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International Law -- The High Seas, The Continental Shelf, and Free Navigation

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action the heirs apparent of the widow should be parties. Any decision given would then become *res adjudicata* as to the parties.[20]

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International Law—The High Seas, The Continental Shelf, and Free Navigation

Few principles of International Law have been more fully recognized and accepted than free navigation on the high seas! Professor Colombos of the Hague Academy of International Law states, "Today it is universally recognized that the open sea is not susceptible of appropriation and that no state can obtain such possession of it as would legally be necessary to give rise to a claim of property. The high sea cannot be subject to a right of sovereignty for it is the necessary means of communication between nations and its free use thus constitutes an indispensable element for international trade and navigation."[1]

I

Though the seas are free today, this was not always so, nor were they set free without a struggle. From the tenth to the sixteenth century, English kings made sovereign claims to all seas.[2] During the fifteenth century Pope Alexander, by a Papal Bull of September 25, 1493, partitioned the Atlantic Ocean between Portugal and Spain. Denmark, Genoa, Sweden, Russia, and many other states asserted similar claims of sovereignty over the high seas. This tide of sovereign claims, however, soon receded when Queen Elizabeth proclaimed, "The use of the sea and air is common to all; neither can any title to the ocean belong to any people or private persons forasmuch as neither nature nor regard of the public use and custom permitteth any possession thereof." Twenty-five years later, in 1609, the Dutch publicist Grotius (Hugo de Groot), traditionally considered the founder of International Law, stated as a basic principle, "The open sea cannot be subject to the sovereignty of any state, access to all nations is open to all, not merely by the permission but by the command of the Law of Nations."[3] Justice Story, in *The Marianna Flora*,[4] stated the American view—" . . . [U]pon the

[20] In re Morris, 224 N. C. 487, 31 S. E. 2d 539 (1944); Cameron v. McDonald, 216 N. C. 712, 6 S. E. 2d 497 (1940); Ludwick v. Penny, 158 N. C. 104, 73 S. E. 228 (1910).

[1] HIGGINS & COLOMBOS, INTERNATIONAL LAW OF THE SEA § 50 (3d ed. 1954).

[2] For a historical outline of these British claims, see FULTON, THE SOVEREIGNTY OF THE SEA (1911).

[3] GROTIUS, MARE LIBERUM (1609), contained in c. 12 of GROTIUS, DE JURE PRAEDAE (CLASSICS OF INTERNATIONAL LAW, Scott Trans., 1950).

[4] 24 U. S. (11 Wheat.) 1, 42 (1826). To the effect that "International Law is a part of our law, and must be ascertained and administered by the courts of justice . . . ," see Justice Gray's opinion in The Paquete Habana, 175 U. S. 677

ocean, in time of peace, all possess an entire equality. It is the common highway of all, appropriated to the use of all, and no one can vindicate to himself a superior or exclusive prerogative there." Suffice it to say that for the past two hundred years, the seas, in principle, have been free to all men for navigation.[5]

Granting that free navigation on a free sea has gained universal acquiescence, this is not to say that the high seas are in a state of anarchy. In order to keep the seas open for navigation, it has become necessary for the International Community to formulate and adopt rules and regulations for sea use. The relative safety of our water highways today will bear witness to the numerous successful conventions which met on the questions of safety of life at sea, international signals, communications, collisions, carriage of goods, piracy, and control of liquor and slave trade, to mention but a few.[6]

A century after Grotius' Open Seas Doctrine appeared, the Dutch Judge Bynkershoek gave birth to the modern doctrine of territorial waters, and thereby gave definition to the high seas. He wrote, "Wherefore on the whole it seems a better rule that the control of the land (over the sea) extends as far as a cannon will carry; for that is as far as we seem to have both command and possession."[7] This "cannon shot rule" has for many years been equated with the more familiar, and generally accepted, Anglo-American "three-mile limit rule," though admittedly the purpose, national defense, is no longer served.[8] All expanse beyond the territorial waters, or territorial belt or marginal seas, as it is sometimes called, defines the high seas.

The territorial waters are usually determined by running a line parallel to the shore a specific distance from the shore.[9] All of this water, area above the water, and sea-bed and subsoil below the water of the territorial belt is considered the sovereign territory of the coastal state.[10]

(1900); Ware v. Hylton, 3 U. S. (3 Dall.) 199 (1796); Dickinson, *The Law of Nations as Part of the National Law of the United States,* 101 U. PA. L. REV. 26 (1952-53).

[5] Freedom of Navigation as an international precept follows logically, notwithstanding the conflicting philosophical bases of *res communis* and *res nullius.* See JESSUP, THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION 75 (1927); HIGGINS & COLOMBOS, *op. cit. supra* note 1, § 71.

[6] For an excellent and authoritative treatment of these various conventions generally, see BENEDICT, ADMIRALTY (6th ed. 1940); HIGGINS & COLOMBOS, *op. cit. supra* note 1, §§ 292-388.

[7] BYNKERSHOEK, DE DOMINIO MARIS (1702), as contained in CLASSICS OF INTERNATIONAL LAW c. 2, at 44 (Magoffin Trans., 1923).

[8] See Walker, *Territorial Waters: The Cannon Shot Rule,* 22 BRIT. Y. B. INT'L L. 210 (1945).

[9] Problems of delimitation of territorial waters cannot be treated within the scope of this article. See generally the citations under note 11, *infra.*

[10] Cf. *Draft of the Hague Codification Conference 1930,* LEAGUE OF NATIONS PUBLICATION: Art. 2 (1930).

The question of local concern in the United States, as to whether the State or

Over this belt, the littoral states exercise jurisdiction and control, subject only to the right of innocent passage.[11] The Hague Codification Conference of 1930, though not establishing agreement on the width of the territorial belt, did determine that no state claims less than a three-mile limit.[12] Today, due mainly to English influence around the turn of the nineteenth century, the majority of maritime states accept the minimum width of three miles as also the maximum width.[13]

Though the major maritime powers support this three-mile zone, claims to wider belts have nevertheless been made.[14] The most extensive claims to marginal areas are limited today to twelve miles. The United States' adherence to the three-mile limit practice since 1794 was reaffirmed in *Cunard S. S. Co. v. Mellon*[15]—". . . [T]he territory subject to its jurisdiction includes . . . , the ports, harbors, bays, and other enclosed arms of the sea along its coast and a marginal belt of sea extending from the coastline outward a marine league or three geographical miles."[16]

II

Classic as well as modern International Law publicists tell us that the modes used by a state for acquiring additional sovereign territory are

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Federal Government will exercise this sovereignty over the territorial belt, was settled in favor of the Federal Government in United States v. California, 332 U. S. 19 (1947). Cf. United States v. Louisiana, 339 U. S. 699 (1950), and United States v. Texas, 339 U. S. 707 (1950). The Submerged Land Act, 67 STAT. 29 (1953), 43 U. S. C. § 1301, reversed the Court to the extent of the three mile limit.

[11] The right of innocent passage is defined by the International Law Commission as follows: "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. Passage is innocent so long as the ship does not use the territorial sea for committing any acts prejudicial to the security of the coastal state or contrary to the present rules, or to other rules of international law. Passage includes stopping and anchoring, but only insofar as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress." 51 AM. J. INT'L L., SUPP. 164 (1957).

On the subject of territorial waters generally, see JESSUP, *op. cit. supra* note 5; MASTERSON, JURISDICTION IN MARGINAL SEAS (1929); *Harvard Research in International Law, Territorial Waters,* 23 AM. J. INT'L L., SPEC. SUPP. 241-46 (1929); DANIEL, SOVEREIGNTY AND OWNERSHIP IN THE MARGINAL SEAS 14 (1950); HIGGINS & COLOMBOS, *op. cit. supra* note 1, c. 3-7.

[12] The "mile" here used is the so-called nautical, or marine, or geographical mile. One league equals three marine miles.

[13] Reeves, *Codification of the Law of Territorial Waters,* 24 AM. J. INT'L L. 486 (1930); HIGGINS & COLOMBOS, *op. cit. supra* note 1, §§ 77-99.

[14] Boggs, *National Claims on Adjacent Seas,* 61 GEOGRAPHICAL REVIEW 185 (1951); HIGGINS & COLOMBOS, *op. cit. supra* note 1, §§ 86-93.

[15] 262 U. S. 100 at 122 (1922); Cf. United States v. Carrillo, 13 F. Supp. 121 (1935).

[16] Though fixed in their claims to *sovereignty* over a specific width of marginal seas, many states, including the United States, claim additional jurisdiction beyond the territorial belt and up to twelve miles, for specific reasons—for example, to enforce revenue, customs, and immigration laws; to enforce and regulate national sanitation laws; to protect fisheries; etc. See 19 U. S. C. §§ 1581, 1584, 1585, 1586, 1587, 1594; HIGGINS & COLOMBOS, *op. cit. supra* note 1, §§ 106-132; BENEDICT, *op. cit. supra* note 6.

occupation and cession, conquest, prescription, and accretion.[17] Yet a fifth method, that of proclamation,[18] was used by President Harry S. Truman on September 28, 1945, when he proclaimed the American policy respecting the natural resources of the subsoil and sea-bed of the continental shelf.[19]

Though this proclamation stirred little national interest, the international repercussions were extensive, for during the following years over thirty other states have issued similar decrees concerning the continental shelf; Mexico, most of the Central and South American States, Pakistan, Iran, South Korea, and the Philippines numbering among them. Of these, many were put in a stronger and more extensive language, claim-

[17] HALL, INTERNATIONAL LAW, 125 (8th ed. 1925).

[18] "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 contintental 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." PROC. No. 2667, 3 C. F. R. 39 (Supp. 1945); 40 AM. J. INT'L L., SUPP. 45 (1946).

[19] That same day, September 28, 1945, President Truman, by Executive Order, placed control and jurisdiction of these resources under the Secretary of Interior. 40 AM. J. INT'L L., SUPP. 47 (1946).

A White House press release of same date, defined the continental shelf as the area out from short to a 600 foot depth, 13 DEP'T STATE BULL. 484 (1945).

The first congressional assertion of control and jurisdiction over the continental shelf appertaining to the United States was the Outer Continental Shelf Lands Act, 67 STAT. 462 (1953), 43 U. S. C. 1331 (1953). For an excellent article analyzing this Act, see Christopher, *The Outer Continental Shelf Lands Act: Key to a New Frontier*, 6 STAN. L. REV. 23 (1953-54).

ing sovereignty over the shelf itself, irrespective of depth. Some went so far as to claim sovereignty over the high seas above the shelf.[20] Among these states which, to date, have officially asserted claims, some of the powers are conspicuously absent, *e.g.*, England, Russia. Also France, Italy, Japan, Spain, India, Scandinavian States, and West Germany are abstainers. Mr. Boggs humorously attributes the sudden rash of decrees following the Truman Proclamation to "a sort of 'cartographic chauvinism' and a desire to 'keep up with the Joneses.' "[21]

The concept of the continental shelf has a philosophical as well as a scientific basis. The philosophical justification for the sovereign extension over the shelf is often found within the proclamations themselves, for example, the Truman Proclamation contends that ". . . the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus *naturally* appurtenant to it. . . ." The scientific basis is founded in ocean geology and geography. It is generally agreed that out from the shores of the littoral state the sea-bed gradually falls off to and levels at about two hundred metres,[22] until it reaches a point (the limit of the shelf) where the drop becomes suddenly steep and continues down to the oceanic basin.[23] The International Law Commission, at its fifth session, tentatively approved articles for submission to the General Assembly of the United Nations wherein the continental shelf is defined as ". . . the sea-bed and subsoil of the submarine areas contiguous to the coast, but outside the area of the territorial sea, to a depth of two hundred metres."[24] The practical purposes of adopting the two hundred metre line are evident in light of the aforementioned scientific knowledge, as well as the fact that many nautical charts have the two hundred metre line already indicated.[25] At this line, however, the extent of the shelf is by no means uniform. It has been asserted that no shelf exists along some shores, while in other places, the Yellow Sea and Gulf of Siam, it extends some 800 miles. It has been estimated that the shelf area all

[20] For an analysis of the difference between many of these proclamations, see generally, Young, *Recent Developments with Respect to the Continental Shelf*, 42 AM. J. INT'L L. 849 (1948); Young, *Further Claims to Areas Beneath the High Seas*, 43 AM. J. INT'L L. 790 (1949); Young, *Saudi Arabian Offshore Legislation*, 43 AM. J. INT'L L. 530 (1949); Lauterpacht, *Sovereignty Over Submarine Areas*, 27 BRIT. Y. B. INT'L L. 376 (1950); Boggs, *op. cit. supra* note 14, at 185; Waldock, *Legal Basis of Claims to the Continental Shelf*, 36 GROTIUS SOC., TRANS. FOR 1950, 115 (1951); MOUTON, THE CONTINENTAL SHELF, c. 4 (1952).

[21] *Delimitation of Seaward Areas Under National Jurisdiction*, 45 AM. J. INT'L L. 240 at 241 (1951).

[22] 200 metres, 100 fathoms, 600 feet, are all approximately equal. 600 feet = 100 fathoms; 200 metres = 656.1 feet.

[23] For an impressive collection of this scientific data, see MOUTON, *op. cit. supra* note 20, c. 4.

[24] 48 AM. J. INT'L L., SUPP. 28 (1954).

[25] See Young's article wherein he proposes that states accept the 200 metre line as the "legal standard." *Legal Status of Submarine Areas Beneath the High Seas*, 45 AM. J. INT'L L. 225 at 234 (1951).

over the world covers 27,500,000 square kilometres, or 7.6 per cent of the surface of the oceans.[26]

In spite of the simpliicty achieved by the International Law Commission when it accepted the "200 metre limit" in defining the continental shelf, at its final session concerning this matter, July 1956, it reverted to its 1951 position, abandoning in part the geological concept of that term. In the final report on the *Law of the Sea,* the Commission added the following words to the aforementioned definition of the continental shelf: ". . . or, beyond that limit [referring to the 200 metre line], to where the depth of the superjacent water admits the exploitation of the natural resources of the said areas."[27] Here the limits of the "shelf," beyond the geographic shelf, are determinable only with reference to the exploitability of the sea-bed and subsoil.

The amendment to the definition of the continental shelf was probably made by the Commission in the hope of appeasing those states which lack an adjacent shelf area. Yet in light of contemporary scientific knowledge, this recession of certainty—substitution of limits of exploitability for the 200 metre line—is ill-founded, for as a practical matter exploitation to a depth greater than 600 feet is not now considered feasible, nor is it expected to become so in the near future. This amendment merely adds one more abstraction to a field already surrounded by uncertainties.

The late international attention given to the continental shelf is due principally to two factors: the needs of an ever-increasing population, confined within the limited availability of land, have turned scientific research to methods of utilizing the natural resources of the sea-bed and subsoil; considerations of national defense, though not generally emphasized, have been no small consideration. National hopes of locating rich oil fields, sulphur beds, and other heavy minerals, even uranium, are even now materializing.[28] As of June 1, 1950, twenty-two oil fields west of the Mississippi River on the Gulf of Mexico were producing on the continental shelf.[29] In August, 1954, the United States Government announced the future construction of radar installations upon the continental shelf as a means of furthering national security.[30] To-day many such radar installations are in operation, some as far as 110 miles out at sea.

[26] UMBGROVE, THE PULSE OF THE EARTH, 99 (2nd ed., 1947).

[27] Article 67, *Law of the Sea,* Report of International Law Commission, U. N. GENERAL ASSEMBLY, 11th Sess., OFFICIAL RECORDS, Supp. No. 9 (A/3159); 51 AM. J. INT'L L., SUPP. 177 (1957).

[28] See International Law Association's Report of the Forty-third Conference, Brussels 1948, p. 172 (1948).

[29] Weaver, *The Continental Shelf of the Gulf of Mexico,* BULL. OF AM. ASSO. OF PETROLEUM GEOLOGISTS, Vol. 35, No. 2 (Feb. 1951).

[30] N. Y. Times, Aug. 12, 1954, p. 1, col. 2; Note 40 CORNELL L. Q. 110 (1954).

The practical necessities of a Truman Proclamation are seen when one considers the international consequences of a foreign power moving within one hundred miles of American shores and drilling for oil, setting up advance communication bases, or other installations. Mr. Vallat, speaking of the Truman Proclamation, said, "This unilateral declaration does not purport to be based on any recognized and established rule of interantional law, but on what is reasonable and just."[31] That these claims will continue to be insisted upon is open to little doubt; that the rights sought by these claims will one day be upheld as matters of International Law is also evident due to the nature of that law—". . . founded on justice, equity, convenience, and the reason of the thing, and confirmed by long usage."[32]

Judge Lauterpacht, of the International Court of Justice, would carry this one step further, for he states, ". . . [T]here is no existing principle or rule of International Law which is opposed to what, for the sake of brevity, may be called here the doctrine and the practice of the continental shelf, and the latter has now, in any case, become a part of the International Law by unequivocal positive acts of some states, including the leading maritime powers, and general acquiescence on the part of others."[33] The wording of some of the state proclamations concerning the continental shelf would also appear to be in accord with this latter view.

III

Eleven years have now passed since the Truman Proclamation initiated the practice of the continental shelf. Eleven years ago many people realized the immediate difficulties and conflicts that such a proclamation entails. Today, due to the efforts of those concerned, many of these difficulties have been reconciled.[34] Sovereign claims by littoral states over their adjacent shelf areas have not been challenged; rather the response has been one in kind. International Law authorities have also endorsed this practice, basing their arguments upon natural law, justice, or merely the reason of the thing. This doctrine, however, has been approved only to the extent that it applies to the shelf itself.[35] It is over

[31] *Continental Shelf*, 23 BRIT. Y. B. INT'L L. 333 at 334 (1946).
[32] Lord Mansfield, as quoted in POLLOCK, ESSAYS IN THE LAW, 64 (1922).
[33] Lauterpacht, *op. cit. supra* note 20, p. 376.
[34] Sir Cecil Hurst's advice to members of the Grotius Society undoubtedly contributed to the general air of reconciliation and understanding. "The world wants oil and I think we ought to all approach the study (of the continental shelf) not with the idea of magnifying the objections but with the intention of finding ways of overcoming the difficulties with which the whole subject is surrounded." *The Continental Shelf*, 34 GROTIUS SOCIETY, TRANS. FOR 1948, 153 at 169 (1949).
[35] See generally, Vallat, *op. cit. supra* note 31, 333; Lauterpacht, *op. cit. supra* note 20, 376; also MOUTON, *op. cit. supra* note 20, wherein many of Lauterpacht's ideas, have been incorporated; Borchard, *Resources of Continental Shelf*, 40 AM. J. INT'L L. 53 (1946); Selak, *Recent Developments in High Seas Fisheries Juris-*

the more extensive claims that the controversy can still be heard—it is here that the future of free navigation will be decided.

For our purpose, the continental shelf claims can be divided into three groups: (1) those claiming sovereign rights over the shelf alone,[36] (2) those claiming sovereign rights over the shelf as well as the epicontinental waters,[37] and (3) those claiming sovereign rights over a specific area of water, irrespective of the continental shelf.[38] Properly speaking, this third group has no connection with the doctrine of the continental shelf as it is generally understood, unless it be a causal one.[39] Gratis dicta to sovereignty over a broad expense of high seas, without regard to the continental shelf as a basis of such claims, are obviously contrary to International Law, as seen by section one of this article. Consequently, no attempt will be made to directly discuss those claims categorized in group three, but rather limit the comparisons to ones between group one and group two above, and the effect of each on freedom of navigaton.

Considering the Truman Proclamation of 1945 as representative of group one, *supra,* and the Argentina Declaration as representative of group two, *supra,* wherein lies the difference? The Argentina Declaration clearly lays claim to the continetnal shelf itself. The operative section reads: "It is hereby declared that the Argentine Epicontinental Sea and Continental Shelf are subject to the sovereign power of the Nation."[40] The United States proclamation purports to claim jurisdiction and control only over the "natural resources" within the shelf. The

diction Under Presidential Proclamation of 1945, 44 AM. J. INT'L L. 670 (1950); Young, *op. cit. supra* note 25, 225; GIDEL, LA PLATAFORMA CONTINENTAL ANTE EL DERECHO, 169 (Trans. by Rubio, 1950); Kunz, *Continental Shelf and International Law: Confusion and Abuse,* 50 AM. J. INT'L L. 828 (1956); LEE, DIVERGENCIES IN INTERNATIONAL LAW WITH SPECIAL REFERENCE TO THE LAW OF TERRITORIAL WATERS, Dissertation for M. Litt. Degree at University of Cambridge, June, 1951; Phleger, *Recent Developments Affecting the Regime of the High Seas,* 32 DEP'T STATE BULL. 934-40 (June 6, 1955); Smith, *Expanded Maritime Jurisdiction,* 19 GEO. WASH. L. REV. 469 (1950-51); Trigg, *National Sovereignty Over Maritime Resources,* 99 U. PA. L. REV. 82 (1950).

[36] Those states which issued proclamations of the "group one" character are: United States (1945); Bahamas (1948); Jamaica (1948); Guatemala (1949); Philippines (1949); Saudi Arabia (1949); United Kingdom of Bahrain—The Arab Shiekdoms (1949); Brazil (1950); British Honduras (1950); Falkland Islands (1950); Iran (1950); Pakistan (1950); Israel (1950).

[37] Those states which issued proclamations of the "group two" character are: Mexico (1945); Argentina (1946); Panama (1946); Iceland (1948); Costa Rica (1949); Australia (1953).

[38] Those states which issued proclamations of the "group three" character are: Chile (1947); Peru (1947); Nicaragua (1949); El Salvador (1950); Honduras (1950); Ecuador (1951); South Korea (1952).

[39] See Kunz' excellent article wherein he shows the incompatibility between the doctrine of the continental shelf and the "group three" type proclamations as well as the illegality of such claims. Kunz, *op. cit. supra* note 35, 828. For state protest notes on the Chilean and Peruvian claims, see *Replies from Governments to Questionnaires of the International Law Commission,* A/CN. 4/9, March 23, 1950, p. 113.

[40] 41 AM. J. INT'L L., SUPP. 12 (1947).

operative section reads: ". . . [T]he 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 coast of the United States as appertaining to the United States, subject to its jurisdiction and control."[41] Yet, ". . . [o]ne cannot read this proclamation (Truman's) without feeling that within the area of its Continental Shelf, the United States is claiming rights as large as sovereignty."[42] "It is difficult to see what distinction there is between control over the 'natural resources' and control over the subsoil and sea-bed themselves. Anything of value might be included in 'natural resources,' and any use or interference with the subsoil or sea-bed might equally be regarded as a use of or interference with their 'natural resources.' Therefore, it does not seem that the use of this expression imports any real limitation, and the claim may be taken as relating to the sea-bed and subsoil themselves."[43] For practical purposes, therefore, we can say that in this respect the American and Argentine claims are not conflicting.

The major difference between the United States Presidential Proclamation and the Argentina Declaration is in the purported sovereignty over the waters above the shelf, though both decrees expressly state that rights of free navigation are in no way affected. The operative section of the Truman Proclamation is: "The character is high seas of the water above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected,"[44] while the operative wording of the Argentina Declaration is: "For purposes of free navigation the character of the waters situated in the Argentine Epicontinental Sea and above the Argentine Continental Shelf, remains uneffected by the present declaration."[45]

The Argentine assertion of sovereignty over their epicontinental waters is to some degree a reasonable one. Is it not a matter of linguistic sophistry to hypothesize sovereignty over the shelf area without concurrent sovereignty over the epicontinental seas? Could a state fully exercise sovereignty over the shelf area, exploiting the natural resources, without complete freedom and control of the sea above? Obviously not. On the other hand, it is an antimony to assert sovereignty over waters, while at the same time asserting that free navigation will not thereby be affected. The principle of free navigation depends for its existence on free seas, *res communes*. Therefore, the only conceivable right conferred by the Argentina Declaration is that of innocent passage. If it is true that the lack of sovereign control over the epicontinental sea

[41] For full text of the Proclamation, see note 18 *supra*.
[42] Hurst, *op. cit. supra* note 34, at 162.
[43] Vallat, *op. cit. supra* note 31, at 336.
[44] See full text, note 18 *supra*.
[45] Full text printed in 41 AM. J. INT'L L., SUPP. 11 (1947).

affects adversely the scope of sovereign control over the shelf itself, then this latter control must suffer.

In view of the protests to the Argentine claims,[46] and in the opinions of recognized contemporary publicists,[47] sovereign claims to high seas are, a fortiori, illegal. Once a state is permitted to establish a legal claim over large areas of water merely on the strength of their superposition to the continental shelf, it is but a small step for other states to likewise claim sovereignty over their adjacent high seas, irrespective of the shelf. This is, in effect, what Chile and the other "group three" states have attempted to do.[48] Allow this to happen and the international community will have regressed to their 14th century position; a position they fought so valiantly to overcome.[49]

Of course, the exploitation of natural resources within the shelf will necessarily cause some obstruction to navigation; yet it is insisted that this obstruction should never be unreasonable. The tendency is to view the setting up of oil wells or pumping stations on waters over the shelf, as merely another "use" of the high seas, in the same manner that free navigation for transportation and commerce is a "use." Which use in each case will prevail shall be determined by an equitable balance of the conflicting interests.[50] What is and what is not unreasonable, must ultimately be decided on the merits of each case. It is conceivable that substantial interference with navigation could be justified in one case, while insignificant interference in another could be found totally unjustifiable. The decision of justification will initially lie with the coastal state, however, the International Law Commission provided in Article 73 concerning the *Law of the Sea,* that disputes not otherwise peacefully

[46] *Replies from Governments to Questionnaires of the International Law Commission, op. cit. supra* note 39, 113; 24 DEP'T STATE BULL. (Jan. 1, 1951).

[47] See generally the citation under footnote No. 35, *supra.*

[48] For arguments in support of the "group three" view, see Aramburu y Menchaca, *Character and Scope of the Rights Declared and Practiced Over the Continental Sea and Shelf,* 47 AM. J. INT'L L. 120 (1953); see also Young's attempted rebuttal, *Over-extension of the Continental Sea,* 47 AM. J. INT'L L. 454 (1953). Also in support of the "group three" claims, erroneously coupled with the concept of territorial waters, see Garioca's *argumentum ad hominem, The Continental Shelf and the Extension of the Territorial Sea,* 10 MIAMI L. Q. 490 (1956); and in answer, Bayitch, *International Fishery Problems in the Western Hempisphere,* 10 MIAMI L. Q. 499 (1956).

[49] Enforcement of the "group three" claims in the future might be considered a *casus belli.* The countries involved, though refusing to test their 200 mile claim to high seas in the International Court of Justice, have enforced the purported jurisdictional control. In 1955 Ecuador seized two American flag-vessels which were sailing within the 200 mile radius. One American seaman was seriously injured by Ecuadorean gun fire.—In 1954 Peruvian war vessels and airplanes seized five Panamanian flag-vessels, while sailing 300 miles off the Peruvian coast. The charge was labeled "piratical." It is clear that the "group three" states intend to enforce their decrees claiming exclusive fishing rights within the so-called 200 miles of *territorial* waters. Official protests were to no avail. Kunz, *op. cit. supra* note 35, 828.

[50] MOUTON, *op. cit. supra* note 20, c. 3.

settled concerning the "reasonableness of interference" be referred to the International Court of Justice.[51]

It is also conceded that the littoral state ought to be allowed to exercise sovereign controls over the people and tools used to exploit the shelf, as well as some control over the water area occupied in this endeavor, however, this latter control is in no way comparable to sovereignty. The coastal state, engaged in exploration and exploitation of its natural resources would have, for example, jurisdiction for the prevention and punishment of crime, as well as other causes of action now recognized in Admiralty.

The International Law Commission's final report of its eighth session, 1956, covering *The Law of the Sea,* as requested by the United Nations, included a set of rules which would give reasonable protection to both freedom of navigation and the continental shelf doctrine.[52]

Art. 68: The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources.

Art. 69: 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.

Art. 70: 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 on the continental shelf.

Art. 71. 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.

2. Subject to the provisions of paragraphs 1 and 5 of this article, the coastal state is entitled to construct and maintain on the continental shelf installations necessary for the exploration and exploitation of its natural resources, and to establish safety zones at a reasonable distance around such installations and take in those zones measures necessary for their protection.

3. Such installations, though under the jurisdiction of the

[51] Article 73, *op. cit. supra* note 27; 51 AM. J. INT'L L., SUPP. 178 (1957).

[52] U. N. GENERAL ASSEMBLY, 11th Sess. (Eight Session of International Law Commission), OFFICIAL RECORDS, Supp. No. 9 (A/3159); 51 AM. J. INT'L L., SUPP. 154 at 177-78 (1957).

For reports of the International Law Commission covering the seven preceding sessions, see the AM. J. INT'L L. SUPPLEMENTS: Vol. 44 (1950) (1st and 2d Sess.); Vol. 45 (1951) (3rd Sess.); Vol. 47 (1953) (4th Sess.); Vol. 48 (1954) (5th Sess.); Vol. 49 (1955) (6th Sess.); Vol. 50 (1956) (7th Sess.).

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.

4. Due notice must be given of any such installations constructed, and permanent means for giving warning of their presence must be maintained.
5. Neither the installations themselves, nor the said safety zones around them may be established in narrow channels or where interference may be caused in recognized sea lanes essential to international navigation.

Precepts of International Law ultimately depend upon international acceptance, be it expressed or implied. Without this acceptance, no Jus Gentium exists.[53] Which type of unilateral claims, those asserted by the Truman Proclamation or those asserted by the Argentina Declaration, will become established principles of international law, only the future can tell. Yet the direction of this acceptance cannot be doubted today. Free navigation—*juris et de jure!*

H. WALLACE ROBERTS.

Libel—Multi-State Defamation—Place of Commission of Tort

In recent years courts throughout the country have often been faced with the problems of multi-state defamation arising from national distribution of books and periodicals and from the wide coverage of radio and television programs. Yet, there has been almost a complete judicial reluctance to face these problems squarely. Many courts have failed to discuss the issue when it was obviously present.[1] In some cases the scope of recovery was not clearly set out;[2] and, even where the issue was correctly presented, courts have on occasion applied the law of the forum

[53] "International law consists in certain rules of conduct which modern civilized states regard as being binding on them in their relations with one another with a force comparable in nature and degree to the binding the conscientious person to obey the laws of his country, and which they also regard as being enforceable by appropriate means in case of infringement." HALL, *op. cit. supra* note 17, at 1. "What is internationlaw law? It is the body of principles and rules which civilized States consider as binding upon them in their mutual relations. It rests upon the consent of Sovereign States." Hughes, *The World Court as a Going Concern,* 16 A. B. A. J. 151 at 153 (1930).

[1] Levey v. Warner Bros. Pictures, Inc., 57 F. Supp. 40 (S. D. N. Y. 1944); Wright v. R. K. O. Radio Pictures, Inc., 55 F. Supp. 639 (D. Mass. 1944); Backus v. Look, Inc., 39 F. Supp. 662 (S. D. N. Y. 1941); Cannon v. Time, Inc., 39 F. Supp. 660 (S. D. N. Y. 1939); Means v. MacFadden Publications, Inc., 25 F. Supp. 993 (S. D. N. Y. 1939).

[2] Brinkley v. Fishbein, 110 F. 2d 62 (5th Cir.), *cert. denied,* 311 U. S. 672 (1940); Melvin v. Reid, 112 Cal. App. 285, 297 Pac. 91 (1931).