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NOTES

INTERNATIONAL LAW — TWELVE-MILE FISHERIES ZONE

In 1966, the United States established a fishery zone contiguous to its territorial sea,¹ introducing a new element into its policy with regard to high seas jurisdiction. This Note examines the provisions of this law and its effects on international law and United States' policy.

Generally recognized in international law is the principle of freedom of the seas.² However, a majority of nations claim various exceptions to it. The most outstanding is that of a territorial sea, which extends the sovereignty of a coastal state to its adjacent waters. In 1703, the Dutch jurist Cornelis van Bynkershoek asserted that the width of a nation's coastal belt should be determined by the range of a cannon shot.³ This limit was fixed at three nautical miles on the premise that a cannon would never shoot farther than that distance.⁴ Currently, there is no certain international rule as to the extent of the territorial sea, other than that a nation may properly claim at least three miles.⁵

Another exception to freedom of the seas is the contiguous zone, defined as an extension of jurisdiction beyond a state's territorial sea for a special and limited purpose. This concept grew up simultaneously with, but apart from, the concept of the territorial sea. The 1958 Convention on the Territorial Sea and the Contiguous Zone states:

"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;

1. Pub. L. No. 658, 89th Cong., 2d Sess., 80 Stat. 908 (1966).

2. Convention on the High Seas, April 29, 1958, art. 2, T.I.A.S. No. 5200 (effective Sept. 30, 1962); U.N. Doc. No. A/Conf. 13/L.53 (1958), reprinted in 38 DEP'T STATE BULL. 1115 (1958).

3. WESSELS, HISTORY OF THE ROMAN DUTCH LAW 332 (1908).

4. Allen, *Legal Limits of Coastal Fishery Protection*, 21 WASH. L. REV. 2 (1946).

5. See listing of claims in the table located in *Hearings Before the Subcommittee on Merchant Marine and Fisheries of the Senate Committee on Commerce*, 89th Cong., 2d Sess. 29-30 (1966). See table in text accompanying note 15 *infra*. See generally JOHNSTON, *THE INTERNATIONAL LAW OF FISHERIES* (1965).

“(b) Punish infringement of the above regulations committed within its territory or territorial sea.”⁶

The practical purpose of this zone has been to serve as a safety valve from the rigidities of the territorial sea doctrine, permitting satisfaction of particular demands through exercise of a limited authority which does not endanger the whole gamut of community interests.⁷

A more recent exception is the claim asserted by many coastal states to the continental shelf. The Convention on the Continental Shelf, adopted by the United Nations Conference on the Law of the Sea in 1958, acknowledges such claims⁸ and provides that a coastal state has the exclusive right to exploit the resources of the seabed and subsoil of its continental shelf.⁹ Resources include “living organisms belonging to the 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.”¹⁰

The concept of a special fishery zone, considered separately from the territorial sea, was presented during the Geneva Conventions in 1958 and 1960 as a compromise to gain votes for a narrower than twelve-mile territorial sea.¹¹ It was first introduced into international law by the 1945 Truman Proclamation.¹² In this proclamation, the United States stated that, to conserve and protect fishery resources, conservation zones would be established in areas of the high seas contiguous to the coasts of the United States where fishing activities had or may be developed and maintained on a substantial scale.¹³ Since the Geneva Con-

6. Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, art. 24, T.I.A.S. No. 5639 (effective Sept. 10, 1964); U.N. Doc. No. A/Conf. 13/L.52 (1958), reprinted in 38 DEP'T STATE BULL. 1111 (1958).

7. McDougal & Burke, *Crisis in the Law of the Sea*, 67 YALE L.J. 581 (1958).

8. Convention on the Continental Shelf, April 29, 1958, T.I.A.S. No. 5579 (effective June 10, 1964); U.N. Doc. A/Conf. 13/L.55 (1958), reprinted in 38 DEP'T STATE BULL. 1121 (1958).

9. *Id.* art. 2.

10. *Id.* art. 2(4).

11. See Dean, *The Geneva Conferences on the Law of the Sea: What Was Accomplished*, 52 AM. J. INT'L L. 607, 614 (1958), *The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas*, 54 AM. J. INT'L L. 751, 773-77 (1960). See also *Hearings Before the Subcommittee on Merchant Marine and Fisheries of the Senate Committee on Commerce*, 89th Cong., 2d Sess. (1966).

12. Presidential Proclamation No. 2668, 59 Stat. 885 (1945), reprinted in 40 AM. J. INT'L L. (Supp.) 46-48 (1946).

13. *Ibid.* The effects of this proclamation were worldwide. The first group of similar proclamations were primarily concerned with sedentary fisheries, such as pearl and oyster. The second group were concerned with mineral resources—

ventions, a number of nations have claimed exclusive fishery jurisdiction in areas contiguous to their coasts. In 1964, a Conference on European Fisheries, in which sixteen nations were represented (chiefly the Scandinavian countries and nations fishing near them) recognized, in article 2, a nation's exclusive right to fish and its exclusive fisheries jurisdiction within a six-mile belt beyond the baseline of its territorial sea. Article 3 gives the right to fish to the coastal state and to other contracting parties who had habitually fished the area, in a belt between six and twelve miles from the baseline of the territorial sea.¹⁴

Information prepared for the 1958 and 1960 Geneva Law of the Sea conferences and additional information available to the Department of State as of April 1966 reveals the following claims to territorial sea and fishing zones:

See Table Next Page

mainly oil. A more expansionist third group claimed rights not only to the shelf, but also to the use of the seas above it. Some South American states combined the two elements in the Truman Proclamation and claimed full rights over the continental shelf and the seas above it. Chile, Ecuador, and Peru claimed exclusive sovereignty and jurisdiction over a 200 nautical mile zone and exclusive sovereignty and jurisdiction over the seabed and subsoil. A South Korean Proclamation in 1952 closed to Japan fisheries up to 250 miles from Korea; Russia closed the Sea of Okhotsk to Japan in 1956; Indonesia closed half a million square miles within her archipelago which prompted the Philippines to act similarly; Iceland asserted sovereignty over the fisheries above the continental shelf in 1948, but reduced her claim to a four mile territorial sea in 1952. CHRISTY & SCOTT, *THE COMMON WEALTH IN OCEAN FISHERIES* 160-63 (1965).

14. Fisheries Convention Final Draft, reprinted in 58 AM. J. INT'L L. 1068 (1964).

Country	Territorial sea	Fishing limits	Other
Afghanistan	No coast		
Albania	10 miles	12 miles	
Algeria	12 miles		
Argentina	3 miles	10 miles	Continental Shelf—including sovereignty over superjacent waters.
Australia	do		
Austria	No coast		
Belgium	3 miles	12 miles ¹	
Bolivia	No coast		
Brazil	3 miles	12 miles	
Bulgaria	12 miles	do	
Burma	do	do	
Burundi	No coast	do	
Byelorussian S.S.R.	do	do	
Cambodia	5 miles	12 miles	Continental Shelf—to 50 meters including sovereignty over superjacent waters.
Cameroon	6 miles		
Canada	3 miles	12 miles	
Central African Republic	No coast		
Ceylon	6 miles		Claims right to establish conservation zones within 100 nautical miles of the territorial sea.
Chad	No coast		
Chile	50 kilometers	200 miles	
China	3 miles		
Colombia	6 miles	12 miles	
Congo (Brazzaville)	(?)		
Congo (Léopoldville)	(?)		
Costa Rica		200 miles	
Cuba	3 miles		
Cyprus	12 miles		
Czechoslovakia	No coast		
Dahomey	3 miles	12 miles	
Denmark	do	do ¹	
Greenland		do	
Faroe Islands		do	
Dominican Republic	3 miles	15 miles	
Ecuador	12 miles	200 miles	
El Salvador	200 miles		
Ethiopia	12 miles		
Federal Republic of Germany	3 miles	(?)	
Finland	4 miles		
France	3 miles	12 miles ¹	
Gabon	(?)		
Ghana	12 miles		Undefined protective areas may be proclaimed seaward of territorial sea, and up to 100 miles seaward of territorial sea may be proclaimed fishing conservation zone.
Greece	6 miles		
Guatemala	12 miles		
Guinea	130 miles		
Haiti	6 miles		
Holy See	No coast		
Honduras	12 kilometers		
Hungary	No coast		
Iceland		12 miles	
India	6 miles	100 miles	
Indonesia	12 miles		
Iran	do		
Iraq	do		
Ireland	3 miles	12 miles ¹	
Israel	6 miles		
Italy	do	12 miles ¹	
Ivory Coast	3 miles		
Jamaica	do		
Japan	do		
Jordan	do		
Kenya	do		
Korea		20-200 miles	Continental Shelf—including sovereignty over superjacent waters.
Kuwait	(?)		
Laos	No coast		
Lebanon		6 miles	
Liberia	3 miles		
Libya	12 miles		
Luxembourg	No coast		
Malagasy Republic	12 miles	(?)	

See footnotes at end of table.

Country	Territorial sea	Fishing limits	Other
Malawi.....	No coast.....	.....
Malaysia.....	3 miles.....	.....
Maldive Islands.....	(?).....	6 miles.....	
Mali.....	No coast.....	.....
Malta.....	(?).....	.....
Mauritania.....	6 miles.....	12 miles.....	
Mexico.....	9 miles.....	.....
Mongolia.....	No coast.....	.....
Morocco.....	3 miles.....	12 miles.....	Exception—6 miles for Strait of Gibraltar.
Nepal.....	No coast.....	.....
Netherlands.....	3 miles.....	(?).....	
New Zealand.....	do.....	12 miles.....	
Nicaragua.....	do.....	200 miles.....	Continental Shelf—including sovereignty over superjacent waters.
Niger.....	No coast.....	.....
Nigeria.....	3 miles.....	.....
Norway.....	4 miles.....	12 miles.....	
Pakistan.....	3 miles.....	do.....	Plus right to establish 100 mile conservation zones.
Panama.....	12 miles.....	.....	Continental Shelf—including sovereignty over superjacent waters.
Paraguay.....	No coast.....	.....
Peru.....	.....	200 miles.....	
Philippines.....	(?).....	.....
Poland.....	3 miles.....	.....
Portugal.....	(?).....	12 miles ¹	
Romania.....	12 miles.....	.....
Rwanda.....	No coast.....	.....
Saudi Arabia.....	12 miles.....	.....
Senegal.....	6 miles.....	.....	Plus 6 miles contiguous zone.
Sierre Leone.....	12 miles.....	.....
Singapore.....	(?).....	.....
Somali Republic.....	(?).....	.....
South Africa.....	6 miles.....	12 miles.....	
Spain.....	do.....	do ¹	
Sudan.....	12 miles.....	.....
Sweden.....	4 miles.....	12 miles ¹	
Switzerland.....	No coast.....	.....
Syria.....	12 miles.....	.....	Plus 6 miles "necessary supervision zone."
Tanzania.....	do.....	.....
Thailand.....	6 miles.....	12 miles.....	
The Gambia.....	3 miles.....	.....
Togo.....	12 miles.....	.....
Trinidad and Tobago.....	(?).....	.....
Tunisia.....	6 miles.....	12 miles.....	Territorial sea follows the 50-meter isobath for part of the coast (maximum 65 miles).
Turkey.....	do.....	do.....	
Uganda.....	No coast.....	.....
Ukrainian S.S.R.....	12 miles.....	.....
U.S.S.R.....	do.....	.....
United Arab Republic.....	do.....	.....
United Kingdom.....	3 miles.....	12 miles ¹	
Colonies.....	do.....	.....
United States of America.....	do.....	.....
Upper Volta.....	No coast.....	.....
Uruguay.....	6 miles.....	12 miles.....	
Venezuela.....	12 miles.....	.....
Vietnam.....	.....	20 kilometers.....	
Yemen.....	(?).....	.....
Yugoslavia.....	10 miles.....	.....
Zambia.....	No coast.....	.....

¹ Parties to the European Fisheries Convention which provides for the right to establish 3 miles exclusive fishing zone seaward of 3-mile territorial sea plus additional 6-mile fishing zone restricted to the convention nations.

² Not available.

³ Signatories of the European Fisheries Convention.

NOTE.—No distance indicated under fishing where same as territorial sea.

As can be seen from the table,¹⁵ the trend in international law is toward nations establishing a special fishery zone of twelve miles and doing so by multilateral agreements and unilateral action.

Secretary of State Thomas Jefferson, in 1791, chose three miles as the width of the territorial waters of the United States;¹⁶ the United States has always adhered to this.¹⁷ However, it takes the view that the three-mile limit does not constitute a geographical limit for all purposes.¹⁸ For example, the United States extended its jurisdiction beyond the territorial sea in the Tariff Act and in the Anti-Smuggling Act.¹⁹ It has also claimed the resources of the subsoil and seabed of its continental shelf.²⁰ Such extensions of jurisdiction are recognized in international law.²¹

In the 1945 Truman Proclamation, along with its claim to the resources of the continental shelf, the United States asserted that, to protect fishery resources, conservation zones would be established. This proclamation arose directly out of the incursion of Japanese fishermen in the 1930's into the Bristol Bay red salmon fishery.²² Because of later developments, particularly the 1952 International North Pacific Convention with Japan and Canada, the United States has found it unnecessary to initiate the action envisioned in the proclamation.²³ The United States has also made a claim to other areas of the high seas not necessarily contiguous to it. Because pelagic sealing was destroying seal herds, it unilaterally claimed a right of ownership in the

15. *Hearings Before the Subcommittee on Merchant Marine and Fisheries of the Senate Committee on Commerce*, 89th Cong., 2d Sess. 29-30 (1966).

16. Heinzen, *The Three-Mile Limit: Preserving the Freedom of the Seas*, 11 STAN. L. REV. 615 (1959).

17. See Statement of Author Dean, United States Representative, in the First Committee, March 11, 1958, 38 DEP'T STATE BULL. 574, 577 (1958), 3 GENEVA CONFERENCE RECORDS 25, 26 (1958).

18. Allen, *Legal Limits of Coastal Fisheries Protection*, 21 WASH. L. REV. 2 (1946).

19. MACCHESNEY, INTERNATIONAL LAW SITUATION AND DOCUMENTS 432 (1956).

20. Presidential Proclamation No. 2668, 59 Stat. 885 (1945), reprinted in 40 AM. J. INT'L L. (Supp.) 46-48 (1946).

21. Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, art. 24, T.I.A.S. No. 5639 (effective Sept. 10, 1964); U.N. Doc. No. A/Conf. 13/L.52 (1958), reprinted in 38 DEP'T STATE BULL. 1111 (1958); Convention on the Continental Shelf, April 29, 1958, T.I.A.S. No. 5579 (effective June 10, 1964); U.N. Doc. No. A/Conf. 13/L.55 (1958), reprinted in 38 DEP'T STATE BULL. 1121 (1958).

22. Allen, *The Fishery Proclamation of 1945*, 45 AM. J. INT'L L. 177 (1951).

23. TOMAŠEVIĆ, INTERNATIONAL AGREEMENTS ON CONSERVATION OF MARINE RESOURCES 77-78 (1943).

fur seals of the North Pacific Ocean.²⁴ This action, however, was rejected as unlawful by an international tribunal²⁵ and ended in the adoption of the 1911 Fur Seal Convention by the United States, Great Britain, Japan, and Russia.²⁶

The most recent action by the United States concerning fisheries, and the action which prompted this research, is Public Law 89-658, which states:

“. . . That there is established a fisheries zone contiguous to the territorial sea of the United States. The United States will exercise the same exclusive rights in respect to fisheries in the zone as it has in its territorial sea, subject to the continuation of traditional fishing by foreign states within this zone as may be recognized by the United States.

“Sec. 2. The fisheries zone has as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary. . . .”²⁷

This act represents a change in United States policy,²⁸ the reason, as set forth by the Secretary of the Interior, being:

“With the advent however, of large scale expanded fishing operations by foreign fishing fleets, a demand had developed within certain segments of our fishing industry for an expansion of the present fishery jurisdiction of the United States so that American fishermen might enjoy an exclusive right to exploit the fishery resources of this expanded area. This bill (P.L. 89-658) responds to this demand.”²⁹

The demand of certain segments of the fishing industry was initiated by interests located on the Pacific and Atlantic coasts and stems from the fear that highly efficient trawl fishing now carried on by Russian and Japanese vessels off the two coasts will completely deplete the supply of bottom fish (particularly

24. 1 MOORE, DIGEST OF INTERNATIONAL LAW 891-930 (1906).

25. TOMAŠEVIĆ, INTERNATIONAL AGREEMENTS ON CONSERVATION OF MARINE RESOURCES 95 (1943).

26. *Id.* at 96.

27. Pub. L. No. 658, 89th Cong., 2d Sess., 80 Stat. 908 (1966).

28. “The United States does not recognize any unilateral extension of either the territorial sea or zones of exclusive fishing rights. In the matter of fisheries, however, agreements between or among interested sovereign participants are recognized.” *Sovereignty of the Sea*, DEP'T STATE GEOGRAPHIC BULL. no. 3 (April 1965).

29. *Hearings Before the Subcommittee on Merchant Marine and Fisheries of the Senate Committee on Commerce*, 89th Cong., 2d Sess. 3 (1966).

ocean perch) located on the continental shelf of the United States. Testimony throughout the Senate committee hearing by representatives of these fishing industries indicates this fear of possible economic loss.³⁰ However, as pointed out by Senator Bartlett, the United States has done little research on this question of economic loss and thus does not know how much fish is out there.³¹

In international law, the new act of Congress has a serious impact on the provisions of the 1958 Geneva Conventions on the Law of the Sea, which have been ratified by the United States.³² In article 24 of the Convention on the Territorial Sea and Contiguous Zone, the right of a coastal state to control fisheries in a zone of the high seas contiguous to a state's territorial sea is not included.³³ Such contiguous zones may be controlled only when it is necessary to prevent infringement of customs, fiscal, immigration, or sanitary regulations within the territorial sea or the territory of a nation.³⁴ The Convention on the High Seas provides that high seas are open to all nations and that no state may validly purport to subject any part of them to its sovereignty; this freedom of the seas includes freedom of fishing.³⁵ Article 1 of the Convention on Fishing and Conservation of the Living Resources of the High Seas states that all nations have the right for their nationals to engage in fishing on the high seas and that all nations have a duty to adopt or cooperate with other nations in adopting such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.³⁶ Article 7 of this convention allows a state to

30. *Id.* at 122, 131, 139.

31. *Id.* at 67.

32. Convention on the High Seas, ratified by the President of the United States, March 24, 1961, deposited with Secretary-General of the United Nations, April 12, 1961, T.I.A.S. 5200; Convention on the Territorial Sea and the Contiguous Zone, ratified by the President of the United States, March 24, 1961, deposited with the Secretary-General of the United Nations, April 12, 1961, T.I.A.S. 5639; Convention on Fishing and Conservation of the Living Resources of the High Seas, ratified by the President of the United States, March 24, 1961, deposited with the Secretary-General of the United Nations, April 12, 1961, T.I.A.S. 5969.

33. Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, art. 24, T.I.A.S. No. 5639 (effective Sept. 10, 1964); U.N. Doc. No. A/Conf. 13/L.52 (1958), reprinted in 38 DEP'T STATE BULL. 1111 (1958).

34. *Ibid.*

35. Convention on the High Seas, April 29, 1958, art. 2, T.I.A.S. No. 5200 (effective Sept. 30, 1962); U.N. Doc. No. A/Conf. 13/L.53 (1958), reprinted in 38 DEP'T STATE BULL. 1115 (1958).

36. Convention on Fishing and Conservation of the Living Resources of the High Seas, April 29, 1958, T.I.A.S. 5969 (effective March 20, 1966); U.N. Doc. A/Conf. 13/L.54 (1958), reprinted in 38 DEP'T STATE BULL. 1118 (1958).

adopt unilateral measures of conservation, but only after unsuccessful attempts at negotiation, and then only if the need for such measures is urgent, based on scientific findings, and does not discriminate against foreign fishermen.³⁷

It is submitted that Public Law 89-658 does violence to both the language and intent of these conventions. The act is not a conservation move, but one to insure United States fishermen the exclusive right to fish within twelve miles of the coasts of the United States.³⁸

The new law also affects future United States policy. Other nations in recent times have taken unilateral action to extend their seaward limits.³⁹ Action by the United States gives added impetus to this trend, providing still other nations with the needed excuse to extend their fishery jurisdiction. The present law makes it extremely difficult to object to such extensions on behalf of those United States fishermen who now enjoy the freedom of the seas off foreign coasts up to the traditional three-mile belt.

The provision that the United States' claim to exclusive rights within the fishing zone is subject to the continuation of traditional fishing by foreign states is misleading, as Canada is the only state recognized as a traditional fisher.⁴⁰

The total average marine fishery catch off the United States' coasts for the 1959-63 period was more than 4,500 million pounds.⁴¹ About sixty-eight percent of this catch was taken from present territorial waters; about thirteen percent from the now exclusive fishery zone; the remaining nineteen percent was taken beyond twelve miles. Only two percent of the total was caught outside three miles, but within twelve miles of foreign coasts. However, this two percent represents the bulk of the United States' tunafish catch.⁴² It is plain that the new exclusive zone does not help the economy of the fishing industry a great deal, but it will harm the tuna fishermen who depend on the right to fish within twelve miles of foreign countries if those countries

37. *Ibid.*

38. *Hearings Before the Subcommittee on Merchant Marine and Fisheries of the Senate Committee on Commerce*, 89th Cong., 2d Sess. 3 (1966).

39. See text accompanying note 15 *supra*.

40. U.S. CODE CONG. & AD. NEWS No. 10, p. 4035 (Nov. 1966).

41. *Hearings Before the Subcommittee on Merchant Marine and Fisheries of the Senate Committee on Commerce*, 89th Cong., 2d Sess. 39 (1966).

42. *Ibid.*

make or have made similar exclusive claims to which the United States can no longer object.

It is suggested that the problem of the Russian and Japanese depletion of fish on the ocean floor might have been handled more satisfactorily by agreement than by unilateral action. The United States could have invited Russia, Japan, and Canada to a conference to consider joint measures of investigation and control. Cooperation on conservation measures between these countries is evidenced by the management of the fur seal herds of the North Pacific since 1911.⁴³ The Russians evidence a readiness for international conservation and are members with the United States in such agreements as the International Whaling Commission, the International Commission for the Northwest Atlantic Fisheries, and the King-Crab Treaty.⁴⁴ Russia is not a party to the Convention on Fishing and Conservation of the Living Resources of the High Seas; however, this refusal is not on fishery or conservation grounds, but is based on refusal to accept the convention's compulsory arbitration clauses.⁴⁵

In conclusion, it is submitted that unilateral acts of nations which deal with a policy of exclusion in an area affecting the world community are not recommended where international agreements might accomplish the same result and thus avoid possible international friction or conflict with international law and treaties.⁴⁶

Edward E. Roberts, Jr.

MINERAL LAW — SERVITUDES — PRESCRIPTION — REDUCTION OF PARTIALLY USED MULTIPLE LINE GAS PIPELINE SERVITUDES

In an expropriation proceeding, plaintiff contended that multiple line agreements¹ created a single servitude and gave it the

43. TOMAŠEVIĆ, INTERNATIONAL AGREEMENTS ON CONSERVATION OF MARINE RESOURCES 77-78 (1943).

44. *Hearings Before the Subcommittee on Merchant Marine and Fisheries of the Senate Committee on Commerce*, 89th Cong., 2d Sess. 83 (1966).

45. *Id.* at 89.

46. See U.S.-U.S.S.R discussions relating to conservation and use of fishing resources off the United States coast, 55 DEP'T STATE BULL. 273 (1966), reprinted in 61 AM. J. INT'L L. 107 (1967).

1. Two "multiple line agreements" were granted when the existing pipeline was constructed in 1953. They provided for a right of way 66 feet wide and contained the following language regarding additional pipelines: "In the event Grantee desires to change or alter the route under, upon, over and through the