufficiently long practice, but it said that the decision—

[13] "does not indicate, nor does it suggest, that other methods of delimitation of territorial waters such as that adopted by the United States are not equally valid in international law. The selection of the baselines, the Court pointed out, is determined on the one hand by the will of the coastal state which is in the best position to appraise the local conditions dictating such selection, and on the other hand by international law which provides certain criteria to be taken into account such as the criteria that the drawing of baselines must not depart to any appreciable extent from the general direction of the coast, that the inclusion within those lines of sea areas surrounded or divided by the land formations depends on whether such sea areas are sufficiently closely linked to the land domain to be subject to the regime of internal waters, and that economic interests should not be overlooked the reality and importance of which are clearly evidenced by long usage.

"In the view of the Department, the decision of the International Court of Justice in the *Fisheries* case does not require the United States to change its previous position with respect to the delimitation of its territorial waters. It is true that some of the principles on which this United States position has been traditionally predicated have been deemed by the Court not to have acquired the authority of a general rule of international law. Among these are the principle that the baseline follows the sinuosities of the coast and the principle that in the case of bays no more than 10 miles wide, the baseline is a straight line across their opening. These principles, however, are not in conflict with the criteria set forth in the decision of the International Court of Justice. The decision, moreover, leaves the choice of the method of delimitation applicable under such criteria to the national state. The Department, accordingly, adheres to its statement of the position of the United States, with respect to delimitation of its territorial waters in date of November 13, 1951" (174-175).

[14] *Bays*

The Department of State in its letter of November 13, 1951 first cites (168) a letter from Secretary of State Bayard to Secretary of the Treasury Manning of May 28, 1886 (U.S. Appendix 175-181). The first part of this letter is directed to the limitation of the marginal belt to a width of three miles; a question which is not here in controversy.

Following that, Secretary Bayard directs his attention to the question "Whether the line which bounds seaward the three-mile zone follows the indentations of the coast or extends from headland to headland * * *" (177). He says that "The headland theory, as it is called, has been uniformly rejected by our Government, * * *" and notes (176) in support of this assertion the opinions expressed in diplomatic correspondence by various Secretaries of State; a statement of Judge Woolsey in his work on international law, and an opinion of Umpire Bates of the London Commission of 1853.⁸ He adds, referring to the so-called headland theory:

"This doctrine is new and has received a proper limit in the convention between France and Great Britain of the 2d of August, 1839, in which it is equally agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland.

* * * * *

"We may therefore regard it as settled that, so far as concerns the eastern coast of North America, the [15] position of this Department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, and that the seaward boundary of this zone of territorial waters follows the coast of the mainland, extending where there are islands so as to place round such islands the same belt. This necessarily excludes the position that the seaward boundary is to be drawn from headland to headland, and makes it follow closely, at a distance of three miles, the boundary of the shore of the continent or of adjacent islands belonging to the continental sovereign" (177-178).

At the end of his letter Secretary Bayard said:

"These rights we insist on being conceded to our fishermen in the northeast, where the mainland is under the British sceptre. We cannot refuse them to others on our northwest coast, where the sceptre is held by the United States" (181).

The controversy between Great Britain and the United States to which Secretary Bayard's words refer lasted throughout the nineteenth century; indeed, from the Treaty of Paris to the Treaty of July 12, 1912 following the decision and recommendations of the Arbitration Tribunal of September 7, 1910 in the *North Atlantic Coast Fisheries* case.⁹ It gave occasion for the United States repeatedly to assert its position as to the location of the baseline of the marginal belt. The position maintained by the United States throughout the controversy was that the line of demarcation is the low-water mark following the sinuosities of the coast, excluding any straight-line measurement from headland to headland of bays. The arbitration was on a clause of the Treaty of October 20, 1818 which provided that "the United States hereby renounce forever, any liberty heretofore enjoyed or claimed by the inhabitants [16] thereof, to take, dry, or cure fish on, or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in

8. These letters of the Secretaries asserted the three-mile limitation of the marginal belt. They spoke of the three miles as measured from the "shore" (U.S. 55-56) and two of them, Jefferson in 1793 and Pickering in 1796, spoke of "landlocked" bays (U.S. 77, 78 and post p. 24). The Bayard letter (177) includes relevant quotations from Judge Woolsey and from Umpire Bates.

9. See Jessup, P. C., *The Law of Territorial Waters and Maritime Jurisdiction*, p. 363 *et seq.*

America not included within the above mentioned limits." The British representatives interpreted this treaty provision to exclude American fishermen from all bays regardless of their size and claimed that the limit described in the treaty should be measured three miles from a line drawn from headland to headland. The United States contended that the word "bays" in the treaty meant those smaller indentations which would naturally be classed with creeks and harbors. Mr. Elihu Root, speaking for the United States, advocated the six-mile rule for measuring bays; limiting the headland-to-headland doctrine by the three-mile rule. The decision of the Court of Arbitration on this question was unfavorable to the United States. The American interpretation of the Treaty of 1818 was rejected and the Court held that:

"In case of bays, the three marine miles are to be measured from a straight line drawn across the body of water at the place where it *ceases to have the configuration and characteristics of a bay*. At all other places the three marine miles are to be measured following the sinuosities of the coast." (Italics supplied.)¹⁰

Expressing, however, the feeling that though this decision was correct in principle, it was "not entirely satisfactory as to its practical applicability," the Arbitration Tribunal went on to recommend, as it was empowered to do, that the parties to the controversy should agree specifically as to the exclusive fishing rights in certain named bays, and that:

"1. In every bay not hereinafter specifically provided for the limits of exclusion shall be drawn three miles seaward from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed ten miles."

[17] This recommended disposition of the dispute was incorporated in the Treaty of 1912 between the United States and Great Britain (Senate Document 348, 61st Congress, 4th Session, Vol. 3, 2635).

The ten-mile rule incorporated in the 1912 treaty was thus a recession by the United States from its position that inland waters were limited by the three-mile marginal belt rule to bays six miles wide. In the 1912 treaty the ten-mile rule was accepted by the United States as a "proper limit" upon the headland-to-headland doctrine, to use the expression chosen by Umpire Bates in 1853 (post p. 19) and adopted by Secretary Bayard in his letter of May 28, 1886 (U.S. Appendix 177-178).

The rule had a very considerable background, particularly in the usage of Great Britain and other countries bordering on the North Sea with respect to fisheries. The Arbitration Tribunal in recommending the ten-mile rule expressly took into consideration¹¹ the fact that Great Britain had adopted the rule in treaties with France and with the North German Confederation and the German Empire, and likewise in the North Sea Convention; that it had on various occasions in the course of negotiations with the United States proposed and adopted the rule in instructions to its Naval Officers stationed on the north-eastern coast, and that the rule had already formed the basis of a treaty between Great Britain and the United States, negotiated in 1888 by Secretary Bayard.¹² Dr. Drago dissented from the majority award of the Arbitration Tribunal, believing that it should have adopted the ten-mile rule as to bays. His dissenting opinion quotes the provisions of

10. *Ibid.*, p. 377.

11. *Ibid.*

12. This treaty was never ratified by the Senate.

a series of these British treaties and regulations incorporating that rule in 1839, 1843, 1867, 1868, 1874, 1882 and [18] 1887¹³ and refers also to the unratified Treaty of 1888.

It appears from the historic documents referred to by Jessup and others that throughout the nineteenth century Great Britain adhered to the idea of following the sinuosities of the coast, but sometimes proposed the more restrictive six-mile rule.¹⁴ One instance of this was a question asked in Parliament on February 25, 1907 in which the Foreign Office, Admiralty, the Colonial Office, the Board of Trade and the Board of Agriculture and Fisheries, stated, perhaps as a minimum, the six-mile rule.¹⁵ In connection with it Dr. Drago referred to the comment of John Bassett Moore in a letter quoted in 13 (1894-95) *Annuaire de L. S. Institute de Droit Int.*, p. 146, to the effect that the ten-mile rule was no more than a practical application of the six-mile rule to the necessities of fishermen.¹⁶ And Dr. Drago (111) expressed his opinion that:

"The six miles are the consequence of the three miles marginal belt of territorial waters in their coincidence from both sides at the inlets of the coast, and the ten miles far from being an arbitrary measure are simply an extension, a margin given for convenience to the strict six miles for fishery purposes."

[19] In February 1853 Umpire Bates in the case of *The Washington* had reached the same conclusion as that of Dr. Drago's dissent. He rejected the contention of the British Government that the term "bays" in the Treaty of 1783, which used the same words as the Treaty of 1818, included the waters landward of lines drawn from headland to headland along the coast, using the expression subsequently adopted by Secretary Bayard in his letter of May 28, 1886, that "This doctrine [of headlands] is new, and has received a proper limit in the convention between France and Great Britain of the 2d of August 1839," which incorporated the ten-mile rule (IV Moore, *International Arbitrations*, 4342; I Moore, *Digest of International Law*, 785, 786). The Netherlands in its neutrality proclamation during the Russo-Japanese War adopted the ten-mile rule.¹⁷ In 1903 the United States took the position in the Alaska Boundary Arbitration that a ten-mile limit for bays is proper (7 *Alaska Boundary Arbitrations*, S. Doc. 162, 58th Congress, 2d Session, p. 844). A French law of March 1, 1888 regulating fisheries incorporated the ten-mile rule (Crocker, 525-6).

The rule that the baseline of the marginal belt follows the sinuosities of the coast interrupted only by definitely limited straight lines across the mouths of bays has been widely commented upon and approved by jurists experienced in international law.¹⁸ In 1894 the Institute of International Law adopted the principle that the territorial sea follows

13. Treaty between Great Britain and France, August 2, 1839; Regulations between Great Britain and France, May 24, 1843; Treaty between Great Britain and France, November 11, 1867; British Board of Trade Notice to fishermen under the regulation agreed to between Great Britain and the North German Confederation, November 1868, repeated in December 1874 under the arrangement between Great Britain and the German Empire; Treaty between Great Britain, Belgium, Denmark, France, Germany and The Netherlands for regulating the police of the North Sea Fisheries, May 6, 1882; British Order-in-Council, October 23, 1887 (*ibid.*, pp. 107-108).

14. *Ibid.*, 366, 380.

15. Pitt Cobbett, "*Cases and Opinions on International Law*," Vol. I, p. 143, and this instance is noted by Dr. Drago in his dissenting opinion at pp. 110-111.

16. *Ibid.*, 356.

17. Jessup, 360; 1904, *For. Rel.*, U.S. 27.

18. The recommendations of the national and international associations referred to are accompanied in many cases by rather extensive comments in the journals and reports cited in the text.

the sinuosities of the coast except that it is measured from a straight line drawn across the bay. The limit incorporated in the rule was twelve marine miles rather than ten (Jessup, *The Law of Territorial Waters [20] and Maritime Jurisdiction*, 361; Crocker, *Extent of the Marginal Sea*, 148). In 1895 the International Law Association followed suit but used the ten-mile measure (*Transactions, 1873-1924*, 223). The Third Commission of the Second Hague Peace Conference in 1907 in its report relative to the laying of automatic submarine contact mines recommended the ten-mile rule (Scott, *Reports to The Hague Conference of 1899 and 1907*, 664; Crocker, 487, 491). And as Jessup notes (362) the League of Nations Committee of Experts for the Progressive Codification of International Law suggested in Article 4 the rule that the baseline of the marginal belt should follow the sinuosities of the coast except where it is interrupted by straight lines drawn across bays putting the limit at twelve marine miles.

The Secretary of State in his letter of November 13, 1951 further refers, in support of the ten-mile rule (U.S. Appendix 170) to the Research in International Law of the Harvard Law School. That research was organized in November 1927 for the purpose of preparing a draft of an international convention on certain subjects as to which the Council of The League of Nations, through its Preparatory Committee for the International Codification Conference, had addressed inquiries to various governments. Its report of 1929 recommended, in Article 5 of the section on the Law of Territorial Waters, Part III, the adoption of the ten-mile rule subject, of course, to the existence of so-called "historic bays" (Am. J. of Int. Law, Vol. 23, 1929, p. 265 *et seq.*). The wording of Article 5 was:

"The seaward limit of a bay or river-mouth the entrance to which does not exceed ten miles in width is a line drawn across the entrance. The seaward limit of a bay or river-mouth the entrance to which exceeds ten miles in width is a line drawn across the bay or river-mouth where the width of the bay or river-mouth first narrows to ten miles."

[21] The article is followed by a rather full commentary by a distinguished group of American experts in the field of international law.

As the November 13, 1951 letter of the Secretary of State points out, the ten-mile rule was supported at The Hague Conference of 1930 by the United States, and it was incorporated in the Report of the Second Sub-Committee (*Acts of Conference*, 217-218).

On the foregoing facts I come without any embarrassment of doubt to the conclusion that, subject to the special case of historical bays, the United States has traditionally taken the position that the baseline of the marginal belt is the low-water mark following the sinuosities of the coast, and not drawn from headland to headland, except that at bays, gulfs or estuaries not more than ten miles wide the baseline is a straight line drawn across the opening of such indentations, or where such opening exceeds ten miles in width, at the first point therein where their width does not exceed ten miles; and that it has not in its international relations asserted the criteria proposed by California or any criteria that would mark as inland waters any greater water area on the coast of California than is here conceded by the United States, except for a possible but not now significant hiatus as to the depth of bays, discussed hereinafter (post pp. 25-26).

In thus reviewing the record and expressing the considerations which have led me to make the foregoing recommendations, I have not overlooked the fact that counsel for the United States take the position that this Court cannot go behind or disregard the State Department's declaration of what its policy now is or what it has been in the past

(U.S. 12-50). While I assume that with respect to what the policy of the United States now is in international relations this Court will accept without question the statement of the Secretary of State, I am not convinced that [22] the absolute statement of the rule by counsel for the United States (U.S. 36) as to what the policy of the United States has been in the past has no exceptions; particularly in view of the fact that, after all, the policy of the United States in its international relations is expressed perhaps more often by acts than by policy declarations, and here we are particularly concerned with what the policy was on October 28, 1947, when the decree in this case was entered. I do not think that any of the cases cited by counsel or any others that I have been able to find go quite that far (*cf. Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 380). If I am wrong about that, and counsel for the United States are right, then the Court will act accordingly. In that event the conclusion would be the same as the one I have reached, although reached by a somewhat different route.

Counsel for the United States have also taken the position (U.S. 50-53) that Dr. Hudson's testimony in which he criticized the State Department's letters is irrelevant and should not be considered. I have not accepted that argument or followed that course. On the contrary, I have examined with the greatest care the testimony of Dr. Hudson (Tr. 65-214). I have not, however, found anything in it which significantly impeaches or contradicts anything in the two letters from the Secretary of State. I think that every criticism Dr. Hudson makes as to the accuracy of the recital by the Secretary of State of the traditional policy of the United States is more than amply covered by a remark included in the opinion of the International Court of Justice in the *Anglo-Norwegian Fisheries* case and quoted with approval, on different points of argument, both by counsel for the United States (U.S.R. 19) and by counsel for California (Cal. 50, fn. 13):

"The Court considers that too much importance need not be attached to the few uncertainties or [23] contradictions, real or apparent, which the United Kingdom Government claims to have discovered in Norwegian practice."

It should be added that a great part of Dr. Hudson's testimony is taken up with his comments on the decision of the International Court of Justice in the *Anglo-Norwegian Fisheries* case (Tr. 70-108). He noted in his comments, as the Secretary of State noted in his supplementing letter of February 12, 1952, that the principles (1) that the baseline follows the sinuosities of the coast and (2) that in the case of bays not more than ten miles wide the baseline is a straight line across their opening, were deemed by the International Court not to have acquired the authority of a general rule of international law. That may be assumed to be true. Although the rule has been adopted by Great Britain and the other countries bordering the North Sea, except Norway, and by the United States, it does not by any means appear that it has been adopted universally by maritime nations. Indeed, counsel for California in their brief (Cal. 117) list a number of nations which are said to claim all bays without regard to their size or configuration.

The above-discussed present and traditional position of the United States in its international relations corresponds, so far as it goes, with the position taken here by counsel for the United States as to the appropriate answers to the questions under discussion. It does not go the whole way as to the criteria which determine whether a coastal indentation is a bay constituting inland waters, because the position of the State Department does

not include any particular formula or method for determining whether the coastal indentation is sufficiently deep to have the character of a bay.

The concept of a bay as inland waters over which a country has some natural or reasonable right to exercise exclusive [24] jurisdiction has often been expressed vaguely but understandably by use of the word "landlocked" (*cf.* 332 U.S. 34). Thus in a letter of November 8, 1793 to the British Minister (I Moore, *Digest of International Law*, 702-703) Mr. Jefferson referred to rivers and bays "as being landlocked, within the body of the United States." And on September 2, 1796, Mr. Pickering (*ibid.* 704) excepted from the marginal belt "any waters or bays which are so landlocked as to be unquestionably within the jurisdiction of the United States, be their extent what they may," and in my opinion the same concept is reflected in the criterion expressed in the judgment of the International Court of Justice in the Fisheries case (p. 133) as the "idea, which is at the basis of the determination of rules relating to bays," namely, "whether certain sea areas lying within these lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters." But it is quite clear that this concept has not yet found concrete expression in any generally accepted rule or formula of international law.

On this subject the State Department letter of November 13, 1951 says, referring to The Hague Conference of 1930 (170):

"It was understood by most delegations that, as a corollary to the adoption of this principle, a system would be evolved to assure that slight indentations would not be treated as bays (*Acts of Conference*, 218). The United States proposed a method to determine whether a particular indentation of the coast should be regarded as a bay to which the 10 mile rule would apply (*Acts of Conference*, 197-199). The Second Sub-Committee set forth the American proposal and a compromise proposal offered by the French delegation in its report, but gave no opinion regarding these systems (*Acts of Conference*, 218-219)."

[25] The statement reflects (1) the existence of the question: When is a coastal indentation deep enough or of such configuration as to constitute an area of inland waters, and (2) the fact that no consensus was reached on this question at The Hague Conference. The American proposal referred to in the State Department letter was the Boggs formula upon which counsel for the United States rely in these proceedings as an appropriate method of answering this question. But so little has the drawing of a precise line of demarcation between inland waters and the marginal belt engaged attention in international relations that there is nothing that could be thought of as an accepted rule of international law as to the required depth of inland bays. The concern of the members of the Second Sub-Committee at The Hague Conference of 1930 with this question, as well as their failure to reach any consensus about it, is reflected not only in the above quotation and in their failure to reach agreement, but also in the observation on bays (*Acts of Conference*, 218) that "Most delegations agreed to a width of ten miles provided a system were simultaneously adopted under which slight indentations would not be treated as bays." It is clear, however, from the letter of the Secretary of State of November 13, 1951 that the State Department is not now prepared to say that the Boggs formula represents either a present or traditionally a definitive position of the United States on this detail. The position of counsel for the United States in these proceedings is not that the geometric formula proposed at The Hague Conference, and upon which the United States now stands as an

appropriate measure, has been established either as a general rule of international law or even as the traditional position of the United States in international law (U.S. 35).

A question *might* arise, under such circumstances, as to the status of the waters of a coastal indentation less [26] than ten miles wide but not deep enough to satisfy the Boggs formula. But no such question has *arisen* in these proceedings.¹⁹ California accepts, of course, the concession or disclaimer of the United States so far as it goes, and it has not called attention to any coastal indentation which would be admitted to the status of inland waters by the ten-mile rule without limitation but would be excluded from that status for lack of depth under the Boggs formula. This modicum of difference between the criteria urged in this case on behalf of the United States and any definitive position taken by the State Department in our international relations is, therefore, without present significance in this controversy. My recommendation is that the Boggs formula should be accepted, for the present purposes of this case, as an appropriate technical method of ascertaining whether a coastal indentation has sufficient depth to constitute inland waters within the limitations of the ten-mile rule.

Islands Lying Off the Coast

The letter from the Secretary of State of November 13, 1951 says (U.S. Appendix, pp. 167-175) that at The Hague Conference of 1930 the United States took the position that each offshore island was to be surrounded by its own belt of territorial waters, and that this principle was approved in the Report of the Second Sub-Committee.

The rule that the baseline of the marginal belt follows the sinuosities of the coast, except where interrupted by straight-line segments not more than ten miles wide across the mouths of bays, in itself excludes the idea of drawing the coastline from headland to headland around offshore [27] islands. That each offshore island should have its own three-mile belt goes naturally with the fact that these islands are part of the territory of the nation to which the mainland belongs. No one, for instance, questions that the islands lying off the southern coast of California are part of the State of California, and as such each of them is, of course, entitled to its three-mile marginal strip (*cf. In re Marinovich*, 48 Cal. App. 474, 478). Subject to the special case of historical waters (post p. 30) it seems clear enough that the rule stated by the Secretary of State in his letter of November 13, 1951 is and has traditionally been the position of the United States in international relations, and I have therefore included in my recommended answer to Question 1 offshore islands as well as the mainland.

Straits

Subject to the special case of historical waters, the position of the United States as to straits connecting two areas of open sea, as set forth by the Secretary of State (*ante* p. 9), is that if both entrances are less than six nautical miles wide the strait is territorial waters but never inland waters. Otherwise, the marginal belt is to be measured in the ordinary way. If the strait is merely a channel of communication to an inland sea the ten-mile rule regarding bays should apply. The channels between the offshore islands

19. The controversy as to the Crescent City Bay area nine-tenths of a mile deep landward of a line three and one-half miles long (Cal. 86; U.S.R. 55-57) turns on the proper measurement of a harbor rather than on any application of the Boggs formula.

and the mainland in the so-called "unit area" claimed by California connect two areas of open sea.

To support his statement as to straits the Secretary refers (U.S. Appendix 172) to the position taken by Secretary Evarts on January 18, 1879 in connection with the passage through the Straits of Magellan (I Moore, *Digest of International Law*, 664). Counsel for the United States additionally cite (U.S. 67) a communication from Secretary of State Buchanan to the Minister of Denmark [28] of October 14, 1848 (H. Ex. Doc. 108, 33rd Congress, 1st Session, p. 38; I Moore, *Digest of International Law*, 660), protesting the levying by Denmark of dues on United States vessels passing through the Danish sound and belts from the North Sea to the Baltic, which ultimately led to the Treaty of April 11, 1857 (11 Stat. 719) by which complete freedom of navigation for American vessels in the Danish straits was established; and a letter from Mr. Jackson, United States Consul at Halifax, of October 3, 1870, insisting on the freedom of passage through the Strait of Canso from the Gulf of St. Lawrence to the Atlantic Ocean between Cape Breton Island and the mainland of Nova Scotia (U.S. 68-69; "*Foreign Relations*," 1870, pp. 428, 430; see, also, I Moore, *Digest of International Law*, 789-791). The recommendations of the United States at The Hague Conference of 1930 on the subject of straits (*Acts of Conference*, 200) are quoted on page 70 of the United States brief.

Counsel for the United States further assert that the position of the United States with respect to straits has been completely in accord with the established rule of international law, citing a number of authorities (U.S. 71). They stress particularly the recent ruling in a decision of the International Court of Justice in the *Corfu Channel Case* (I.C.J. Reports 1949, p. 4) in which Great Britain was successful in having Albania held responsible for damages sustained by two British warships which struck mines while proceeding through the North Corfu Channel at a point within the territorial waters of Albania. The Strait of Corfu between the Greek Island of Corfu and the mainland is less than six miles wide at each end (U.S. 72-74; Hudson, *The Twenty Eighth Year of the World Court*, 44 A.J.I.L. 1-12). The pertinent extract from the opinion of the Court is quoted in the brief for the United States at pages 73-74. California in its brief filed in this [29] Court in relation to the Report of the Special Master of May 22, 1951, at page 41, takes the position that if Corfu Island had been part of the country of Albania "this channel could have been declared inland waters"; but I agree with counsel for the United States (U.S. 75) that this is an unsound distinction.

In its brief addressed to the Special Master on June 6, 1952 California (118-121) discusses the matter of channels. Counsel suggest that many nations have found it advantageous to adopt an "exterior" coastline extending around off-lying islands as the baseline of the marginal sea; that the exterior coastline as a base for the marginal sea depends in each case upon laws or decrees of a sovereign state and not upon any arbitrary limitation of distance, and that the United States is free, if it finds that it is in the national interest to do so, to recognize and declare that the waters between the off-lying islands of California and the mainland are wholly inland waters. It is true that some countries have adopted such an "exterior" coastline. Norway is an example. It is also clearly correct to say that the establishment of such a coastline depends in international law upon effective assertion of right by the particular State. Whether the United States is free to take the position advocated by California if it finds that it is in the national interest to do so, and whether that would in fact be in the national interest as argued

for California (Cal. 119-121) is in my judgment beyond anything submitted to me for consideration by the order of the Court (*ante* p. 7 and post pp. 40-43).

On the whole case as submitted I have, therefore, no hesitation in recommending to the Court that in its answer to Question 1 it should find that, subject to the special case of historical waters, the channels and other water areas between the mainland and the offshore islands lying off the southern coast of California are not inland waters.

[30] *Historical Waters*

In my consideration of this aspect of the case I have assumed that the establishment of an historical right to encroachment upon the open sea greater than the ten-mile rule hereinbefore discussed essentially depends upon an assertion of right by the interested nation.²⁰ The question to be answered is whether there has been any effective assertion by the United States of exclusive jurisdiction, or any exercise by it of exclusive authority, over the "over-all unit area of inland waters," or over the five important bays within the seven segments under consideration, claimed by California as inland waters; *i.e.*, Monterey Bay, Crescent City Bay area, San Luis Obispo Bay, Santa Monica Bay and San Pedro Bay.

With the exception of the anomalous incident of the *amicus* brief in the *Stralla* case (post pp. 35-37) there is no evidence that the United States has ever exercised exclusive authority or asserted exclusive jurisdiction in any of these areas beyond the three-mile marginal belt delimited as hereinbefore defined.

Answer to that question must, therefore, depend upon whether acts of California can take the place of, or amount to, effective assertion by the United States. Counsel for California contend that the "effect * * * of an assertion or exercise of jurisdiction by the State of California * * * is the same as if the action had been taken by the United States."²¹ Counsel for the United States, on the other hand, take the position that since individual States of the Union have no capacity to deal with external affairs or foreign relations no effect whatever should be given in these proceedings to assertions made by the State [31] (U.S. 110).²² Behind this interesting question of constitutional law lies the factual question whether California has, in fact, asserted or exercised exclusive authority over the water areas in question. Counsel for the United States aver that the past assertions of jurisdiction over coastal areas by California do not support its present position (U.S. 133 *et seq.*).

On the evidence submitted, I have reached the conclusion, as will presently appear, that no explicit assertion by California of exclusive authority over these water areas in dispute was ever made until in 1949 the Government Code of California declared that the boundary described in the Constitution runs three English miles seaward from the islands, rocks and reefs adjacent to the mainland, etc. (1949 Cal. Stats., Chap. 65; Cal. 56).

On the question of constitutional law propounded I agree with counsel for the United States that when the action of a State is actually contrary to action by the

20. *Cf.* U.S. 29; Cal. 9, 19 and the argument of Elihu Root in the *North Atlantic Coast Fisheries Case Proceedings*, Vol. XI, quoted by Jessup in *The Law of Territorial Waters and Maritime Jurisdiction*, at pp. 368-369.

21. Brief filed by California before Special Master, March 14, 1952, p. 2.

22. Counsel do not question that assertions by a State would be an appropriate element to be considered by the State Department, as evidence of long usage, if the State Department did assert for the United States the item of external sovereignty in question (U.S. 127).

Federal Government the action is invalid for the reason that it is in conflict with the superior authority of the United States (U.S. 110 and 128-129). But whether no effect whatever should be given to an assertion or exercise of exclusive authority by an individual State affecting citizens of foreign states, is a question that does not arise in these proceedings if my factual conclusions are correct. I do not, therefore, think it would be useful, or even appropriate for me to express any opinion on that subject; particularly in view of the fact that in the *Louisiana* case (339 U.S. 705) in passing upon the effect of Louisiana's claims *vis-a-vis* the United States or those acting on behalf of or pursuant to its authority, this Court expressly noted that it intimated no [32] opinion as to the effect of such actions by a State *vis-a-vis* persons other than the United States and its agents.

As to the facts, California has asserted the right to control fishing within the waters of Monterey Bay and the right to enforce its criminal laws within the waters of Santa Monica Bay, up to and three miles beyond a straight line drawn from headland to headland of those bays. The incidents of these assertions of right appear with respect to Monterey Bay in *Ocean Industries v. Greene*, 15 F. 2d 862 and *Ocean Industries v. Superior Court*, 200 Cal. 235 and as to Santa Monica Bay in *People v. Stralla*, 14 Cal. 2d 617.

In *Ocean Industries, Inc., v. Greene et al.* (15 F. 2d 862, N. D. Cal., S. D., St. Sure, D. J.), decided November 13, 1926, Ocean Industries sought to enjoin Greene, individually and as an officer of the State of California, from interfering with the operation of plaintiff's fish reduction plant anchored within the indentation of Monterey Bay shoreward of a straight line drawn between its headlands, which are nineteen miles apart. Judge St. Sure denied the injunction for lack of jurisdiction on the ground (1) that California had jurisdiction because its Constitution included in the boundaries of the State harbors and bays, and its statute establishing Fish and Game Districts covered Monterey Bay within one of those districts; and (2) there had been no affirmative action of Congress taking such control of these areas. He interpreted the language of the Constitution of California, "all the islands, harbors and bays along and adjacent to the coast" to declare in effect that Monterey Bay is a part of the territory of the State; he found that there is in international law no established six-mile limitation of the distance between headlands of bays, supporting that finding by reference to the internationally recognized status of Chesapeake Bay, Delaware Bay and Cape Cod Bay in this country and Conception Bay in Newfoundland. He [33] resolved the ambiguity of statutory language defining the boundaries of the Fish and Game Districts, "under the circumstances," in favor of including the whole bay. When, in January 1927, the Supreme Court of California in *Ocean Industries, Inc. v. Superior Court* (200 Cal. 235) gave judgment on this same question it held that the place of anchorage was within the boundaries of California on essentially the same grounds; the word "bays" in the California Constitution was interpreted to embrace the entire area of all the bays indenting the coast, regardless of their size (243); the ambiguity of statutory language defining county boundaries was resolved by reference to the Constitution so interpreted (243-244), and the six-mile limit on the headland rule in international law was questioned by reference to Conception Bay, Newfoundland, Cancale Bay in France and Delaware and Chesapeake Bays in the United States (245-246). In August 1935, the U.S. District Court for the Southern District of California, Central Division (Stephens, D.J.) in *U.S. v. Carrillo et al.* (13 F. Supp. 121), dismissed certain counts of an indictment charging defendants with violation of a Federal statute by acts of piracy on the high seas. The acts were committed on a vessel in San Pedro

Bay more than three miles from the mainland but landward of a line drawn from headland to headland. Defendants' motion to dismiss was based on the ground that the vessel was within the territory of the State of California at the time of the alleged robbery. Judge Stephens adopted the idea that the baseline of the marginal belt runs from headland to headland at bays, rather than following the exact contour of the coast (122). He recognized that there must be some limitation read into this formula and found such limitation in the usage of the word "bays" by governments, explorers and geographers, and he followed *Ocean Industries v. Superior Court* in interpretation of the California Constitution. The State of California was not [34] a party. The position of the United States was the same there as it is here but the decision was against it. In November 1939, the Supreme Court of California decided in a criminal case (*People v. Stralla et al.*, 14 Cal. 2d 617) that defendants had violated the California Penal Code by operating a gambling ship anchored in Santa Monica Bay four miles from shore but approximately six miles landward from a line drawn between the headlands of the bay. The *Ocean Industries* case in the California Supreme Court and Judge Stephens' decision in the *Carrillo* case were both referred to (622, 623, 631, 632). In the Court's very full opinion holding that the vessel was anchored in the territorial waters of California the use of the word "bays" in the Constitution of California was interpreted to include all bays without limitation as to the distance between headlands, and the Fish and Game Code was interpreted in the light of this constitutional interpretation (631). The Court found no established limitation, in international law, of the headland doctrine, citing, as the other decisions had done, the accepted status of Delaware Bay, Conception Bay and Chesapeake Bay (628-630).

The rationale of all the decisions is, I think, directly in conflict with the position which the United States had then taken and now takes in its international relations. The interpretation which prevailed in these cases of the word "bays" in California's Constitution is the same interpretation that Great Britain urged for the word "bays" in the Treaty of 1818, and against which Mr. Root on behalf of the United States vigorously advanced the proposition that the headland doctrine should be limited by the three-mile rule to bays not more than six miles wide; and when the Arbitration Tribunal upheld Great Britain's contention but recommended acceptance by both parties of the ten-mile rule, the United States in the Treaty of 1912 retreated from Mr. Root's position only to the extent of fixing ten miles [35] as an appropriate limit for the headland doctrine (*ante* p. 17). It is to be noted, too, that these instances of assertion of right by the State of California in the courts did not constitute an assertion of exclusive authority over these waters such as might be the occasion for objection by foreign governments or action by the United States in our international relations. The *Ocean Industries* cases involved only a matter of regulating fishing which had no exclusive aspects. (*Cf. U.S. v. California*, 332 U.S. 37-38 and *Vermilya-Brown Co. v. Connell*, 335 U.S. 381.) The *Stralla* case and the *Carrillo* case which were criminal actions rested, of course, on the proposition that the area in question was part of the territorial waters of California, but there is nothing to indicate that the defendants were citizens of a foreign country. Under these circumstances, absence of objection from foreign countries cannot be regarded as acquiescence in the position of California, nor, I think, could silence on the part of the United States be interpreted as a concurrence by the United States in its foreign relations with the proposition on which California stood

in these cases. As to Delaware Bay, Chesapeake Bay, etc., which in all these cases were regarded by the courts as confirmation of their broad interpretation of the word "bays"; the fact is that in international law these instances are not regarded as a denial of the ten-mile rule. They are regarded in international law as bays which by historical usage have, in accordance with a well established custom in international law, been established as inland waters, notwithstanding the ten-mile rule (*cf.* Cal. 1951, 73).

In the *Stralla* case an *amicus* brief was filed by United States Attorney Ben Harrison "acting by direction of the Attorney General of the United States and in the name and in behalf of the United States of America" (Cal. Appendix 3, p. 6). The *amicus* brief supported the position of California. It particularly supported the interpretation of [36] California's Constitution urged by California (21) and, as the other decisions had done, regarded the recognition of Conception Bay as inland waters as supporting the broad interpretation of the headland-to-headland rule (14, 15), rather than as a particular exception to that rule based on historical grounds. Indeed, the authors of the *amicus* brief adopted in its entirety the "excellent brief of counsel for the people" (12). Counsel for California rely very much upon this incident of the *amicus* brief in the *Stralla* case (Cal. 27, 51). I quite agree that the position taken in that brief is squarely opposed to the position taken by the counsel for the United States here, and so do they (U.S. 132). It is equally clear, however, that the position taken in that brief is squarely in conflict with the traditional position of the State Department in our international relations. If to determine what the true position of the United States is on this subject choice has to be made between the *amicus* brief filed in the California court and the position traditionally taken by the United States *vis-a-vis* foreign nations in our international relations, I should elect to put aside the *amicus* brief.

Rather extensive testimony and arguments were presented before me as to the location of the southeastern headland of San Pedro Bay (Cal. 95-101; U.S. 149-150; and U.S.R. 67-72). In the *Carrillo* case (13 F. Supp. 121) Judge Stephens located the southeastern headland at the point contended for by the United States. If, contrary to my conclusion, the Court should find that California has established its contention that San Pedro Bay constitutes inland waters, and if the Court further rejects the determination of Judge Stephens in the *Carrillo* case, then I would recommend that the contention of California as to the southeastern headland should be rejected, and the contention of the United States accepted, on the evidence submitted, particularly the testimony [37] of Mr. Shalowitz for the United States (Tr. 1219-1235).

In the brief filed on behalf of California in the *Stralla* case it was asserted that the "body of water lying easterly of the islands adjacent to the coast is within the boundaries of the State of California," but the decision did not deal with that assertion. The ground upon which decision rested was that the vessel was anchored landward of the line from headland to headland. The suggestion in the brief that the boundaries of the State of California embraced the waters between the mainland and the outlying islands was no more than a caveat. It could not, I think, be regarded as an assertion of right that could have any repercussion or effect in our international relations. Counsel for California go even further to urge that the *amicus* brief, when it made a blanket endorsement of the brief for California, constituted an assertion by the United States in the field of international law of right to the exclusive control of the so-called "over-all unit"

of water, and this even though the *amicus* brief did not mention these waters or the remark about them in California's brief. In making my recommendations I have given no weight to that suggestion.

The contention that the bays, harbors and channels under consideration have been claimed and established as inland waters by California, is discussed by counsel for California in their brief at pages 44-57. The discussion starts with the interpretation of California's Constitution which California successfully pressed in the Courts, and which I have found to be contrary to the interpretation inherent in the traditional position of the United States limiting the headland-to-headland doctrine to bays not more than ten miles wide (*ante* pp. 34-35). Counsel's discussion also refers (47-48) to assertions of exclusive control of the waters off the shore of California by Spain in the eighteenth century and by Mexico in the first part of the nineteenth century, before the [38] Treaty of Guadalupe Hidalgo. It does not seem to me that these assertions of exclusive control have any significance now. On the contrary, I think they are reflections from the old rule of the closed sea, or *mare clausum*, which in the nineteenth century was replaced by the doctrine of the freedom of the seas—the traditional doctrine of the United States. Counsel also refer (49-50) to cases, which hardly help this point, in the State Courts of California in which the question of the status of waters between the marginal belts of the outlying islands and the marginal belt of the mainland was introduced but not decided (*Ex parte Keil*, 85 Cal. 310 (1890) and *Wilmington, etc. v. Railroad Commission*, 166 Cal. 741 (1913); affirmed 236 U.S. 151, 153 (1915)) or in which the statutory words "state waters" adjacent Catalina Island were limited to a belt three miles wide. At page 51 *et seq.*, counsel discuss the *Ocean Industries* case and the *Stralla* case including the finding of the California Supreme Court that the county boundaries should be interpreted in harmony with the Court's interpretation of the Constitution. They mention again that "Fish and Game District 19 includes all islands and the waters adjacent thereto lying off the coast of Southern California" but admit that these words "do not explicitly apply to all channel waters between the island and the mainland" (55), and they mention the California statute which makes it a misdemeanor to dump garbage or other waste products within twenty miles of the coast of California, without suggesting, however, that this sanitary regulation amounted to an assertion of exclusive right to waters within twenty miles of the coastline. And finally, counsel refer to the California Act of 1949 (1949 Cal. Stat., Chap. 65) which does indeed constitute an assertion of right, as inland waters, to the water areas here in controversy.

After painstaking consideration of California's position as thus stated in their brief, I conclude that this California [39] Statute of 1949, two years after the decision of this Court in the *California* case, is the first explicit assertion by California of exclusive authority over these water areas in dispute, or that these water areas constitute inland waters. Furthermore, I accept the contention of counsel for the United States, fully supported by the evidence and fairly stated, I think, in their brief (U.S. 134-148) that California, from 1933 to 1949, by its legislation as to Fish and Game Districts and as to county boundaries has recognized that its seaward boundary in the so-called "unit area" runs three miles from the mainland.

Much of the testimony submitted to the Special Master in these proceedings dealt with geography, the history and the economic importance of the water area in dispute; Monterey Bay, Crescent City Bay area, San Luis Obispo Bay, Santa Monica Bay and San Pedro

Bay, and the so-called "over-all unit area" between the offshore islands and the mainland (Cal. 79-117; U.S. 148-151; U.S.R. 50-78). If there had been any assertion of exclusive jurisdiction of these waters by or on behalf of the United States, then this testimony would in general be relevant to the question whether these areas present special characteristics such as would justify in international law an assertion of exclusive sovereignty. But if my factual conclusions are correct, then the testimony is irrelevant to any issue here presented. I see no point in prolonging this report by any detailed comments on the testimony.

Low-Water Mark

From the point of view of a disputed real estate boundary line, defined as "the ordinary low-water mark," the mean of all of the low tides would certainly be indicated. There would, from that point of view, be no more reason to choose the mean of the lower low tides (as one interested claimant might suggest from self-interest) than to choose the mean [40] of the higher low tides (as self-interest might likewise move the other claimant to suggest). The middle way—the statistical mean of all the low tides over the cyclical period of approximately nineteen years—would seem to be the only choice of which neither contestant could justly complain. That, I think, was the effect of the decision of the Ninth Circuit Court of Appeals in *Borax v. Los Angeles* (74 F. 2d 901, 906), expressly approved by this Court on *certiorari* (296 U.S. 10, 26).

But California urges that, from the point of view of national interest and policy with respect to territorial waters, the mean of the lower low tide should be preferred. Here, as well as in connection with the criteria it proposes as to the status of channels and as to the seaward boundary of the inland waters of bays, California advances the proposition that the adoption of the criteria it suggests "would serve the national interest by placing the international domain as far seaward as possible" (Cal. 142). In my recommendations I have rejected that argument because I have not understood that the order of the Court intended that I should express my views on such a question of the foreign policy of the nation. It seems clear to me that the question whether the national interest would best be served by placing the national baseline of the marginal belt as far seaward as possible is one which calls for "decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry" (*C. & S. Air Lines v. Waterman Corp.*, 333 U.S. 103, 111). But if I am wrong in that, then I must report that the suggestion flies in the face of our traditional policy of freedom of the seas (*United States v. California*, 332 U.S. 19, 34). In any event, there is in the record before me as Special Master no evidence whatever that the policy of the United States is, or ever [41] has been, to place the baseline as far seaward as possible, nor is there any evidence that that policy would be for the best interest of the United States, or indeed for the best long-time interest of the State of California. To the contrary, counsel for the United States have directed attention to a letter dated April 25, 1952 from the Department of the Navy on behalf of the Department of Defense to the Chairman of the House Judiciary Committee, commenting upon the Joint Resolution, H. J. Res. 373 (U.S.R. Appendix 80-84). In that letter the Under Secretary of the Navy says, that as one of the world's foremost advocates of the doctrine of the freedom of the seas the United States has always advocated the three-mile limit of territorial waters delimited in such

a way that the outer limits thereof closely follow the sinuosities of the coastline; that the time-honored position of the Navy is that by thus securing greater freedom and range of its warships and aircraft the United States better protects its security interests, and the letter strongly recommends against the enactment of H. J. Res. 373 which would declare the boundaries of the inland waters of the United States to be as far seaward as is permissible under international law.

California urges, however, that the mean lower low-water mark should be adopted for another reason. It points out that the mean lower low-water mark, as distinguished from the mean of all low waters, is used for all hydrographical surveys and navigation charts of the Pacific Coast; that it is required in all the work of the Corps of Engineers by Section 5 of the Rivers and Harbors Act of March 4, 1915, and that it is also used by the California State Lands Commission (Cal. 141, Tr. 1110-1111). The reason why the mean of the lower low waters is used on navigation charts is, of course, because it is safer and therefore more serviceable to navigators (U.S. 155 and [42] letter of Feb. 8, 1952 from the Coast & Geodetic Survey to the Solicitor General—Appendix 181, 185-186). It seems clear enough that navigators approaching our coast and interested to locate the outer boundary of the three-mile marginal belt would refer to these official navigation charts (*cf.* U.S. 156). It would be a matter of convenience to navigators if the marginal belt were measured from a low-water mark based on the mean of the lower low waters as shown on these charts.

The letters from the Secretary of State to the Attorney General (U.S. Appendix 167-175) do not mention this question of fixing the low-water mark, and there is no evidence that the State Department has made any choice in our international relations. The report of the Second Sub-Committee at the Hague Conference included the following sentence:²³

“For the purposes of this Convention, the line of low-water mark is that indicated on the charts officially used by the coastal state, provided the latter line does not appreciably depart from the line of mean low water spring tide.”

The reference here to the mean of the spring tides, rather than to the mean of all the low tides, would indicate that the consensus of the Second Sub-Committee was to prefer a restriction rather than enlargement of encroachment on the open sea; but whether a choice by the United States of the more seaward line based on the mean of the lower low tides would meet with approval by other nations, and whether our traditional policy of the freedom of the seas would outweigh, in determination of the national policy, the matter of convenience just referred to, is a matter of speculation upon which it does not seem profitable for me to enter.

I have, therefore, based my recommendation of the mean [43] of all the low tides upon the considerations as to property rights above set forth, believing that a choice of the mean of the lower low tides is a matter of international policy to be determined by the political agencies of government, rather than a matter of judicial determination.

In making this recommendation I have not overlooked the argument of counsel for the United States that this question has already been judicially determined by the Court in its use of the term “ordinary low-water mark” in its decree; that the term “ordinary low-water mark on the coast of California” is the equivalent of “mean low-water mark on the coast of California” and that the technical meaning of the latter term is the intersectior.

23. See *Acts of Conference*, 206.

with the coast of the plane of the mean of all the low tides rather than the plane of the mean of the lower low tides (U.S. 151 *et seq.*). It is of course true that the datum plane of all the low waters and also the datum plane of the lower low waters have been established, and each of these planes is made use of under appropriate circumstances. Mr. Marmer, an outstanding authority, testified that though the expression "ordinary low water" is not a technical term it is understood "to mean average or mean low water," and has the same meaning as "mean low water" (Tr. 58). I think his testimony establishes that to a man skilled in the art the lay expression "ordinary low water" would be taken to mean the same thing as the more exact technical term "mean low water." But nothing has been brought to my attention to indicate that this Court when it used the expression "ordinary low water" in its decree purposely intended to choose the mean of all the low waters as distinguished from the mean of the lower low waters, or that the Court in the principal case judicially resolved the question now in dispute. I have been unable to conclude that that question has already been judicially determined. If, however, I am wrong in that, [44] the correction of my error would lead to the same conclusion that I have recommended on other grounds.

There is one further question that has to be determined before the chosen low-water mark can be located by actual survey. That is the question whether the surveyors are to take the low-water mark as it exists today; or whether allowances are to be made for natural or artificial modifications of the shoreline. The parties agree that natural accretions and relictions are to be disregarded. The question is thus narrowed to artificial changes in the shoreline including artificial fills and structures; and artificial structures include outer harborworks as well as inner harborworks.

The question as to artificial structures has further been narrowed by the recommendation of counsel for the United States, that with respect to natural accretions added by gradual and imperceptible processes to the shoreline as a result of the presence of artificial structures, this Court should follow the so-called United States rule (see *County of St. Clair v. Lovingsston*, 23 Wall. 46, 66-69; *cf. Oklahoma v. Texas*, 265 U.S. 493, 495) rather than the California rule (*Carpenter v. City of Santa Monica*, 63 Cal. App. 2d 772, 787-794; 147 P. 2d 964, 972-975). Under the United States rule such natural accretions to tidelands accruing from artificial structures belong to the riparian owner of the accreted land. Since that is also California's position in the present controversy, the parties are in agreement that such accretions belong to California rather than to the United States. This further narrows the dispute down to the question of the dominion and power over the lands, minerals and other things underlying the actual artificial structures or within areas between newly constructed outer harborworks and original inner harborworks. And even as to the first part of this narrowed question, the United States has taken the position, as I pointed out in my report of May 22, 1951 (p. 33), that it does not claim title to them; that it has drafted [45] a bill which has been introduced in Congress to make clear that "it does not expect to under any circumstances claim or assert title or take over any improvements which may have been made by the State or by any political subdivision of the State."

Counsel for the United States base their contention that the United States retains full dominion and power over the lands, minerals and other things underlying these artificial projections and harbor areas within the more recently constructed outer harborworks, upon what they regard as the accepted rule of law that artificial changes in the shoreline,

either in the nature of reclaiming land or constructing barriers which enclose water areas, do not change the title to the land affected by the improvements (Br. 100-101). They cite a number of cases in the courts of California, New Jersey, New York and Iowa to this effect.

California, on the other hand, contends (Cal. 123-132 and 134 *et seq.*) that these cases involving title to filled lands are not applicable in connection with the location of the marginal belt. Its position is that the full dominion and power of the United States rests, under the decision in the principal case and the decisions in the *Texas* and *Louisiana* cases, upon the national interests, national responsibilities and national concern in matters of external sovereignty which rest in the United States in connection with the water area of the three-mile marginal belt; not in the area in which these responsibilities might have existed in 1850 or at any other time in the past but upon the responsibilities which now exist (*cf. U.S. v. Louisiana*, 339 U.S. 704).

In my recommendation I have rejected the position of the United States and accepted the position of California, believing that the California position is the legally sound one. I have been fortified in this conclusion by two ancillary considerations: The first of these is that the United States has full control of the erection of any such artificial accretions, [46] because of its control of navigable waters. I think it may be assumed that in the past the question of the ownership of the lands, minerals and other things underlying these artificial accretions has not been taken into consideration by the United States in passing judgment upon whether the accretions will be permitted; but it seems clear that in the future that aspect of the matter can be, and probably will be, taken into account. I do not share the view of counsel for the United States (U.S. 102) that this would be an undesirable situation. On the contrary, I think it would give opportunity for appropriate negotiations and agreement between the State and the United States at the time the artificial change is approved.

Harbors

The second of these ancillary considerations, applicable particularly to the question of outer harborworks, is that the position of the United States leads to an anomalous and I think unsound conclusion. Counsel for the United States admit (U.S. 101) that at The Hague Conference of 1930 the United States proposed and the Second Sub-Committee recommended that the baseline of the marginal belt should at harbors be the "outermost permanent harbourworks," and they say that "* * * it is probably still the position of the United States that the completion of permanent harbor works carves the particular area out of the high seas and vests complete control in the nation owning the mainland, and in that respect makes the area 'inland water.'" They contend, however, that this does not mean that in the internal relation between the states and the Federal Government title would pass. They say that, on the contrary, under the rule of title to real estate above referred to, title would not pass and would remain in the United States rather than pass to California. They do not suggest that there is any authority or precedent in domestic or international [47] law for thus attributing a double status to these water areas. In my opinion, the contention that the boundaries of the marginal belt are at one place as between the United States and an individual State and at another, different place as between the United States and a foreign nation, is unsound on the general principle underlying the judgments in the principal case and the *Texas* and *Louisiana* cases.

Finally, there is, in my opinion, another fallacy in the position taken by the United States with respect to the extent of inland waters at harbors. The concept of a port or harbor necessarily includes anchorage area for vessels that load and unload without docking or vessels that are waiting for dock space; just as the concept of a railroad terminal includes switching yards and waiting rooms. Counsel for the United States (U.S. 101, 107) take the position that the baseline of the marginal belt should be so drawn as to include only anchorages which are protected by the natural configuration of the coast; that it should exclude anchorages which are sheltered by, or in which a deficient natural sheltering is supplemented by, the artificial construction of a breakwater. No authority or precedent is cited for this conclusion, and it does not seem to me a reasonable one. It would be a particularly hard rule on a coast like that of California on which nature has afforded relatively little shelter. I think it is in conflict with the generalized consensus of the Second Subcommittee at The Hague Conference that the outermost harborworks should be excluded from the marginal strip of open sea. It can safely be assumed that wherever an artificial breakwater is erected (always with the consent of and usually by the Corps of Engineers) the breakwater is planned to include a reasonable, adequate anchorage for the port in question. It is for these reasons that I have recommended that in front of harbors the outer limit of inland waters should embrace an [48] anchorage reasonably related to the physical surroundings and the service requirements of the port, and, absent contrary evidence, may be assumed to be the line of the outermost harborworks.

Respectfully submitted,

WILLIAM H. DAVIS.

NEW YORK, NEW YORK, *October 14, 1952.*

APPENDIX D

Letters from Department of State to Department of Justice (Territorial Waters)

NOVEMBER 13, 1951.

Reference is made to your letter dated October 30, 1951, requesting a statement from the Department of State in regard to the position of the United States as to the principles or criteria which govern the delimitation of the territorial waters of the United States. You ask in particular how such delimitation is made in the case of:

- (a) A relatively straight coast, with no special geographic features, such as indentations or bays;
- (b) A coast with small indentations not equivalent to bays;
- (c) Deep indentations such as bays, gulfs or estuaries;
- (d) Mouths of rivers which do not form an estuary;
- (e) Islands, rocks or groups of islands lying off the coast;
- (f) Straits, particularly those situated between the mainland and offshore islands.

In the formulation of United States policy with respect to territorial waters and in the determination of the principles applicable to any problem connected therewith, such as the problem of delimiting territorial waters, the Department of State has been and is guided by generally accepted principles of international law and by the practice of other states in the matter.

(a) In the case of a relatively straight coast, with no special geographic features such as indentations or bays, the Department of State has traditionally taken the position that territorial waters should be measured from the low water mark along the coast. This position was asserted as early as 1886 (The Secretary of State, Mr. Bayard, to Mr. Manning, Secretary of the Treasury, May 28, 1886, 1 Moore, *Digest of International Law*, 720). It was maintained in treaties concluded by the United States. (See Article 1 of the Convention concluded with Great Britain for the Prevention of Smuggling of Intoxicating Liquors on January 23, 1924, 43 Stat. 1761.) This position was in accord with the practice of other states. (See Article 2 of the Convention between Great Britain, Belgium, Denmark, France, Germany and the Netherlands for regulating the Police of the North Sea Fisheries signed at The Hague, May 6, 1882, 73 *British and Foreign State Papers*, 39, 41, and Article 2 of the Convention between Germany, Denmark, Estonia, Finland, France, the British Empire, Italy, Latvia, Poland and Sweden, relating to the Non-Fortification and Neutralization of the Aaland Islands, concluded at Geneva on October 20, 1921, 9 *League of Nations Treaty Series*, 212, 217.) The United States maintained the same position at the Conference for the Codification of International Law held at The Hague in 1930. (See League of Nations, Bases of Discussion for the Conference for the Codification of International Law, II, Territorial Waters, C. 74 M. 39,

1929, V., 143, hereinafter referred to as *Bases of Discussion*.) The report of the Second Sub-Committee adopted the low water mark as the base line for the delimitation of territorial waters. (League of Nations. Acts of the Conference for the Codification of International Law, III, Territorial Waters, C. 351 (b) M. 145 (b), 1930, V., 217, hereinafter referred to as *Acts of Conference*.)

(b) The Department of State has also taken the position that the low water mark along the coast should prevail as the base line for the delimitation of territorial waters in the case of a coast with small indentations not equivalent to bays: the base line follows the indentations or sinuosities of the coast, and is not drawn from headland to headland. This position was already established in 1886. (See the letter from the Secretary of State Mr. Bayard to Mr. Manning, Secretary of the Treasury, dated May 28, 1886, *supra*.) The United States maintained this position at the Hague Conference of 1930. (See Amendments to Bases of Discussion proposed by the United States, *Acts of Conference*, 197.) The principle that all points on the coast should be taken into account in the delimitation of territorial waters was adopted in the report of the Second Sub-Committee (*Acts of Conference*, 217).

(c) The determination of the base line in the case of a coast presenting deep indentations such as bays, gulfs, or estuaries has frequently given rise to controversies. The practice of states, nevertheless, indicates substantial agreement with respect to bays, gulfs or estuaries no more than 10 miles wide: the base line of territorial waters is a straight line drawn across the opening of such indentations, or where such opening exceeds 10 miles in width, at the first point therein where their width does not exceed 10 miles. (See Article 2 of the Convention between Great Britain, Belgium, Denmark, France, Germany and the Netherlands, for regulating the Police of the North Sea Fisheries, signed at The Hague, May 6, 1882, 73 *Foreign and British State Papers*, 39, 41; The North Atlantic Coast Fisheries Arbitration between the United States and Great Britain of September 7, 1910; *U.S. Foreign Rel.*, 1910 at 566; and the Research in International Law of the Harvard Law School, 23 *American Journal of International Law*, 55, 266.)

Subject to the special case of historical bays, the United States supported the 10 mile rule at the Conference of 1930 (*Acts of Conference*, 197-199) and the Second Sub-Committee adopted the principle on which the United States relied (*Acts of Conference*, 217-218). It was understood by most delegations that, as a corollary to the adoption of this principle, a system would be evolved to assure that slight indentations would not be treated as bays (*Acts of Conference*, 218). The United States proposed a method to determine whether a particular indentation of the coast should be regarded as a bay to which the 10 mile rule would apply (*Acts of Conference*, 197-199). The Second Sub-Committee set forth the American proposal and a compromise proposal offered by the French delegation in its report, but gave no opinion regarding these systems (*Acts of Conference*, 218-219).

(d) With respect to mouths of rivers which do not flow into estuaries, the Second Sub-Committee agreed to take for the base line a line following the general direction of the coast and drawn across the mouth of the river, whatever its width (*Acts of Conference*, 220).

(e) With respect to the measurement of territorial waters when rocks, reefs, mudbanks, sandbanks, islands or groups of islands lie off the coast, the United States took the position at the Conference that separate bodies of land which were capable of use

should be regarded as islands, irrespective of their distance from the mainland, while separate bodies of land, whether or not capable of use, but standing above the level of low tide, should be regarded as islands if they were within three nautical miles of the mainland. Each island, as defined, was to be surrounded by its own belt of territorial waters measured in the same manner as in the case of the mainland (*Acts of Conference*, 200).

The report of the Second Sub-Committee defined an island as a separate body of land, surrounded by water, which was permanently above high water mark, and approved the principle that an island, so defined, had its own belt of territorial sea (*Acts of Conference*, 219). While the Second Sub-Committee declined to define as islands natural appendages of the sea-bed which were only exposed at low tide, it agreed, nevertheless, that such appendages, provided they were situated within the territorial sea of the mainland, should be taken into account in delimiting territorial waters (*Acts of Conference*, 217).

(f) The problem of delimiting territorial waters may arise with respect to a strait, whether it be a strait between the mainland and offshore islands or between two mainlands. The United States took the position at the Conference that if a strait connected two seas having the character of high seas, and both entrances did not exceed six nautical miles in width, all of the waters of the strait should be considered territorial waters of the coastal state. In the case of openings wider than six miles, the belt of territorial waters should be measured in the ordinary way (*Acts of Conference*, 200-201). The report of the Second Sub-Committee supported this position with the qualification that if the result of this determination of territorial waters left an area of high sea not exceeding two miles in breadth surrounded by territorial sea, this area could be assimilated to the territorial sea (*Acts of Conference*, 220).

The Second Sub-Committee specified in its observations on this subject that the waters of a strait were not to be regarded as inland waters, even if both belts of territorial waters and both shores belonged to the same state (*Acts of Conference*, 220). In this, it supported the policy of the United States to oppose claims to exclusive control of such waters by the nation to which the adjacent shore belonged. (The Secretary of State, Mr. Evarts, to the American Legation, Santiago, Chile, January 18, 1879, in connection with passage through the Straits of Magellan, I Moore, *Digest of International Law*, 664.) With respect to a strait which is merely a channel of communication to an inland sea, however, the United States took the position, with which the Second Sub-Committee agreed, that the rules regarding bays should apply (*Acts of Conference*, 201, 220).

In connection with the principles applicable to bays and straits, it should be noted that they have no application with respect to the waters of bays, straits, or sounds, when a state can prove by historical usage that such waters have been traditionally subjected to its exclusive authority. The United States specifically reserved this type of case at the Hague Conference of 1930 (*Acts of Conference*, 197).

The principles outlined above represent the position of the United States with respect to the criteria properly applicable to the determination of the base line of territorial waters and to the demarcation between territorial waters and inland waters.

JAMES E. WEBB,
Acting Secretary.

FEBRUARY 12, 1952.

Reference is made to your letter of January 22, 1952, inquiring whether, in the light of the decision of the International Court of Justice in the Fisheries Case (*United Kingdom v. Norway*) in date of December 18, 1951, the Department adheres to the statement of position given at your request on November 13, 1951, with respect to the principles or criteria governing the delimitation of the territorial waters of the United States.

The Department noted the holding of the Court that the Norwegian Government in fixing the base lines for the delimitation of Norwegian fisheries by applying the straight base lines method had not violated international law, especially in view of the peculiar geography of the Norwegian coast and of the consolidation of this method by a constant and sufficiently long practice.

The decision of the Court, however, does not indicate, nor does it suggest, that other methods of delimitation of territorial waters such as that adopted by the United States are not equally valid in international law. The selection of base lines, the Court pointed out, is determined on the one hand by the will of the coastal state which is in the best position to appraise the local conditions dictating such selection, and on the other hand by international law which provides certain criteria to be taken into account such as the criteria that the drawing of base lines must not depart to any appreciable extent from the general direction of the coast, that the inclusion within those lines of sea areas surrounded or divided by land formations depends on whether such sea areas are sufficiently closely linked to the land domain to be subject to the regime of internal waters, and that economic interests should not be overlooked the reality and importance of which are clearly evidenced by long usage.

In the view of the Department, the decision of the International Court of Justice in the Fisheries Case does not require the United States to change its previous position with respect to the delimitation of its territorial waters. It is true that some of the principles on which this United States position has been traditionally predicated have been deemed by the Court not to have acquired the authority of a general rule of international law. Among these are the principle that the base line follows the sinuosities of the coast and the principle that in the case of bays no more than 10 miles wide, the base line is a straight line across their opening. These principles, however, are not in conflict with the criteria set forth in the decision of the International Court of Justice. The decision, moreover, leaves the choice of the method of delimitation applicable under such criteria to the national state. The Department, accordingly, adheres to its statement of the position of the United States with respect to delimitation of its territorial waters in date of November 13, 1951.

DEAN ACHESON,
Secretary.

APPENDIX E

Letter from Coast and Geodetic Survey to Department of Justice (Tidal Datum Planes)

FEBRUARY 8, 1952.

This is in reference to your letter of January 29, 1952, requesting a statement from the Coast and Geodetic Survey in regard to the principles and practices governing the selection and determination of tidal datum planes. Specifically, you would like answers to the following questions:

- (a) What tidal datums are utilized in the work of the Coast and Geodetic Survey?
- (b) What tidal datum or datums does the Coast and Geodetic Survey utilize and for what purposes in its work on the Pacific coast?
- (c) What practices would the Coast and Geodetic Survey follow in determining the datum of "ordinary low water" on the Pacific coast?
- (d) Would this practice differ in the case of inland waters such as the inner bay of San Pedro?

I would like to preface my answers to these questions with the statement that the Coast and Geodetic Survey has been engaged in the study and application of tidal phenomena for more than a hundred years. During that period it has developed principles and standard technical procedures for the selection and establishment of reference planes based on tidal definition. These procedures form the basis for the answers to the specific questions raised in your letter.

(a) What tidal datums are utilized in the work of the Coast and Geodetic Survey?

Tidal datums are horizontal planes of reference determined from the rise and fall of the tide. There are a number of datums which may be derived from tidal observations. There is no one natural or basic tidal datum, although the datum of mean sea level is frequently so designated because it is the plane about which the tide oscillates.

The selection of a tidal datum usually depends upon the type of tide existing in a locality and the specialized purpose which the datum is to serve. The rise and fall of the tide is not the same everywhere, but differs from place to place both in amount and type. Along the Atlantic coast of the United States, the predominant type of tide is the "semidaily" which is characterized by two high and two low waters each tidal day, with little variation in height between successive low waters or between successive high waters. Along the Gulf coast, the tide is predominantly of the "daily" type, in which one high water and one low water occur each tidal day. And, along the Pacific coast, the tide is of the "mixed" type, and two high and two low waters occur each tidal day, but with marked variation in height between successive high waters and between successive low waters.

In its work along the various coasts of the United States and in the interior of the country, the Coast and Geodetic Survey utilizes the following principal tidal datums:

- (1) Mean sea level
- (2) Mean high water
- (3) Mean low water
- (4) Mean lower low water

In addition, the Coast and Geodetic Survey recognizes the following four tidal datums as of value to the engineer and for which the relationship to the other datums is determined:

- (5) Highest tide observed
- (6) Mean higher high water
- (7) Half tide level or mean tide level
- (8) Lowest tide observed

(b) *What tidal datum or datums does the Coast and Geodetic Survey utilize and for what purposes in its work along the Pacific coast?*

In its work on the Pacific coast, where the tide is of the mixed type, the Coast and Geodetic Survey utilizes primarily the datums of mean sea level, mean high water, and mean lower low water (Nos. 1, 2, and 4 above), but in its tidal bench mark data, published for the various tide stations along the Pacific coast, use is also made of Nos. 3, 5, 6, 7 and 8.

The purposes for which these datums are used are described in the following sections:

THE DATUM OF MEAN SEA LEVEL

The datum of mean sea level is used for referencing elevations of bench marks in the network of precise levels established by the Bureau throughout the United States, it being the most practicable datum for general engineering purposes. This datum, which may be defined as the average height of the surface of the sea for all stages of the tide over a 19-year period,¹ is the fundamental tidal datum to which all other datums are referred. In point of accuracy of determination, the datum of mean sea level is the most accurate of all tidal datums because it is derived by averaging *all* the tabulated *hourly* heights of the tide.

THE DATUM OF MEAN HIGH WATER

The datum of mean high water is used as the plane of reference for the shoreline—the dividing line between land and sea—and for elevations of alongshore features on the hydrographic and topographic surveys and the nautical charts of the Coast and Geodetic Survey. It is determined by averaging the heights of *all* the high waters (higher high and lower high) over a 19-year period.

THE DATUM OF MEAN LOWER LOW WATER

The datum of mean lower low water is used as the plane of reference for water depths (soundings) on hydrographic surveys and nautical charts of the Pacific coast and

1. Tide and Current Glossary, Special Publication No. 228 (Revised 1949 edition), U.S. Coast and Geodetic Survey, p. 24.

is derived by averaging the heights of only the lower low waters at a given place over a 19-year period.

Datums for soundings are selected primarily for their practical utility to the mariner and are closely related to the characteristics of the tide in a given area. From the standpoint of the mariner, the critical part of the tidal cycle is at the time of low water—depths in a channel or over a bar are then at a minimum—and hence a low-water datum is used. If a datum higher than low water were to be used, depths shown on the nautical charts would be greater than actually exist at the time of low water and might lead the mariner into a false sense of security, particularly if he failed to apply a correction to the charted depths. Therefore, where the tide is of the semidaily type, as on the Atlantic coast, the datum of mean low water is used, which is the mean of the two low waters occurring each day. But where the tide is of the mixed type, as on the Pacific coast, a datum based on the mean of the lower of the two low waters occurring each day is used, it being more serviceable to the navigator. The adoption of the datum of mean lower low water for the nautical charts of the Pacific coast is purely a matter of convenience and safety and has nothing to do with relative accuracy of datums.

In the Tide Tables of the Coast and Geodetic Survey for the Pacific coast, the predicted tides are also referenced to mean lower low water. This follows the practice of using the same datum for the predictions as is used for the nautical charts and enables the mariner to apply the height of the tide directly to the charted soundings and thus obtain the actual depth of water for any given place and for any height of tide.

(c) What practices would the Coast and Geodetic Survey follow in determining the datum of "ordinary low water" on the Pacific coast?

The term "ordinary" low water is not one which the Coast and Geodetic Survey has defined and standardized for survey operations and for technical engineering usage. But where the word "ordinary" is used in connection with tides, it is regarded as the equivalent of the word "mean."² Thus, "ordinary high water" is the same as "mean high water," and "ordinary low water" the same as "mean low water."

The basis for this interpretation is the consideration that where there is a variation in the height of any phase of the tide, each height having equal significance in the tidal cycle, the mean of the heights is more representative of that level than is any single height, when taken alone.

As applied to low water on the Pacific coast, where successive low waters fall to different levels, the mean of the two levels occurring each tidal day is more representative of the technical concept of low water than is either higher low or lower low when considered alone. (Similarly, the datum of ordinary lower low water would be better represented by the mean of all the lower low waters than by any single lower low water.) The Coast and Geodetic Survey therefore considers it technically correct to regard the mean of the two low waters on the Pacific coast (a low water occurs every 12 hours) as the "ordinary" or "usual" low water, as distinguished from either higher low water or lower low water, which, occurring only once every 24 hours, could relatively be classed as the "extraordinary" or "unusual" low water.

2. Tide and Current Glossary, Special Publication No. 228 (Revised 1949 edition), U.S. Coast and Geodetic Survey, p. 26.

The determination of the datum of "ordinary low water" on the Pacific coast thus becomes a matter of determining the datum of "mean low water." In deriving this datum the Coast and Geodetic Survey averages the low waters over a 19-year period as near as possible. Whether the tide is of the semidaily type—as on the Atlantic coast—or of the mixed type—as on the Pacific coast—all the low waters are used to arrive at a mean value.³ The term mean low water datum is, therefore, one of technical definition and is not necessarily related to the datum used for referencing soundings on the nautical charts of the Bureau. It coincides with the chart datum used on the Atlantic coast but differs from the datum used on the Pacific coast, as explained above.

The relation of lower low water to the fall of the tide is of a similar nature to that which higher high water bears to the rise of the tide.⁴ Likewise, mean high water and mean low water are cognate terms in relation to the rise and fall of the tide.

(d) Would this practice differ in the case of inland waters such as the inner bay of San Pedro?

Since the term mean low water datum is one of technical definition, the procedures used to derive it are the same for an inland body of water, such as the inner bay of San Pedro, as they are for the open coast.

R. F. A. STRUDDS
Rear Admiral, USC&GS
Director

3. Tidal Datum Planes, Special Publication No. 135 (1951 edition), U.S. Coast and Geodetic Survey, p. 104.

4. *Id.* at 123.

APPENDIX F

Presidential Proclamation of September 28, 1945 (The Continental Shelf)¹

Whereas the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

Whereas its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

Whereas recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

Now, Therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. 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.

1. Proclamation No. 2667 (59 Stat. 884).

APPENDIX G

Submerged Lands Act

(This Act is identified as Public Law 31, 83d Congress, 1st Session, and is recorded in 67 Stat. 29.)

AN ACT

To confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act".

TITLE I

DEFINITION

SEC. 2. When used in this Act—

(a) The term "lands beneath navigable waters" means—

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however,* That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

(g) The term "State" means any State of the Union;

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

TITLE II

LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

SEC. 3. RIGHTS OF THE STATES.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provision hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural

resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on the effective date of this Act, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however,* That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: *Provided, however,* That within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;

(d) Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

(e) Nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

SEC. 4. SEAWARD BOUNDARIES.—The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast

line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

SEC. 5. EXCEPTIONS FROM OPERATION OF SECTION 3 OF THIS ACT.—There is excepted from the operation of section 3 of this Act—

(a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.

SEC. 6. POWERS RETAINED BY THE UNITED STATES.—(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

SEC. 7. Nothing in this Act shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377),

June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amendatory thereof or supplementary thereto.

SEC. 8. Nothing contained in this Act shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however,* That nothing contained in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this Act, or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this Act.

SEC. 9. Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

SEC. 10. Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve", is hereby revoked insofar as it applies to any lands beneath navigable waters as defined in section 2 hereof.

SEC. 11. SEPARABILITY.—If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby; without limiting the generality of the foregoing, if subsection 3(a)1, 3(a)2, 3(b)1, 3(b)2, 3(b)3, or 3(c) or any provision of any of those subsections is held invalid, such subsection or provision shall be held separable and the remaining subsections and provisions shall not be affected thereby.

APPROVED *May 22, 1953.*

APPENDIX H

Outer Continental Shelf Lands Act (Excerpts)

(This Act is identified as Public Law 212, 83d Congress, 1st Session, and is recorded in 67 Stat. 462.)

AN ACT

To provide for the jurisdiction of the United States over the submerged lands of the outer Continental Shelf, and to authorize the Secretary of the Interior to lease such lands for certain purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Outer Continental Shelf Lands Act".

SEC. 2. DEFINITIONS.—When used in this Act—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) The term "Secretary" means the Secretary of the Interior;

(c) The term "mineral lease" means any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

SEC. 3. JURISDICTION OVER OUTER CONTINENTAL SHELF.—(a) It is hereby declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act.

(b) This Act shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

SEC. 4. LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

(2) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this Act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose.

* * * * *

(c) (1) The head of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the islands and structures referred to in subsection (a) or on the waters adjacent thereto, as he may deem necessary.

(2) The head of the Department in which the Coast Guard is operating may mark for the protection of navigation any such island or structure whenever the owner has failed suitably to mark the same in accordance with regulations issued hereunder, and the owner shall pay the cost thereof. Any person, firm, company, or corporation who shall fail or refuse to obey any of the lawful rules and regulations issued hereunder shall be guilty of a misdemeanor and shall be fined not more than \$100 for each offense. Each day during which such violation shall continue shall be considered a new offense.

(f) The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is hereby extended to artificial islands and fixed structures located on the outer Continental Shelf.

(g) The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands and fixed structures referred to in subsection (a) or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

* * * * *

SEC. 7. CONTROVERSY OVER JURISDICTION.—In the event of a controversy between the United States and a State as to whether or not lands are subject to the provisions of this Act, the Secretary is authorized, notwithstanding the provisions of subsections (a) and (b) of section 6 of this Act, and with the concurrence of the Attorney General of the United States, to negotiate and enter into agreements with the State, its political subdivision or grantee or a lessee thereof, respecting operations under existing mineral leases and payment and impounding of rents, royalties, and other sums payable thereunder, or with the State, its political subdivision or grantee, respecting the issuance or nonissuance of new mineral leases pending the settlement or adjudication of the controversy. . . .

* * * * *

SEC. 11. GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS.—Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.

* * * * *

SEC. 14. PRIOR CLAIMS NOT AFFECTED.—Nothing herein contained shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however,* That nothing herein contained is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact applies to the lands subject to this Act or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything herein contained.

SEC. 15. REPORT BY SECRETARY.—As soon as practicable after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing the amounts of all moneys received and expended in connection with the administration of this Act during the preceding fiscal year.

SEC. 16. APPROPRIATIONS.—There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 17. SEPARABILITY.—If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby.

APPROVED *August 7, 1953.*

APPENDIX I

Conventions on the Law of the Sea Adopted by United Nations Conference at Geneva, 1958

(All conventions contain similar procedural articles for signing, ratification, and revision. They come into force on the thirtieth day following the deposit of the twenty-second instrument of ratification or accession with the United Nations. In the following reprint of the conventions these procedural articles are omitted.)

A. CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE¹

*The States Parties to this Convention,
Have agreed as follows:*

large-scale charts officially recognized by the coastal State.

Article 4

PART I: TERRITORIAL SEA

SECTION I. GENERAL

Article 1

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

2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Article 2

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

SECTION II. LIMITS OF THE TERRITORIAL SEA

Article 3

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on

¹. Adopted Apr. 27, 1958 (U.N. Doc. A/Conf. 13/L.52).

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 baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.

3. Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the

reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

Article 5

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a 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 territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

Article 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 7

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points.

Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Article 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

Article 10

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

Article 11

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

Article 12

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Article 13

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

SECTION III. RIGHT OF INNOCENT
PASSAGESUB-SECTION A. RULES APPLICABLE TO
ALL SHIPS*Article 14*

1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress.

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag.

Article 15

1. The coastal State must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

Article 16

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

4. 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.

Article 17

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

SUB-SECTION B. RULES APPLICABLE TO
MERCHANT SHIPS

Article 18

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Article 19

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal State; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through

the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 20

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

SUB-SECTION C. RULES APPLICABLE TO GOVERNMENT SHIPS OTHER THAN WARSHIPS

Article 21

The rules contained in sub-sections A and B shall also apply to government ships operated for commercial purposes.

Article 22

1. The rules contained in sub-section A and in article 19 shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

SUB-SECTION D. RULE APPLICABLE TO WARSHIPS

Article 23

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

PART II: CONTIGUOUS ZONE

Article 24

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.

3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

PART III: FINAL ARTICLES

Article 25

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

[Articles 26 to 32 inclusive are procedural in nature and have been omitted.]

B. CONVENTION ON THE CONTINENTAL SHELF²

*The States Parties to this Convention,
Have agreed as follows:*

Article 1

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 2

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant

physical contact with the seabed or the subsoil.

Article 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

Article 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

Article 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer

2. Adopted Apr. 26, 1958 (U.N. Doc. A/Conf. 13/L.55).

edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Article 6

1. Where the same continental shelf is adjacent to the territories of two or more

States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

Article 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.

[Articles 8 to 15 inclusive are procedural in nature and have been omitted.]

C. CONVENTION ON THE HIGH SEAS³

The States 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, held at Geneva from 24 February to 27 April 1958, adopted the following provisions as generally declaratory of established principles of international law,

Have agreed as follows:

Article 1

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

Article 2

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal States:

- (1) Freedom of navigation;
- (2) Freedom of fishing;
- (3) Freedom to lay submarine cables and pipelines;
- (4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Article 3

1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free

³. Adopted Apr. 26, 1958 (U.N. Doc. A/Conf. 13/L.53).

access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:

(a) To the State having no sea-coast, on a basis of reciprocity, free transit through their territory; and

(b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.

2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

Article 4

Every State, whether coastal or not, has the right to sail ships under its flag on the high seas.

Article 5

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 6

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 7

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an inter-governmental organization flying the flag of the organization.

Article 8

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

Article 9

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 10

1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard *inter alia* to:

(a) The use of signals, the maintenance of communications and the prevention of collisions;

(b) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments;

(c) The construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

Article 11

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 12

1. Every State shall require the master of a ship sailing under its flag, in so far as he

can do so without serious danger to the ship, the crew or the passengers:

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

2. Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and—where circumstances so require—by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

Article 13

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall, *ipso facto*, be free.

Article 14

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 15

Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2 of this article.

Article 16

The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article 17

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 18

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 19

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of

the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 20

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

Article 21

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

Article 22

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That the ship is engaged in the slave trade; or

(c) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (a), (b) and (c) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Article 23

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 24 of the Convention on the Territorial Sea and the Contiguous Zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(a) The provisions of paragraphs 1 to 3 of this article shall apply *mutatis mutandis*;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities, may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article 24

Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

Article 25

1. Every State shall take measures to prevent pollution of the seas from the dumping of radio-active waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radio-active materials or other harmful agents.

Article 26

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 27

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offense. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of

saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 28

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 29

Every State shall take the necessary legislative measures to ensure that the owners of

ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Article 30

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States parties to them.

[Articles 31 to 37 inclusive are procedural in nature and have been omitted.]

D. CONVENTION ON FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS ⁴

The States Parties to this Convention,

Considering that the development of modern techniques for the exploitation of the living resources of the sea, increasing man's ability to meet the need of the world's expanding population for food, has exposed some of these resources to the danger of being over-exploited,

Considering also that the nature of the problems involved in the conservation of the living resources of the high seas is such that there is a clear necessity that they be solved, whenever possible, on the basis of international co-operation through the concerted action of all the States concerned,

Have agreed as follows:

Article 1

1. All States have the right for their nationals to engage in fishing on the high seas, subject (a) to their treaty obligations, (b)

to the interests and rights of coastal States as provided for in this Convention, and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

2. All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 2

As employed in this Convention, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products. Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.

4. Adopted Apr. 26, 1958 (U.N. Doc. A/Conf. 13/L.54).

Article 3

A State whose nationals are engaged in fishing any stock or stocks of fish or other living marine resources in any area of the high seas where the nationals of other States are not thus engaged shall adopt, for its own nationals, measures in that area when necessary for the purpose of the conservation of the living resources affected.

Article 4

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected.

2. If the States concerned do not reach agreement within twelve months, any of the parties may initiate the procedure contemplated by article 9.

Article 5

1. If, subsequent to the adoption of the measures referred to in articles 3 and 4, nationals of other States engage in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, the other States shall apply the measures, which shall not be discriminatory in form or in fact, to their own nationals not later than seven months after the date on which the measures shall have been notified to the Director-General of the Food and Agriculture Organization of the United Nations. The Director-General shall notify such measures to any State which so requests and, in any case, to any State specified by the State initiating the measure.

2. If these other States do not accept the measures so adopted and if no agreement can be reached within twelve months, any

of the interested parties may initiate the procedure contemplated by article 9. Subject to paragraph 2 of article 10, the measures adopted shall remain obligatory pending the decision of the special commission.

Article 6

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

2. A coastal State is entitled to take part on an equal footing in any system of research and regulation for purposes of conservation of the living resources of the high seas in that area, even though its nationals do not carry on fishing there.

3. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

4. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall not enforce conservation measures in that area which are opposed to those which have been adopted by the coastal State, but may enter into negotiations with the coastal State with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

5. If the States concerned do not reach agreement with respect to conservation measures within twelve months, any of the parties may initiate the procedure contemplated by article 9.

Article 7

1. Having regard to the provisions of paragraph 1 of article 6, any coastal State may, with a view to the maintenance of the

productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within six months.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:

(a) That there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;

(b) That the measures adopted are based on appropriate scientific findings;

(c) That such measures do not discriminate in form or in fact against foreign fishermen.

3. These measures shall remain in force pending the settlement, in accordance with the relevant provisions of this Convention, of any disagreement as to their validity.

4. If the measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 9. Subject to paragraph 2 of article 10, the measures adopted shall remain obligatory pending the decision of the special commission.

5. The principles of geographical demarcation as defined in article 12 of the Convention on the Territorial Sea and the Contiguous Zone shall be adopted when coasts of different States are involved.

Article 8

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources of the high seas in that area, may request the State or States whose nationals are engaged in fishing there to take

the necessary measures of conservation under articles 3 and 4 respectively, at the same time mentioning the scientific reasons which in its opinion make such measures necessary, and indicating its special interest.

2. If no agreement is reached within twelve months, such State may initiate the procedure contemplated by article 9.

Article 9

1. Any dispute which may arise between States under articles 4, 5, 6, 7 and 8 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations.

2. The members of the commission, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations, from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

3. Any State party to proceedings under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in

the proceedings on the same footing as a member of the commission, but without the right to vote or to take part in the writing of the commission's decision.

4. The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on this matter.

5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend the time limit for a period not exceeding three months.

6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing parties regarding settlement of the dispute.

7. Decisions of the commission shall be by majority vote.

Article 10

1. The special commission shall, in disputes arising under article 7, apply the criteria listed in paragraph 2 of that article. In disputes under articles 4, 5, 6 and 8, the commission shall apply the following criteria, according to the issues involved in the dispute:

(a) Common to the determination of disputes arising under articles 4, 5 and 6 are the requirements:

(i) That scientific findings demonstrate the necessity of conservation measures;

(ii) That the specific measures are based on scientific findings and are practicable; and

(iii) That the measures do not discriminate, in form or in fact, against fishermen of other States.

(b) Applicable to the determination of disputes arising under article 8 is the requirement that scientific findings demonstrate the necessity for conservation measures, or that the conservation programme is adequate, as the case may be.

2. The special commission may decide that pending its award the measures in dispute shall not be applied, provided that, in the case of disputes under article 7, the measures shall only be suspended when it is apparent to the commission on the basis of *prima facie* evidence that the need for the urgent application of such measures does not exist.

Article 11

The decisions of the special commission shall be binding on the States concerned and the provisions of paragraph 2 of Article 94 of the Charter of the United Nations shall be applicable to those decisions. If the decisions are accompanied by any recommendations, they shall receive the greatest possible consideration.

Article 12

1. If the factual basis of the award of the special commission is altered by substantial changes in the conditions of the stock or stocks of fish or other living marine resources or in methods of fishing, any of the States concerned may request the other States to enter into negotiations with a view to prescribing by agreement the necessary modifications in the measures of conservation.

2. If no agreement is reached within a reasonable period of time, any of the States concerned may again resort to the procedure contemplated by article 9 provided that at least two years have elapsed from the original award.

Article 13

1. The regulation of fisheries conducted by means of equipment embedded in the

floor of the sea in areas of the high seas adjacent to the territorial sea of a State may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals. Such regulations will not, however, affect the general status of the areas as high seas.

2. In this article, the expression "fisheries conducted by means of equipment embedded in the floor of the sea" means those

fisheries using gear with supporting members embedded in the sea floor, constructed on a site and left there to operate permanently or, if removed, restored each season on the same site.

Article 14

In articles 1, 3, 4, 5, 6 and 8, the term "nationals" means fishing boats or craft of any size having the nationality of the State concerned, according to the law of that State, irrespective of the nationality of the members of their crews.

[Articles 15 to 22 inclusive are procedural in nature and have been omitted.]

E. OPTIONAL PROTOCOL OF SIGNATURE CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES⁵

The States parties to this Protocol and to any one or more of the Conventions on the Law of the Sea adopted by the United Nations Conference on the Law of the Sea held at Geneva from 24 February to 27 April 1958,

Expressing their wish to resort, in all matters concerning them in respect of any dispute arising out of the interpretation or application of any article of any Convention on the Law of the Sea of 29 April 1958, to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement is provided in the Convention or has been agreed upon by the parties within a reasonable period,

Have agreed as follows:

Article I

Disputes arising out of the interpretation or application of any Convention on the

Law of the Sea shall lie within the compulsory jurisdiction of the International Court of Justice, and may accordingly be brought before the Court by an application made by any party to the dispute being a party to this Protocol.

Article II

This undertaking relates to all the provisions of any Convention on the Law of the Sea except, in the Convention on Fishing and Conservation of the Living Resources of the High Seas, articles 4, 5, 6, 7 and 8, to which articles 9, 10, 11 and 12 of that Convention remain applicable.

Article III

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party to

5. Adopted Apr. 26, 1958 (U.N. Doc. A/Conf. 13/L.57).

this Protocol may bring the dispute before the Court by an application.

Article IV

1. Within the same period of two months, the parties to this Protocol may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall

make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

[Articles V to VII inclusive are procedural in nature and have been omitted.]

APPENDIX J

Claims of Nations to Breadth of Territorial Sea

(Including Zones for Specialized Purposes)

(This table is based on a synoptical table prepared by the Secretary General of the United Nations on Feb. 8, 1960 (U.N. Doc. A/Conf.19/4), for the Second Geneva Conference on the Law of the Sea. The breadth of the territorial sea is given opposite the name of the country.)

(a) Including sovereignty over superjacent waters. (b) Not affecting superjacent waters.
(c) In accordance with international law.

ALBANIA	10 miles	BURMA	Not specified
ARGENTINA	3 miles	CAMBODIA (straight baselines).....	5 miles
Continental shelf	(a)	Continental shelf ..(a)	50-meter depth
Customs	12 miles	Customs	12 miles
Fishing	10 miles	Fishing	12 miles
Neutrality	3 miles	CANADA	3 miles
Sanitary regulations.....	12 miles	Customs	12 miles
AUSTRALIA	3 miles	Fishing	12 miles
Continental shelf	(b)	CEYLON	6 miles
Customs	3 miles	Continental shelf	(b)
BAHAMAS	3 miles	Customs	6 miles
Continental shelf	(b)	Fishing	6 miles
BELGIUM	3 miles	Neutrality	6 miles
Customs	10 km.	Sanitary regulations	6 miles
Fishing	3 miles	CHILE	50 km.
Neutrality	3 miles	Continental shelf	(a) 200 miles
BRAZIL	3 miles	Customs	100 km.
Continental shelf	(b)	CHINA (Nationalist Government).....	3 miles
Fishing	12 miles	Customs	12 miles
Neutrality	3 miles	COLOMBIA	6 miles
BRITISH GUIANA	3 miles	Customs	20 km.
Continental shelf	(b)	Fishing	12 miles
BRITISH HONDURAS	3 miles	Sanitary regulations	12 miles
Continental shelf	(b)	COSTA RICA	(c)
BULGARIA	12 miles	Continental shelf.....	(a) 200 miles
		Fishing	200 miles

CUBA	3 miles	INDIA—Continued	
Customs	12 miles	Fishing	100 miles
Fishing	3 miles	Sanitary regulations	12 miles
Sanitary regulations	5 miles	INDONESIA (straight baselines)	12 miles
DENMARK	3 miles	IRAN	12 miles
Customs	4 miles	Continental shelf	(b)
Fishing	3 miles	IRAQ	(c)
DOMINICAN REPUBLIC	3 miles	IRELAND (straight baselines)	3 miles
Customs	15 miles	ISRAEL	6 miles
Fishing	15 miles	Continental shelf	(b)
Sanitary regulations	15 miles	Fishing	6 miles
ECUADOR	12 miles	ITALY	6 miles
Continental shelf	200-meter depth	Customs	12 miles
EL SALVADOR	200 miles	Fishing	6 miles
Continental shelf	(a) 200 miles	JAMAICA	3 miles
Fishing	200 miles	Continental shelf	(b)
ETHIOPIA	12 miles	JAPAN	3 miles
Fishing	12 miles	Neutrality	3 miles
FINLAND (straight baselines)	4 miles	JORDAN	3 miles
Customs	6 miles	Fishing	3 miles
FRANCE	3 miles	KOREA (Republic of)	Not specified
Customs	20 km.	Continental shelf	(a)
Fishing	3 miles	Fishing	20 to 200 miles
Neutrality	6 miles	LEBANON	Not specified
GERMANY (Federal Republic of)	(c)	Customs	20 km.
Customs	3 miles	Fishing	6 miles
GREECE	6 miles	LIBERIA (for all purposes)	3 miles
Neutrality	6 miles	LIBYA	12 miles
GREENLAND	Not specified	MALAYA	3 miles
Fishing	3 miles	MEXICO	9 miles
GUATEMALA	12 miles	Continental shelf	(b)
Continental shelf	(b)	MONACO	(c)
Customs	12 miles	Customs	20 km.
Neutrality	12 miles	MOROCCO	Not specified
HONDURAS	Not specified	Fishing	6 miles
Continental shelf	(b) 200-meter depth	NETHERLANDS	3 miles
Customs	6 miles	Fishing	3 miles
ICELAND	Not specified	Neutrality	3 miles
Customs	4 miles	NEW ZEALAND	(c)
Fishing (straight baselines)	12 miles	Customs	(c)
INDIA	6 miles	Fishing	3 miles
Continental shelf	(b)	Sanitary regulations	3 miles
Customs	12 miles		

NICARAGUA	Not specified	THAILAND	6 miles
Continental shelf	(a)	Fishing	12 miles
NORWAY	4 miles	TUNISIA	3 miles
Customs	10 miles	Fishing	50-meter depth
Fishing	4 miles	TURKEY	Not specified
Neutrality	4 miles	UNION OF SOUTH AFRICA	3 miles
PAKISTAN	3 miles	Customs	3 miles
Continental shelf	(b) 100-fathom depth	Fishing	3 miles
Fishing	3 miles	Sanitary regulations	3 miles
PANAMA	12 miles	U.S.S.R.	12 miles
Continental shelf	(a)	UNITED ARAB REPUBLIC	12 miles
Fishing	Continental shelf	UNITED KINGDOM	3 miles
PERU	Not specified	Customs	3 miles
Continental shelf	(a) 200 miles	Fishing	3 miles
Fishing	200 miles	UNITED STATES	3 miles
PHILIPPINES	Not specified	Continental shelf	(b)
POLAND	3 miles	Customs	12 miles
Customs	6 miles	Sanitary regulations	3 miles
PORTUGAL	Not specified	URUGUAY	6 miles
Continental shelf	(b) 200-meter depth	Neutrality	5 miles
Customs	6 miles	VENEZUELA (straight baselines)	12 miles
Sanitary regulations	6 miles	Continental shelf	(b) 200-meter depth
ROMANIA	12 miles	Customs	15 miles
SAUDI ARABIA	12 miles	Sanitary regulations	15 miles
Customs	18 miles	VIET NAM (Republic of)	Not specified
Sanitary regulations	18 miles	Fishing	20 km.
SPAIN	6 miles	YEMEN	Not specified
Customs	6 miles	YUGOSLAVIA	6 miles
Fishing	6 miles	Customs	6 miles
SWEDEN	4 miles	Fishing	10 miles
Customs	4 miles		
Neutrality	4 miles		

APPENDIX K

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