Michigan Law Review

Volume 64 | Issue 4

1966

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Recommended Citation

Avrum M. Gross, *The Maritime Boundaries of the States*, 64 MICH. L. REV. 639 (1966).

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THE MARITIME BOUNDARIES OF THE STATES

Aurum M. Gross*

It has long been recognized that the boundaries of coastal states encompass certain adjoining maritime areas. The settled *existence* of those boundaries, however, stands in marked contrast to the confusion which has surrounded their *location*. The geographic extent of the waters to which state jurisdiction extends has remained largely undetermined.

The recent development of refined methods for extracting minerals from offshore areas has translated questions of state jurisdiction into issues of substantial economic significance. In this regard, an increasing number of disputes have arisen between the states and the federal government, primarily over rights to offshore oil deposits. The litigation which has resulted from these disputes, while limited to particular aspects of boundary delineation, has inferentially established a framework of general application.¹ It is the purpose of this article, through analysis of this series of judicial decisions and their historical background, to translate that inferential framework into concrete principles of definition.

I. THE FUNDAMENTALS FOR ANALYSIS

The navigable waters of the globe are divisible into three basic categories—inland waters, marginal seas, and high seas. Since high seas are by definition those waters outside the general jurisdiction of any sovereign, a discussion of maritime boundaries, of necessity, focuses on the two remaining classifications.

The *marginal* or *territorial sea* is a band of waters abutting the coast of a nation over which that nation exercises exclusive jurisdiction, except for the right of innocent passage afforded to foreign vessels.² The outer limit of the marginal sea is by definition the seaward boundary of the nation.³

The *inland waters* of a nation are waters landward of its marginal

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1. See *United States v. California*, 381 U.S. 139 (1965); *United States v. Florida*, 363 U.S. 121 (1960); *United States v. Louisiana*, 363 U.S. 1 (1960); *United States v. Texas*, 339 U.S. 707 (1950); *United States v. Louisiana*, 339 U.S. 699 (1950); *United States v. California*, 332 U.S. 19 (1947); *United States v. Alaska*, 236 F. Supp. 388 (D. Alaska 1964).

2. I SHALOWITZ, *SHORE AND SEA BOUNDARIES* 23 (1962). See generally JESSUP, *TERRITORIAL WATERS AND MARITIME JURISDICTION* (1927).

3. *United States v. California*, 332 U.S. 19, 33 (1947); *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 122-23 (1923); 1 MOORE, *INTERNATIONAL LAW* § 145, at 704 (1906); 1 WHARTON, *INTERNATIONAL LAW* § 32, at 107 (1886).

sea, as well as waters within its land territory. Waters landward of the marginal sea, in turn, are those waters above the mean low water line of the sea, and waters landward of the seaward limits of ports, rivers, bays and harbors.⁴ To ascertain, in bays or other coastal indentations, the division between inland and territorial waters, a straight line, called a "baseline," is drawn from headland to headland across the mouth of the indentation or at some place within it. All waters landward of the line are inland; the marginal sea is measured seaward from the baseline.⁵

The distinction between inland waters and the marginal sea is of obvious significance where national interests are involved. However, this demarcation is no less significant in determining state boundaries, since state jurisdiction over the water areas is derived from different sources, with a resultant divergence in character depending upon which type of water area is involved.

The Supreme Court has repeatedly held that the individual states have ownership of all lands beneath inland waters within their respective boundaries, and exclusive jurisdiction over the water areas themselves.⁶ The Court's analysis was initially premised on the theory that the original states succeeded to all the rights of the English Crown.⁷ Similar authority was conceded to states admitted after the Revolution, on the theory that those states entered the Union on an "equal footing" with their predecessors.⁸

Before 1947 when the Court handed down its decision in *United States v. California*,⁹ it had been generally assumed that state authority over the marginal sea was identical to that possessed over inland waters.¹⁰ In the *California* case, however, the two maritime

4. COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* 158-60 (5th rev. ed. 1962); I SHALOWITZ, *op. cit. supra* note 2, app. A.

5. I SHALOWITZ, *op. cit. supra* note 2, at 281.

6. See, e.g., *Borax Consol., Ltd. v. Los Angeles*, 296 U.S. 10 (1935) (San Pedro Bay); *Port of Seattle v. Oregon & Wash. R.R.*, 255 U.S. 56 (1921) (Seattle Harbor); *The Abby Dodge*, 223 U.S. 166 (1912) (Gulf of Mexico and Straits of Florida); *Manchester v. Massachusetts*, 139 U.S. 240 (1891) (Buzzards Bay); *Weber v. Board of Harbor Comm'rs*, 85 U.S. (18 Wall.) 57 (1873) (San Francisco Bay); *Smith v. Maryland*, 59 U.S. (18 How.) 71 (1855) (Chesapeake Bay).

7. *Martin v. Waddell*, 41 U.S. (16 Pet.) 367, 410 (1842).

8. *Pollard v. Hagan*, 44 U.S. (3 How.) 212 (1845).

9. 332 U.S. 19 (1947).

10. As the Court itself subsequently noted, the assumption was "not without reason." See *United States v. Louisiana*, 363 U.S. 1, 16 (1960). In the *California* case the Court commented that in applying the doctrine of *Pollard v. Hagan*, 44 U.S. (3 How.) 212 (1845), it had "used language strong enough to indicate . . . that states not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not." 332 U.S. at 36.

areas were distinguished. In the Court's view, the marginal belt had been created purely as an attribute of federal sovereignty—an extension of jurisdiction for national, rather than local, purposes. Since this extension had occurred after the formation of the Union, the original states could not have derived rights in the marginal belt as an inherent attribute of their sovereignty.¹¹ Subsequently admitted states which claimed pre-admission authority over the marginal belt were denied continuing authority, since the "equal footing" concept required relinquishment of sovereignty over the area to the federal government upon entrance into the Union.¹²

The controversy in the *California* case arose out of a dispute between the federal government and the state of California over proprietary rights to lands beneath the marginal sea. The holding, however, raised doubts whether state jurisdiction of *any* kind existed beyond the inland water mark. Concern over this point was dispelled by the Court's decision the following year in *Toomer v. Witsell*,¹³ which recognized the states' authority over marginal sea areas within their boundaries. The *California* holding was restricted to instances in which the "paramount" federal authority over the marginal belt conflicted with an exercise of state jurisdiction. Since no such conflict was evident in *Toomer*, the principle of the exercise of state police power over marginal seas was upheld, although the specific regulations in question were invalidated on constitutional grounds.¹⁴

Federal authority over lands underlying the marginal sea was subsequently abrogated by the Submerged Lands Act.¹⁵ Section 3(a)(1) grants to the states "title to and ownership of" all lands underlying "navigable" waters within their boundaries.¹⁶ "Boundaries" include the boundaries possessed by a state at the time it entered the Union, or as subsequently approved by Congress, but in no event may such boundaries extend beyond three miles from the "coast line" in the Atlantic and Pacific Oceans, or beyond three leagues in the Gulf of Mexico.¹⁷ The "coast line" is defined as the

11. See 332 U.S. at 32-35.

12. *United States v. Texas*, 339 U.S. 707 (1950); *United States v. Louisiana*, 339 U.S. 699 (1950).

13. 334 U.S. 385 (1948).

14. See also *Skiriotes v. Florida*, 313 U.S. 69, 75 (1941), where state regulations over territorial waters were upheld "in the absence of conflicting federal legislation."

15. 67 Stat. 29 (1953), 43 U.S.C. §§ 1301-15 (1964). A general discussion of the Submerged Lands Act and the companion Outer Continental Shelf Lands Act, 67 Stat. 462 (1953), 43 U.S.C. §§ 1331-43 (1964), may be found in Wright, *Jurisdiction in the Tidelands*, 32 Tul. L. Rev. 175 (1958).

16. 67 Stat. 30 (1953), 43 U.S.C. § 1311(a)(1) (1964).

17. Submerged Lands Act § 2(b), 67 Stat. 29 (1953), 43 U.S.C. § 1301(b) (1964).

low water mark on the coast or the "seaward limit of inland waters."¹⁸

The significance of the Submerged Lands Act is not limited to the language of grant; section 4 of the act provides that states which had no defined maritime boundary when admitted to the Union may extend their boundaries to a point not to exceed three miles from the "coast line."¹⁹ The insertion of this provision was necessitated by the fact that only a limited number of states possessed maritime boundaries which would have permitted them to claim the benefits of section 3(a). The original states all claimed inherent sovereignty over inland waters along the coast, but they made no claim of sovereignty beyond the inland water boundary.²⁰ Subsequently admitted coastal states entered the Union with authority over inland waters equal to that of their predecessors, but only a limited number of the coastal states possessed maritime boundaries approved by Congress in their acts of admission.²¹ Therefore, in addition to the obvious importance of the Submerged Lands Act as a transfer of federal dominion to all of the coastal states, the act also stands as an overall congressional sanction of the maritime boundaries of a substantial number of states.

It is relevant to note here the absolute necessity of congressional approval for the establishment of a valid maritime boundary. It is true that a state's jurisdiction over its residents has been judicially recognized to extend beyond traditional boundary concepts, without reference to congressional action of any kind.²² Such recognition, however, stands merely as a concession to state authority over state residents wherever they are, and not as support for the proposition that state action is all that is necessary for the establishment of a

18. Submerged Lands Act § 2(c), 67 Stat. 29 (1953), 43 U.S.C. § 1301(c) (1964).

19. 67 Stat. 31 (1953), 43 U.S.C. § 1312 (1964).

20. See *United States v. California*, 332 U.S. 19, 32-33 (1947).

21. The acts of admission of Alabama (Act of March 2, 1819, 3 Stat. 490), Alaska (Act of July 7, 1958, 72 Stat. 339), Hawaii (Act of March 18, 1959, 73 Stat. 4), Louisiana (Act of April 8, 1812, 2 Stat. 702), Mississippi (Act of March 1, 1817, 3 Stat. 348), and Oregon (Act of February 14, 1859, 11 Stat. 383) make specific reference to maritime boundaries. The constitutions of the states of California (1849, art. XII), Florida (1868, art. 1), and Washington (1889, art. XXIV), which describe maritime boundaries, were all expressly or impliedly approved by Congress. See respectively: Act of September 9, 1850, 9 Stat. 452; Act of June 25, 1868, 15 Stat. 73; Act of February 22, 1899, 25 Stat. 676. Texas was admitted to the Union by the Annexation Resolution of Dec. 29, 1845, 9 Stat. 108, wherein Congress consented that "the territory properly included within, and rightfully belonging to, the Republic of Texas, might be erected into a new State." The Republic of Texas, including a marine boundary in the Gulf of Mexico, was defined by the Texas Congress on December 19, 1836 (1 Laws, Republic of Texas 1193).

22. *Skiriotes v. Florida*, 313 U.S. 69 (1941). See also *Cook v. Tait*, 265 U.S. 47 (1924) (assertion of federal jurisdiction over United States citizens outside country); *United States v. Bowman*, 260 U.S. 94 (1922) (same).

valid "boundary." On the contrary, the Supreme Court has clearly stated that the power to prescribe state boundaries lies exclusively with Congress, and, while that power may be exercised through approval of a state's delineation of its boundaries, it is the approval, rather than the state action, that establishes the boundary.²³

The primary difficulty in maritime boundary delineation lies in the fact that neither the Submerged Lands Act nor any other source attempts to define clearly the areas circumscribed by these boundaries. Although a description of inland waters is necessary to a determination of the boundaries of all coastal states, no such descriptions are apparent from an analysis of colonial boundaries, and none is specified in any act of admission or in the Submerged Lands Act. Several statehood acts describe maritime boundaries in general terms, such as "appurtenant" territorial waters.²⁴ The Submerged Lands Act²⁵ and a few of the statehood acts²⁶ provide a specific width for the marginal sea, but make no attempt to prescribe the manner in which the defined belt of waters is to be located in relation to the coast.²⁷ A useful theory of boundary delineation, therefore, requires a clarification of terminology. The "marginal sea" and "inland waters" of the states must be defined in a manner which lends itself readily to geographic description.

II. DELINEATION OF THE MARGINAL SEA OF THE STATES

Determination of the extent of marginal-sea area included within a state boundary is the least complex aspect of the problem. The majority of states entered the Union with no defined maritime boundary in their acts of admission,²⁸ and thus derived their authority over marginal-sea areas entirely as a result of the congressional grant in the Submerged Lands Act. In this regard, section 4 of the act is specific in limiting the maximum breadth of the boundary extension for these states to three miles from the coast line. In contrast, however, greater difficulties in determining the width of the marginal sea have developed with respect to those few states

23. See note 38 *infra*.

24. See, *e.g.*, statehood acts of Alaska and Hawaii cited in note 21 *supra*.

25. § 4, 67 Stat. 31 (1953), 43 U.S.C. § 1312 (1964).

26. See statehood act of Oregon and constitutions of Florida, California, and Washington cited in note 21 *supra*.

27. The difficult problem of determining the exact point on the coast from which to measure the marginal-sea belt is discussed in Part III *infra*.

28. As noted above, see note 20 *supra* and accompanying text, the thirteen original states asserted no maritime claims outside of inland waters. In addition, neither the statehood act nor the original constitution of the state of Maine established any maritime boundary whatsoever. See Act of March 3, 1820, 3 Stat. 544.

which entered the Union with congressionally approved boundaries apparently in excess of three miles from the coast. Texas, Louisiana, Alabama, Mississippi and Florida all claimed such boundaries,²⁹ but the United States Government has continually refused to recognize the validity of claims beyond three miles, on the theory that since the marginal sea of the nation is established at three miles from the coast,³⁰ state authority cannot extend beyond the three-mile limit.

The claims of Louisiana, Mississippi, and Alabama were all predicated on somewhat similar clauses in their acts of admission, which described Mississippi and Alabama as "including all islands within six leagues of the shore,"³¹ and described Louisiana as "including all islands within three leagues of the coast."³² The states contended that this reference to offshore islands implied that all waters between the islands and the mainland were included within the territory of the state. The Supreme Court rejected this interpretation, holding that although the islands were part of the state, the only water areas similarly included were the various three-mile belts around the islands.³³ The Court found no conflict between state and national policy in this regard, since, in its opinion, the acts of admission evinced no attempt by the United States to claim any more of the marginal sea than that sanctioned by national policy.

In two cases involving Texas³⁴ and Florida,³⁵ however, a conflict between state and federal policy was squarely presented. Both states entered the Union with congressionally approved boundaries in the Gulf of Mexico three leagues from the shore.³⁶ Congressional action in this regard was in direct contrast to the announced foreign policy of the State Department, which advocates a marginal sea of three miles for the United States and other countries.³⁷ The Court's resolu-

29. See *United States v. Florida*, 363 U.S. 121 (1960); *United States v. Louisiana*, 363 U.S. 1 (1960).

30. *United States v. California*, 332 U.S. 19 (1947); *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 122 (1922). The traditional position of the United States in support of the three-mile limit is reviewed in 1 MOORE, *op. cit. supra* note 3, § 145, at 705; 1 WHARTON, *op. cit. supra* note 3, § 32, at 107.

31. Alabama: Act of March 2, 1819, 3 Stat. 490; Mississippi: Act of March 1, 1817, 3 Stat. 348.

32. Act of April 8, 1812, 2 Stat. 702.

33. *United States v. Louisiana*, 363 U.S. 1, 66-83 (1960).

34. *Id.* at 36-65. See text accompanying note 122 *infra*.

35. *United States v. Florida*, 363 U.S. 121 (1960).

36. See note 21 *supra*.

37. The Court, in *United States v. Louisiana*, 363 U.S. 1 (1960), was careful to point out that the policy of the executive branch establishes a "boundary" for the nation only in a "special sense." The United States, like other nations, has traditionally exerted control over certain activities, such as smuggling, at varying distances from its coast. See Anti-Smuggling Act, 49 Stat. 517 (1935), as amended, 19 U.S.C. §§ 1701-11

tion of this apparent conflict was a recognition of the congressionally approved boundaries, with a further recognition of the inherent power of the executive branch to control the exercise of certain activities within the boundaries.³⁸

An example may clarify the foregoing result. The exercise of state control over fishing up to a boundary of three marine leagues is obviously inconsistent with the foreign policy of the nation, which recognizes United States jurisdiction only up to a boundary of three miles. Thus, although Texas and Florida have congressionally approved maritime boundaries three leagues from the coast, the foreign policy of the nation prohibits those states from exercising rights over fisheries outside of the traditional three-mile marginal belt. This curtailment does not affect the boundary itself, but only the rights which may be exercised within it, much as a federal treaty may curtail state police power over areas of land within state borders.³⁹

The limiting effect of foreign policy disappears when the boundary question involves a matter of solely domestic concern. The Submerged Lands Act is directed to just such a situation. Since the United States has already laid claim, as against all other nations, to all mineral resources underlying the continental shelf,⁴⁰ the division of those resources between the states and the federal governments is a purely domestic problem; whatever the division, the foreign policy of the nation will remain unaffected.⁴¹ Therefore, since in the

(1964). See also 62 Stat. 799 (1948), 18 U.S.C. § 2152 (1964) (defense purposes). While the three-mile limit may indicate the point at which these rights and others are concentrated, even the marginal sea is subject to rights of innocent passage by foreign vessels. Thus it can be seen that the authority which may be asserted to protect a maritime boundary is more limited than in the case of a boundary dividing the land areas of two sovereigns.

38. "The power to admit new States resides in Congress. The President, on the other hand, is the constitutional representative of the United States in its dealings with foreign nations. From the former springs the power to establish state boundaries; from the latter comes the power to determine how far this country will claim territorial rights in the marginal sea as against other nations." *United States v. Louisiana*, *supra* note 37, at 35. In a similar vein, the Court noted: "It may indeed be that the Executive, in the exercise of its power, can limit the enjoyment of certain incidents of a Congressionally conferred boundary, but it does not fix that boundary." *Id.* at 51.

39. See *United States v. Pink*, 315 U.S. 203 (1942); *United States v. Belmont*, 301 U.S. 324 (1937); *Missouri v. Holland*, 252 U.S. 416 (1920).

40. By Presidential Proclamation No. 2667, 10 Fed. Reg. 12303 (1945), the United States asserted "jurisdiction and control" over "the national resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States."

41. "[I]n light of the purely domestic purposes of the Act, we see no irreconcilable conflict between the Executive policy relied on by the Government and the historical events claimed to have fixed seaward boundaries for some States in excess of three miles." *United States v. Louisiana*, 363 U.S. 1, 33 (1960).

Submerged Lands Act the states were granted all lands underlying navigable waters within their boundaries as previously approved by Congress. Texas and Florida were both free to exercise rights of ownership to the full extent of those boundaries, regardless of whether their rights might be limited as to other activities.

Thus, it can be seen that the geographic breadth of the marginal sea is readily ascertainable. For all coastal states but two, the maximum extent of maritime areas which may be included within the boundary is a three-mile belt measured from the coast. In the two remaining states, the boundary is located three leagues seaward of the coast in the Gulf Stream, and three miles seaward at other locations.

III. DELINEATION OF THE INLAND WATERS OF THE STATES

The most difficult problem of boundary location is not in determining the breadth of the marginal-sea belt, but rather its location. There is general agreement that the marginal sea is measured from the low-water mark on the coast or from the seaward limit of inland waters.⁴² While determination of the low-water mark has caused only minor difficulty,⁴³ the absence of any settled definition of "the seaward limit of inland waters" has created problems of the greatest magnitude.

Prior to attempting a definition, it is necessary to review certain historical developments in the international law of the sea. Although marginal-sea areas have been described precisely by Congress, no specific domestic definition of inland waters is available. Fortunately, however, a definition of inland waters has evolved within the framework of the law of nations; a meaningful analysis of the term must commence with a review of that evolution.

A. *Inland Waters as Defined by International Law*

Where the coastline of a nation is straight or subject to only slight curvature, generally accepted principles of international law require that the marginal-sea belt, whatever its width, follow the

42. See authorities cited note 44 *infra*.

43. Since there are two low tides each day on any particular coast, there had been some question as to whether the low-water mark was to be derived from the average of all low tides, or from averaging only the lower low tides. Article 3 of the Geneva Convention of the Law of the Sea uses "the low-water line along the coast as marked on large-scale charts officially recognized by the Coastal State." Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, art. 3, T.I.A.S. No. 5639. For the United States, the recognized charts are those of the United States Coast and Geodetic Survey, which adopt the lower low-water line. See *United States v. California*, 381 U.S. 139, 176 (1965).

sinuosities of the low-water mark on the coast.⁴⁴ In areas where the coastline is sharply indented, however, the task of locating the marginal sea is more complex. In the case of harbors, bays, and estuaries, it has traditionally been conceded that the coastal nation may measure the marginal sea from a line drawn across the mouth of the indentation or at some point within it. Waters landward of this baseline are internal waters of the coastal nation.⁴⁵

The establishment of a precise formula for ascertaining the proper location and maximum length of a baseline within bays has created one of the more substantial and durable disputes among nations. The earliest numerical formulation was the most obvious. Since three miles was the normally accepted width of a territorial sea, any opening up to six miles in width was already subject to control by a coastal nation surrounding the indentation; it was therefore argued that a baseline six miles in length was proper for separation of inland and territorial waters within bays.⁴⁶ The six-mile limitation, while reasonable in theory, never gained general acceptance as a rule of international law. Certain nations, for reasons of convenience, insisted that an opening of ten miles could validly be enclosed by a baseline.⁴⁷ Moreover, a leading group of international experts asserted that twelve miles would constitute a valid closing line.⁴⁸ While seeking a precise definition of inland waters, nations were equally anxious to disregard any specific mathematical criterion when it suited their advantage to do so.⁴⁹

44. *United States v. California*, 332 U.S. 19 (1947); *Borax Consol., Ltd. v. Los Angeles*, 296 U.S. 10 (1935); Letter from Secretary of State Bayard to Secretary of the Treasury Manning, May 28, 1886, 1 MOORE, *op. cit. supra* note 3, § 149, at 718-21. *But see* 1 KENT, COMMENTARIES ON AMERICAN LAW 29-30 (1832), where the author advocates measurement of the marginal sea of the United States from straight lines drawn between distant headlands, "as for instance, from Cape Ann to Cape Cod." Kent's view is cited approvingly in *The Kodiak*, 53 Fed. 126 (D. Alaska 1892).

45. Early writings suggest a disparity of view on this matter. Despagnet and Hall, whose views are reprinted in *THE EXTENT OF THE MARGINAL SEA* 53-58, 64-83 (Crocker ed. 1919), both apparently believed that a baseline in bays represented the outer limit of the marginal sea. This view was soon discarded. See JESSUP, *op. cit. supra* note 2, at 475.

46. The six-mile rule has been referred to by the Supreme Court as "the minimum limit of the territorial jurisdiction of a nation over tide-waters." *Manchester v. Massachusetts*, 139 U.S. 240, 258 (1891). See COLOMBOS, *op. cit. supra* note 4, at 162.

47. The origin of the ten-mile figure has been traced to an 1893 treaty between England and France. Subsequent international compacts adopted this limitation, often verbatim. See COLOMBOS, *op. cit. supra* note 4, at 162-63; writings of Bonfils, de Lapradelle, and Latour, reprinted in *THE EXTENT OF THE MARGINAL SEA*, *op. cit. supra* note 45, at 11-13, 183-274.

48. See SCOTT, RESOLUTIONS OF THE INSTITUTE OF INTERNATIONAL LAW 114 (1916).

49. See *Direct United States Cable Co. v. Anglo-American Tel. Co.*, 2 App. Cas. 394 (P.C. 1877) (Newfoundland) (*Conception Bay*); *The Alleganean* (*Stetson v. United States*); 4 MOORE, INTERNATIONAL ARBITRATIONS 4332 (1898) (2d Ct. of Comm'rs of Ala. Claims) (*Chesapeake Bay*); 1 OPS. ATT'Y GEN. 33 (1793) (*Delaware Bay*).

The first test of the existence of any established rule of international law defining inland waters within bays arose in the North Atlantic Coast Fisheries Arbitration.⁵⁰ The dispute concerned the interpretation of an 1818 treaty between the United States and Great Britain which prohibited American fishermen from fishing within three nautical miles of any "bays, creeks or harbors of His Britannic Majesty's dominions in America."⁵¹ The British Government contended that the term "bays" referred to all indentations, regardless of the distance between headlands at their mouth. The United States argued that, under international law in force at the time of the treaty, "bays" meant only small indentations, and that the maximum length of a closing line between headlands in a bay was six miles. The arbitration tribunal rejected all subsequently accepted lines of a particular length as arising out of "international acts" and "relating to coasts of a different configuration and conditions of a different character."⁵² Instead, the tribunal couched its understanding of applicable principles in general terms, holding that the three-mile marginal-sea belt was "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."⁵³

Although the tribunal refused to recognize any accepted rule of international law mathematically delimiting the size of bays, it was willing to concede that its general statement of principle was "not entirely satisfactory as to its practical applicability."⁵⁴ Therefore, the tribunal suggested that both parties agree that, with certain exceptions, the baseline in bays should be drawn at the first point therein "where the width does not exceed ten miles."⁵⁵ The result of the decision, therefore, was a rejection of the ten-mile rule as a principle of international law, and a concurrent adoption of that length as a matter of practicality.

The holding of this arbitration tribunal, coupled with the subsequent failure of the Hague Conference on the Law of the Sea to arrive at any significant agreement on the question of closing lines

50. S. Doc. No. 870, 61st Cong., 3d Sess. (1910-11). The Arbitration was held at The Hague in 1910. The most comprehensive analysis of the proceeding is found in JESSUP, *op. cit. supra* note 2, at 363-82.

51. Convention with Great Britain, respecting fisheries, boundary, and the restoration of slaves, art. I, Oct. 20, 1818, reprinted in *THE EXTENT OF THE MARGINAL SEA*, *op. cit. supra* note 45, at 646-47. See JESSUP, *op. cit. supra* note 2, at 365.

52. *Id.* at 374.

53. *Id.* at 377.

54. *Ibid.*

55. *Ibid.*

in bays,⁵⁶ cast great doubt on the international applicability of the ten-mile rule. Moreover, the concept of a standard length for all baselines was rejected by the International Court of Justice in the *Fisheries Case (United Kingdom v. Norway)*.⁵⁷ The issue before the court concerned the validity of Norway's claim that vast water areas abutting her coast were inland waters. Great Britain, faced with a possible loss of valuable fishing rights, argued that baselines drawn across fjords and bays were limited to a maximum length of ten miles. The court rejected the British argument, holding that:

[A]lthough the ten-mile rule has been accepted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law.⁵⁸

After rejecting the ten-mile baseline approach as a rule of law, the International Court upheld a Norwegian scheme of boundary measurement which exhibited a new and flexible approach toward the definition of inland waters. Norway's coastline is highly irregular and liberally sprinkled with nearby rock formations and islands. Instead of measuring its marginal-sea belt from the low-water mark on the coast, Norway established a straight baseline system circumscribing the outer fringe of the so-called *Skeerkagaard*, or island fringe. For this purpose, a line was drawn from the mainland to the outer limit of the island fringe and thence from island to island until eventually it returned to the mainland. Waters landward of the line were claimed as inland, and the marginal belt was extended seaward from this artificial "coast." It is interesting to note that this baseline utilized by Norway occasionally reached sixty miles or more in length between points of land. Nevertheless, in the court's view a claim to inland waters was to be tested by reference to three basic criteria:

56. The 1930 Hague Conference was called to consider the codification of various branches of international law, including the law of the sea. See RESEARCH IN INTERNATIONAL LAW, DRAFT CONVENTIONS AND COMMENTS ON NATIONALITY, RESPONSIBILITY OF STATES FOR INJURIES TO ALIENS, AND TERRITORIAL WATERS 243-45 (1929), as reprinted in 23 AM. J. INT'L L. Supp. (1929). Neither the draft nor any substitute convention was adopted at the conference. United States proposals in regard to bays, together with French proposals on the same subject, are reprinted in 3 ACTS OF THE CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW 195-97 (League of Nations Pub. No. 1930, v. 16).

57. [1951] I.C.J. Rep. 116.

58. *Id.* at 131.

1. the close dependence of the territorial sea upon the land domain;
2. the more or less close relationship existing between certain sea areas and the land formations which divide or surround them; [and]
3. economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage.⁵⁹

The court's approval of the Norwegian system heralded a totally new approach to the delineation of inland waters. The decision rejected any mathematical limitation on baselines, and, by approving the straight-baseline method, the court sanctioned the subjection of large areas of water previously thought of as marginal or high seas to the exclusive jurisdiction of coastal nations. The significance of this approval can readily be shown by reference to the accepted methods of delineation which preceded it. Formerly, islands abutting a coast were treated as separate land areas, possessing their own inland waters and marginal seas.⁶⁰ Water areas which were between the islands and the coast, but outside the marginal-sea belt of either land mass, were defined as high seas. Even if an island were within six miles of a coast, the intervening water areas were considered marginal seas, and were therefore subject to rights of innocent passage by foreign vessels.⁶¹ The straight-baseline method, which treats island clusters as extensions of the coast, may therefore have an enormous effect on the maritime rights of nations.

The *Fisheries Case*, coupled with general concern over the lack of fixed standards for ascertaining inland waters, set the stage for debate on the question at the First Law of the Sea Conference convened at Geneva in 1958.⁶² This conference was the first serious at-

59. *Id.* at 133.

60. See COLOMBOS, *INTERNATIONAL LAW OF THE SEA* 103-04 (5th rev. ed. 1962); Letter from Secretary Webb to Attorney General McGrath, Nov. 13, 1951, *Hearings on S.J. Res. 13 Before the Senate Committee on Interior and Insular Affairs*, 83d Cong., 1st Sess. 460, at 461 (1953); Percy, *Measurement of the United States Territorial Sea*, U.S. Bureau of Public Affairs, Dep't of State Publication No. 6879 (1959).

61. A strait between an island or islands and the mainland may not be subjected to the *exclusive* control of a coastal nation, regardless of width, if the strait serves as a useful route for international passage between two areas of high seas. Judgment of April 9, 1949, [1949] I.C.J. Rep. 4, 28 (Corfu Channel Case). The fact that international traffic is limited, or almost non-existent, is not decisive. See 1 SHALOWITZ, *SHORE AND SEA BOUNDARIES* 75-76 (1962).

62. The Conference was convened pursuant to a resolution of the United Nations General Assembly. U.N. GEN. ASS. OFF. REC. 11th Sess., Supp. No. 17, at 54 (A/3572) (1957), stated that the General Assembly: "*Decides*, in accordance with the recommendation contained in paragraph 28 of the report of the International Law Commission covering the work of its eighth session, that an international conference of plenipotentiaries should be convoked to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political as-

tempt to establish a codification of the law of the sea since the International Conference at The Hague in 1930. Although the Geneva Conference, like its predecessor, was unable to resolve the key question of the maximum width of the territorial sea,⁶³ it did result in general agreement on rules for the maximum length of baselines for inland bays, as well as the establishment of a series of conditions for the use of straight baselines.

Although the *Fisheries Case* apparently destroyed the possibility of adopting the ten-mile rule for bays, the majority of the participants at Geneva agreed that some limitation on the length of the bay-closing line was necessary.⁶⁴ The effect of this concurrence of opinion is reflected in article 7 of the adopted Convention on the Territorial Sea and Contiguous Zone, which provides that where the distance between the low-water marks of 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. Waters landward of the line are inland waters of the coastal nation.

It is quite clear, however, that before such a baseline can be applied in particular cases there must be a prior determination of what types of indentations qualify as "bays." Indiscriminate application of the twenty-four mile rule to each curvature in the coast, regardless of depth, would obviously be inconsistent with the overall purpose of the rule to recognize the legitimate interests of a nation over its coastal waters. Therefore, the Convention adopted the so-called semi-circular test of definition. Under this test, as expressed in article 7 of the Convention, true bays must constitute more than mere curvatures in the coast, contain landlocked waters, and contain an area as large or larger than that of a semi-circle whose diameter is a line drawn across the mouth of the indentation.⁶⁵

pects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate" Eighty-six nations and more than seven hundred delegates attended the Conference. A review of their work is found in Jessup, *The United Nations Conference on the Law of the Sea*, 59 COLUM. L. REV. 234 (1959).

63. A second conference convened in Geneva on March 17, 1960, and was also unable to reach agreement on this matter. See I SHALOWITZ, *op. cit. supra* note 61, at 269-76.

64. The draft articles prepared for the Convention by the International Law Commission originally incorporated a closing line of twenty-five miles. When the proposal met with a cool reception by some states, the Commission reduced the line to fifteen miles. 1956 I.L.C. YEARBOOK I, 190-93, 195-97.

65. The full text of article 7 is as follows:

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

The Convention was also successful in reaching agreement on limiting the application of the straight-baseline method for delineating inland waters. Article 4 recognizes that a coastal nation may establish straight baselines from point to point on its coast if the following conditions exist: (1) The coastline is deeply indented or cut into, or there is a fringe of islands in the immediate vicinity of the coast; (2) the drawing of baselines does not depart to an appreciable extent from the general direction of the coast; and (3) the sea areas within the lines bear a sufficient nexus to the land areas to be subject to the domain of the nation over its internal waters.

In addition to establishing standards for the application of the straight-baseline method, the Convention imposed specific limits on its utilization in certain areas. Section 5 of article 4 prohibits the use of straight baselines where the effect is to cut off from the high seas the territorial waters of another nation. Section 2 of article 5 specifies that if straight baselines enclose waters previously thought to be territorial or high seas, a right of innocent passage exists through such waters. Thus in essence the Convention created a new concept of inland waters which could be subject to international rights.⁶⁸

penetration is in such proportion to the width of its mouth as to contain land-locked 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 areas 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. Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, art. 7, T.I.A.S. No. 5639.

66. Aside from the two major issues covered in article 4, para. 5, and article 5, para. 2, the Convention also disposed of a multitude of other boundary problems. The difficulties associated with measurement of the marginal sea from harbors were resolved by article 8, which prescribes measurement from "the outermost permanent harbour works which form an integral part of the harbour system." Article 13 provides that if a river flows directly into the sea, the marginal sea is to be measured from a straight line drawn across the mouth between points on the low tide line of

The ratification of twenty-two nations required by the Convention was achieved on September 10, 1964. Consequently, there are at present established rules of international law defining the extent of the inland waters of coastal nations. These rules, in part, recognize that all "true" bays which may be enclosed by a twenty-four mile closing line are inland bays of the coastal nation. In addition, if conditions are proper, a nation may establish straight baselines as the line of demarcation between inland waters and the marginal sea.

B. *The Inland-Water Policy of the Executive Branch*

The rules of international law defining inland waters are, to a large extent, permissive. Thus, within certain limits individual nations are free to formulate the rules of definition which they feel can most reasonably be applied to their coasts. The establishment of such rules for the coast of the United States is peculiarly and traditionally a function of the executive branch of the Government.⁶⁷

Early in the nation's development, claims over inland waters were understandably vague. Secretary of State Jefferson, in a letter to French Secretary Gnet, claimed authority over all "landlocked bays" of the United States, but he offered no explanation as to how those bays were to be defined.⁶⁸ Similarly, without reference to closing lines of any nature, Attorney General Edmund Randolph once asserted an American claim to all of Chesapeake Bay, which is twelve miles in width.⁶⁹ The first precise statement of United States policy on inland waters appears in a letter dated May 28, 1886, from Secretary of State Bayard to Treasury Secretary Manning.⁷⁰ Referring to the propriety of drawing a baseline between headlands within bays, Secretary Bayard stated that "the headland theory, as it is called, has been uniformly rejected by our Government"⁷¹

its banks. Article 11 specifies what low tide elevations may be used for measurement of the marginal sea. Article 10 reasserts the doctrine that each island possesses its own marginal sea.

67. As a general matter, the extent of United States sovereignty is a political question, "the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government." *Jones v. United States*, 137 U.S. 202, 212 (1890). See also *Vermilya-Brown Co. v. Connell*, 335 U.S. 377 (1948); *United States v. California*, 332 U.S. 19 (1947); *Pearcy v. Stranahan*, 205 U.S. 257 (1907); *In re Cooper*, 143 U.S. 472 (1892). Congress has never acted in any manner to define the inland waters of the nation, with the result that the actions of the executive branch stand alone in this field.

68. 1 AMERICAN STATE PAPERS, FOREIGN RELATIONS 183 (1833).

69. 1 OPS. ATT'Y GEN. 32 (1793).

70. 1 MOORE, INTERNATIONAL LAW § 149, at 718-21 (1906).

71. While rejecting the utilization of any baseline for the United States coast, the

As the ten-mile baseline became sanctioned by continued use, the United States eventually adopted this standard in its international affairs. On February 15, 1888, following a pattern suggested by Umpire Bates in the case of *The Washington*,⁷² the State Department entered into a treaty with Great Britain which incorporated the ten-mile rule.⁷³ Notwithstanding the fact that the Senate rejected this treaty,⁷⁴ the State Department apparently remained convinced that a ten-mile closing line was proper under international law, and counsel for the United States asserted the applicability of the rule in the Alaska Boundary Arbitration of 1904.⁷⁵ At the Hague Conference of 1930, the United States urged the adoption of the ten-mile standard as proper for defining inland waters within bays.⁷⁶ On November 13, 1951, Acting Secretary of State Webb declared American adherence to the ten-mile rule in a detailed letter to Attorney General McGrath, and this policy was reaffirmed in a subsequent letter from Secretary of State Acheson to the Attorney General on February 12, 1952.⁷⁷

Secretary Acheson's declaration was necessitated by the fact that the *Fisheries Case* had substantially destroyed the foundation on which previous American policy had been premised. As the Secretary noted, "some . . . 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

Secretary nonetheless recognized the practice of other nations. "The 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." *Id.* at 719.

72. 4 MOORE, INTERNATIONAL ARBITRATIONS 4342 (1898).

73. Article III provided: "The three marine miles mentioned in Article I of the convention of October 20, 1818 shall be measured seaward from low water mark; but at every bay, creek, harbor, not otherwise specially provided for in this Treaty, such three marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbor, in the part nearest the entrance at the first point where the width does not exceed ten marine miles." 2 S. Misc. Doc. No. 109, 50th Cong., 1st Sess. 156 (1888).

74. 19 CONG. REC. 7768 (1888).

75. The arbitration involved the location of the boundary between southern Alaska and Canada, which, in the Anglo-Russian Treaty of 1825, was set at ten leagues inland from the "coast." The arguments pertaining to boundaries may be found in 7 Alaska Boundary Arbitration, S. Doc. No. 162, 58th Cong., 2d Sess. 844 (1904).

76. 3 ACTS OF THE CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW 197-99 (League of Nations Pub. No. 1930, v. 16).

77. The two letters are printed in *Hearings on S.J. Res. 13*, *supra* note 60, at 460-62.

law."⁷⁸ Primary among those principles were the ten-mile baseline rule and the measurement of the marginal sea from the sinuosities of the coast. As the Secretary was careful to point out, the failure of the court to accept the foregoing principles as rules of international law did not mean that they were in conflict with that law. Indeed, the decision left "the choice of the method of delimitation applicable under such criteria to the national state."⁷⁹ Exercising its prerogative in this regard, the Department of State specifically refused to utilize straight baselines to delineate inland waters of the nation, and confirmed its adherence to the ten-mile rule as proper for definition of inland bays.

The United States was a signatory of the Geneva Convention, and although the Department of State undoubtedly would have preferred the adoption of less liberal rules for delineating maritime boundaries, particularly in reference to the twenty-four mile closing line for bays, the chairman of the American delegation to the Convention subsequently indicated that the United States was not dissatisfied with any of the final provisions.⁸⁰ The Senate indicated its consent to the Convention in 1960,⁸¹ and on March 24, 1961, presidential ratification was attained. Acting under the terms of the Convention, the United States has subsequently claimed that all American bays which may be closed by a twenty-four mile line are inland waters.⁸² The Government has not, however, sought to apply the straight-baseline method to any portion of the United States coast.

C. *Inland Waters as Defined by Congress—The Submerged Lands Act*

Thus far, we have considered the definition of inland waters within the framework of international relations. Although the definitions utilized by the executive branch of our government have obvious domestic significance, the definitions themselves are not based entirely on internal considerations. Whatever definitions the United States adopts for itself will affect, at least indirectly, the interests of other nations, and the constantly reiterated desire of this

78. *Id.* at 462.

79. *Ibid.*

80. See *Hearings Before the Senate Committee on Foreign Relations on Executives J. to N. Inclusive*, 86th Cong., 2d Sess. 92 (Question No. 29) (1960).

81. 106 CONG. REC. 11187-96 (1960).

82. Letter from Dean Rusk, Secretary of State, to Robert Kennedy, Attorney General, Jan. 15, 1963, in 2 INTERNATIONAL LEGAL MATERIALS 527 (1963).

nation to maximize the extent of the high seas has had a significant limiting effect on our own claims to inland waters.⁸³

Congressional passage of the Submerged Lands Act created the necessity for a definition of inland waters in an entirely different context. The primary purpose of the act was to provide for a division of offshore mineral resources between state and federal authority. Since the areas in question had already been claimed by the federal government as against all other nations, the statutory definition of inland waters adopted in the act would not affect the foreign policy of the executive branch. Thus, Congress was free to adopt whatever definition of the term it felt would best effectuate the policies of the act.

The significance of a definition of "inland waters," as used in the act, is twofold. First, the congressional grant of lands underlying navigable waters within state boundaries is limited to three miles from the "coast line" in most cases and three leagues from the coast in limited instances.⁸⁴ The term "coast line" is, in part, defined as the "seaward limit of inland waters."⁸⁵ Second, for those states which had no clearly defined maritime boundary at the date of passage, the act permits an extension of current boundaries to three miles from the "coast line."⁸⁶ A definition of inland waters is therefore indispensable for proper application of the act.

Although the necessity for a definition seems clear, congressional understanding of that necessity was apparently absent. Indeed, the legislative history of the act indicates a deliberate failure by Congress to specify any theory of inland-water measurement. One of the early Senate resolutions defined the "coast line" in the following terms:

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, *which include all estuaries, ports, harbors, bays, channels, straits, historic bays, and sounds, and all other bodies of water which join the open sea.*⁸⁷

The Senate Committee on Interior and Insular Affairs requested State Department analysis of the boundary questions raised by the legislation. In response, the Department presented extensive testi-

83. See *Hearings on S.J. Res. 13*, *supra* note 60, at 1053 (testimony of Mr. Tate).

84. Submerged Lands Act § 2(b), 67 Stat. 29 (1953), 43 U.S.C. § 1301(b) (1964).

85. Submerged Lands Act § 2(c), 67 Stat. 29 (1953), 43 U.S.C. § 1301(c) (1964).

86. Submerged Lands Act § 4, 67 Stat. 31 (1953), 43 U.S.C. § 1312 (1964).

87. See *Hearings on S.J. Res. 13*, *supra* note 60, at 1051-58. (Emphasis added.)

mony,⁸⁸ making it clear that the ten-mile rule was firmly established as an Executive definition of inland waters within bays and that the straight-baseline method of the *Fisheries Case* had not been adopted.⁸⁹ On the basis of this testimony, the Committee deleted all of the explanatory language following the words "inland waters," leaving the term without qualification. In explanation of its action, the Committee stated:

The words "which include all estuaries, ports, harbors, bays, channels, straits, historic bays, and sounds, and all other bodies of water which join the open sea" have been deleted from the reported bill because of the committee's belief that the question of what constitutes inland waters should be left where Congress finds it. The committee is convinced that the definition neither adds nor takes away anything a State may have now in the way of a coast and the lands underneath waters behind it.

In this connection, however, the committee states categorically that the deletion of the quoted language in no way constitutes an indication that the so-called "Boggs Formula," the rule limiting bays to areas whose headlands are not more than 10 miles apart, or the artificial "arcs of circles" method is or should be the policy of the United States in delimiting inland waters or defining coastlines.⁹⁰

While refusing to adopt the specific definition of inland waters utilized by the executive branch, the legislative branch concurrently refused to provide its own standard of measurement. This refusal stemmed from the congressional assumption that a definition of inland waters had already been firmly established by the judiciary, as evidenced by the fact that debate on the act is replete with references to the judicially "fixed" definition of inland waters.⁹¹ In fact, how-

88. See testimony of Mr. Tate, Deputy Legal Adviser of the Department of State, *Hearings on S.J. Res. 13*, *supra* note 60, at 1051-86.

89. *Id.* at 1052, 1058.

90. 2 U.S. CODE CONG. & AD. NEWS 1493 (1953).

91. For instance, in explanation of the deletion of the language from § 2(c), Senator Cordon stated: "It was not the chairman's view that we were attempting to draw a line delimiting inland waters, but that *we were using a term that is well known in the law and is defined by the Court in the California case, for instance, and in the Louisiana case, I assume.*" (Emphasis added.) *Hearings on S.J. Res. 13*, *supra* note 60, at 1376. In later debates, Senator Cordon answered an assertion that the committee had rejected the Boggs formula by saying: "The committee, as I recall, and I think I am correct, neither accepted nor rejected the Boggs formula or any other formula." 99 CONG. REC. 2633 (1953). In reference to California's boundary claim, Senator Holland remarked: "The Senator from Florida believes that the laws, as announced over and over and over again by the Supreme Court, as to the delimitation of inland waters, are sufficiently fixed, definite, and certain so that it would require a complete, cataclysmic change of the Supreme Court's philosophy in that field to afford any hope for an extension of the boundaries of the good State of California so that they would go out beyond the islands as to all areas contained within an outer line." 99 CONG. REC. 275 (1953).

ever, this congressional assumption was completely at variance with reality. The Supreme Court, prior to the passage of the Submerged Lands Act, had only once indicated an opinion as to whether particular waters were "inland," and it had done so in a manner which bore no relation to an overall definition of the term.⁹² Moreover the lower courts indicated a complete disparity of views. The District Court in Alaska, citing *Kent's Commentaries*, had held that Cook Inlet, a body of water forty miles across at its mouth, was inland.⁹³ Similarly, after referring to the *Webster's Dictionary* definition of a "bay," a California court upheld the jurisdiction of the State of California over Monterey Bay, which is eighteen miles wide at its mouth.⁹⁴ Other courts had defined inland waters on totally unrelated grounds.⁹⁵

The assumed judicial definition of inland waters, therefore, was at best contradictory, and at worst totally absent. The result of this absence was an obvious confusion as to the respective rights of federal and state governments in offshore lands, a confusion which ultimately necessitated judicial resolution.

D. *The Judicial Definition of Inland Waters—United States v. California*,⁹⁶ 1965

The dispute between the federal government and the State of California was initially concerned solely with title to lands underlying the three-mile marginal belt. The Supreme Court's first decision in this matter, in 1947, settled that issue in favor of the federal government but left open for determination the precise location of the subject lands.⁹⁷ To obtain evidence necessary for a judicial deter-

92. In *Manchester v. Massachusetts*, 139 U.S. 240, 258 (1891), the Court, in determining the inland waters of Massachusetts, commented: "We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tide-waters is a marine league from its coast; that bays wholly within its territory not exceeding two marine leagues in width at the mouth are within this limit . . ." Since the bay in question was less than six miles wide at its mouth, the Court was not required to establish the maximum limits for inland waters.

93. *The Kodiak*, 53 Fed. 126 (D. Alaska 1892). Since the enactment of the Submerged Lands Act, a Superior Court in Alaska has held that all waters of Bristol Bay landward of a line 160 miles in length across the bay are territorial waters of the state. *Alaska v. Arctic Maid Fisheries*, No. 7093-A, Super. Ct. Alaska, 1st Jud. Dist., 1962. The United States filed an amicus curiae brief in the Alaska Supreme Court urging reversal, but the case was subsequently dismissed.

94. *Ocean Indus., Inc. v. Superior Court*, 200 Cal. 235, 252 Pac. 722 (1927).

95. See *United States v. Carrillo*, 13 F. Supp. 121 (S.D. Cal. 1935) (San Pedro Bay); *People v. Stralla*, 14 Cal. 2d 617, 96 P.2d 941 (1939) (Santa Monica Bay).

96. 381 U.S. 139 (1965).

97. See text accompanying notes 9-14 *supra*.

mination of the baseline separating the inland waters of the state from the marginal sea, the Court referred the case to a Special Master, restricting the hearing to seven disputed segments of the California coast. The Master's report was submitted to the Court in 1952,⁹⁸ but the case was seemingly rendered moot by the intervening passage of the Submerged Lands Act, granting marginal sea lands to the states. The matter remained technically before the Supreme Court, but was allowed to lie dormant.⁹⁹

As oil exploration moved seaward, however, the outer limit of the marginal belt became as significant for states as the seaward limit of inland waters had been at the time of the initial decision. Since the former limit is directly related to the latter, it was obvious that the issues basic to the Master's hearing were also crucial to an ultimate determination of the case, and that the passage of the Submerged Lands Act, rather than rendering the issues moot, had merely modified them. The Government therefore filed an amended complaint in 1963, squarely presenting for the Supreme Court's determination a definition of the term "inland waters," not as originally considered by the Master, but rather as utilized by Congress in the Submerged Lands Act.¹⁰⁰

The areas in controversy fell into two major categories. The primary area of dispute, designated the "overall unit area," consisted of waters circumscribed by a line drawn from the California mainland to a series of islands, some as much as fifty miles from the coast, and then returning to the mainland. The secondary area consisted of a series of unrelated indentations along the coast.¹⁰¹

The United States' position toward all the disputed areas was simple and direct: Congress, in adopting the Submerged Lands Act, had incorporated into its provisions the contemporaneous definition of inland waters espoused by the executive branch. Under this theory, the "overall unit area" did not qualify as inland waters since it utilized the straight-baseline principle, which had been specifically rejected by the State Department.¹⁰² The claims of California over the various coastal indentations were rejected, on the theory that all but one of the indentations failed to qualify as "bays" under all

98. The Master's report is reprinted in 1 SHALOWITZ, *op. cit. supra* note 61, at 329-53.

99. See *United States v. California*, 381 U.S. 139, 148 (1965).

100. *Id.* at 149.

101. The geographic extent of the disputed areas is shown in the maps constituting appendixes A, B, and C to the Court's opinion.

102. See text following note 79 *supra*.

recognized theories of inland water measurement. While one indentation, Monterey Bay, did qualify as a "bay" under the present policy of the executive branch, the Government argued that since the bay was eighteen miles wide at its mouth and since United States policy at the time of the adoption of the Submerged Lands Act recognized only a ten-mile closing line, the area was not inland waters of the state within the meaning of the act.

California presented several alternative arguments in defense of its claims. First, it argued that since the Submerged Lands Act was designed to restore the states to the position they were thought to be in prior to the Court's decision in the first *California* case, the terms of the act should be construed liberally as a congressional approval of state "belief" as to the limits of their inland waters prior to 1947. Alternatively, California argued that the Submerged Lands Act should be interpreted consistently with international law, and that, under the law of nations, all areas claimed by it were inland waters. The utilization of a straight baseline to circumscribe the "overall unit area" was justified on the basis of the *Fisheries Case* and article 4 of the Geneva Convention.¹⁰³ Similarly, the claim to Monterey Bay was, in California's view, sanctioned by article 5 of the Convention. The remainder of the areas, while not true "bays" under international law, were claimed by the state on the theory that the indentations qualified as inland waters under recognized exceptions to that law. Specifically, California relied on the doctrine of historic waters, under which a nation's claim to extraordinary areas as inland waters is valid upon a showing of a continuous exercise of uncontested and exclusive jurisdiction.¹⁰⁴

The Supreme Court summarily rejected California's initial contention that the Submerged Lands Act constituted a congressional sanction of state "beliefs" as to the extent of their inland waters. In this regard, the Court stated:

Indeed, if the Court is to draw any inference from the intent and structure of the Act as to how inland waters should be defined, the most plausible inference would be that Congress, in adopting the three-mile limitation, must have intended some base line to be used other than one dependent upon each State's subjective concept of its inland waters, for such a limitation would prove to have been none at all¹⁰⁵

103. See text following note 65 *supra*.

104. For a general discussion of the historic-waters doctrine, see *Direct United States Cable Co. v. Anglo-American Tel. Co.*, 2 App. Cas. 394 (P.C. 1877) (Newfoundland); *Judicial Regime of Historic Waters, Including Historic Bays*, U.N. Doc. No. A/CN.4/143 (1962); *Historic Bays*, U.N. Doc. No. A/CONF.13/1 (1957).

105. 381 U.S. at 158-60.

The Court's initial conclusion reduced the issue to a direct clash between two sources of interpretation of the term "inland waters." California relied on international law; the United States relied on the policy of the executive branch. Unfortunately, while the conflict may have been clear, its resolution was not. Both positions suffered from serious deficiencies, and the adoption of either one in its entirety would have created more complexity than would have been resolved.

If international law is looked to as the basis upon which to interpret a 1953 statute, a determination must be made as to the manner in which inland waters were defined by the law of nations at the relevant date. The difficulty with this procedure is that, except for a few extremely vague rules of relationship between lands and waters, there were no internationally recognized principles of definition in 1953. In fact, the International Court had specifically rejected the existence of any mathematically precise rules for delineating bays or any other inland water areas.¹⁰⁶ Therefore, if the Submerged Lands Act were to be interpreted in accordance with international law in force at the time of its adoption, courts would be faced with the incredibly complex task of determining the inland waters of each state by utilizing the geographical, economic, and historical standards announced by the International Court.¹⁰⁷

Even assuming that this multitude of subjective determinations could be made as a practical matter, the application of international law in this area is still subject to a basic objection. That law establishes the maximum extent of inland waters which *may* be claimed by a coastal nation, but it does not pretend to establish national boundaries at that point. Similarly, while California might have argued that its claims to inland waters could have been made by the United States, it would still have been faced with the burden of showing that the federal government had actually sought to exercise rights to the maximum extent sanctioned by international law. Moreover, this burden would appear to be almost insuperable in view of the specific rejection of the full exercise of international rights by the Secretary of State at the time the Submerged Lands Act was adopted.¹⁰⁸

The United States' reliance on the contemporaneous policy of the executive branch as a basis for interpreting the act admittedly

106. See text accompanying notes 58-61 *supra*.

107. See text accompanying note 59 *supra*.

108. Letters of Acting Secretary Webb and Secretary Acheson, *Hearings on S.J. Res. 13 Before the Senate Committee on Int. and Ins. Affairs*, 83d Cong., 1st Sess. 460-62 (1953).

avoided the difficulties of subjectivity. Executive policy defining inland waters, which had been carefully explained to Congress,¹⁰⁹ consisted of the adoption of the ten-mile closing line for bays and a flat rejection of the straight-baseline theory. However, although the policy was clear, it was apparently unacceptable. The Senate Committee specifically refused to approve the policy,¹¹⁰ and there is no evidence in the debates of a contrary intent on the part of Congress as a whole.

Notwithstanding the refusal of Congress to sanction the State Department's policy on inland waters, the Government argued that the act should still be interpreted in accordance with that position. In the Government's view, acts of Congress utilizing the terminology of foreign affairs must be interpreted in accordance with the policy of the executive branch, unless Congress specifically rejects that policy. While this position is clearly justified when the congressional act in question involves foreign affairs,¹¹¹ it is totally unfounded as applied to domestic legislation. As the Supreme Court has pointed out, the Submerged Lands Act involves a division of offshore resources as between the state and federal governments and is unrelated to foreign affairs. The policy of the executive branch, which is vested with authority over foreign relations, is therefore of no relevancy in ascertaining the definition of a term used in purely domestic legislation.

The Supreme Court's resolution of the interpretative problems created by the necessity of defining inland waters for the purposes of the Submerged Lands Act is an outstanding example of pragmatic judicial reasoning. The Court sought not so much a standard that was theoretically defensible as one that would work. While its decision may defy complete logical justification, it unquestionably represents a reasonable solution to a problem which appeared, at least superficially, insoluble. The major problem of interpretation—that of determining what standards Congress intended by its use of the term “inland waters”—was disposed of by the Court's holding

109. See text accompanying note 89 *supra*.

110. See text accompanying notes 90 & 91 *supra*.

111. *Cf. In re Cooper*, 143 U.S. 472 (1892), where congressional re-adoption of an act asserting jurisdiction in the Bering Sea was interpreted as incorporating the previous understanding of the executive branch. The Court commented: “[T]here is much force in the position that, whatever the reason for the conservative course pursued by the Senate [in not defining the extent of jurisdiction in the Bering Sea], the enactment of this section, with full knowledge of the executive action already had and of the diplomatic situation, justified the President in the conclusion that it was his duty . . . to adhere to the construction already insisted upon as to the extent of the dominion of the United States, and to continue to act accordingly.” *Id.* at 502.

that Congress had intended no standards whatsoever. In the Court's view, "Congress, in passing the Act, left the responsibility for defining inland waters to this Court."¹¹² More significant, the Court stated that "it is our opinion that we best fill our responsibility of giving content to the words which Congress employed by adopting the best and most workable definitions available."¹¹³

It is obvious, of course, that a "responsibility for defining inland waters" is substantially different from *adoption* of a "workable definition." Every judicial interpretation of a legislative act involves a responsibility for definition. This truism, however, is no justification for deliberate judicial adoption of definitions, and, indeed, the Court has commonly rejected attempts by Congress to delegate its responsibilities.¹¹⁴ In this instance, however, the Court found just such a delegation and specifically accepted it without extended discussion. With this freedom to select standards of definition which would prove most "workable," the Court turned to those of greatest certainty. It adopted *in toto* the definitions of the Geneva Convention of the Law of the Sea, which was written five years *after* passage of the Submerged Lands Act and which did not become effective until over ten years after passage of the act. The Court stated:

The Convention on the Territorial Sea and the Contiguous Zone, approved by the Senate and ratified by the President, provides such [workable] definitions. We adopt them for purposes of the Submerged Lands Act. This establishes a single coastline for both the administration of the Submerged Lands Act and the conduct of our future international relations (barring an unexpected change in the rules established by the Convention). Furthermore the comprehensiveness of the Convention provides answers to many of the lesser problems related to coastlines which, absent the Convention, would be most troublesome.¹¹⁵

The selection of the Convention as a source of definition did not, in itself, resolve all the issues in the case. It was still necessary for the Court to apply those definitions to the particular water areas involved. One area, that of Monterey Bay, lent itself to easy resolution. Since this indentation clearly met the requirements of article 7 of the Convention for a "bay"¹¹⁶ and was only eighteen miles wide at

112. 381 U.S. at 164.

113. *Id.* at 165.

114. See, e.g., *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Panama Ref. Co. v. Ryan*, 293 U.S. 388 (1935); *United States v. Todd*, 54 U.S. (13 How.) 52 (1794). See also Annot., 168 A.L.R. 826 (1947); Annot., 69 A.L.R. 267 (1930).

115. 381 U.S. at 165.

116. See note 65 *supra*.

its mouth, it satisfied the criteria necessary for classification as inland waters.¹¹⁷

In contrast, California's claim to certain coastal indentations as "historic waters" was summarily denied. In the Court's view, there was not a sufficient showing of the continuous and exclusive authority over the waters necessary for justification of such a claim under the Convention. In passing, the Court refused to sanction the Government's argument that no claim could be made to historic waters unless endorsed by the federal government. The relevancy of a Government disclaimer was recognized, but only in situations where claims were "questionable." The Court was reluctant to hold that such a disclaimer would be effective to bar clearly defined historic claims, and therefore at least impliedly left this issue for later determination.¹¹⁸

The most difficult question involved the validity of California's utilization of straight baselines to include the "overall unit area."¹¹⁹ While much of the argument centered on whether the California coast satisfied the criteria necessary for the establishment of such baselines under international law,¹²⁰ the Court never reached an analysis of this issue. It denied California's claim, holding that the authority to extend inland waters by the straight-baseline method was vested exclusively in the federal government, and that

California may not use such baselines to extend our international boundaries . . . against the expressed opposition of the United States. . . . [A]n extension of state sovereignty to an international area by claiming it as inland water would necessarily also extend national sovereignty, and unless the Federal Government's responsibility for questions of external sovereignty is hollow, it must have the power to prevent States from so enlarging themselves.¹²¹

California's utilization of straight baselines was dubious at best, but the Court's theory of rejection also appears unsound. An "extension" of California's inland water boundary under the terms of the Submerged Lands Act would not, at least in theory, impinge on federal responsibility in foreign affairs. Indeed, in two cases involving Texas and Florida the Court specifically recognized that a boundary established for the purposes of the Submerged Lands Act

117. 381 U.S. at 172.

118. *Id.* at 175.

119. See text accompanying note 101 *supra*.

120. See text following note 55 *supra*.

121. 381 U.S. at 168.

in excess of the national claim did not create conflicts with foreign policy.¹²² While the waters in question in those two cases were marginal-sea areas, the same principles should be applicable to inland waters.

It would appear that strict reliance on the terms of the Geneva Convention would have resulted in a similar rejection of California's baseline claim without the necessity of raising the spectre of state interference in foreign affairs. Under the permissive terms of the Convention, waters are considered inland only if a coastal nation makes the necessary assertion of jurisdiction. Without that assertion, the waters continue to be high or marginal seas, as the case may be. California's utilization of baselines would have resulted in the enclosure of waters which, under the terms of the Convention, were regarded as high seas by the federal government. The enclosure, because of its limited effect, would not have conflicted with foreign policy, but rather with the judicially adopted definition of inland waters for the purposes of the Submerged Lands Act.

The existence of apparent logical difficulties should not diminish the significance of the *California* decision. For the purposes of inland-water definition, the Court has selected an eminently "workable" framework. With only limited exceptions, the problems created by inland-bay measurement have been resolved. Similarly, numerous minor difficulties inherent in inland-water measurement are clarified by adoption of the provisions of the Geneva Convention in the same manner that they were clarified in international law. While future Executive action may again raise questions concerning straight baselines, it is at least settled that the system may not at present be used to define the inland waters of any state.

E. *A Proposed Definition of the Inland Waters of the States*

Superficial analysis of the *California* decision may lead to the conclusion that all major issues concerning inland-water boundary delineation have been judicially resolved. Such an assumption, however, is inconsistent with the limited nature of the holding. In fact, the only issue before the Court in *California* was a definition of inland-water boundaries for the purposes of the Submerged Lands Act. While the holding in effect established an inland-water boundary for those states which extended their boundaries under authority of the act, it neither attempted nor purported to affect state bound-

122. See text accompanying notes 34-39 *supra*.

aries established by Congress prior or subsequent to the passage of the act. As a necessary conclusion to this analysis of inland waters, therefore, it is relevant to consider the manner in which the inland-water boundary for the remaining states will be defined. The distinction suggested here is subtle, but nevertheless significant. Each state entered the Union with some express or implied boundary circumscribing its inland water areas. Obviously, the seaward limit of inland waters necessary to a determination of the respective boundaries must have had some meaning as of the date of admission, but that meaning is not necessarily the same as the "seaward limit of inland waters" as the term is used in the Submerged Lands Act.¹²³

The possible existence of state boundaries distinct from those established by the Submerged Lands Act suggests one obvious anomaly. Theoretically, at least, a state might enter the Union with inland waters in excess of the specifications in the Submerged Lands Act; by virtue of the holding in *Pollard v. Hagan*,¹²⁴ all lands underlying those inland waters are subject to state ownership as an inherent attribute of sovereignty. As a result, the state would possess more lands under the *Pollard* doctrine than it would through the Submerged Lands Act.

Before attempting to define the inland waters of the various states outside the scope of the Submerged Lands Act, one important fact should be noted: not a single act of admission specifies, with any degree of clarity, the extent of inland waters within the various states' boundaries. The few acts of admission or congressionally approved state constitutions which do contain any maritime boundary provisions are couched in the most general of terms. California's constitution, for instance, makes reference to "bays," without further definition.¹²⁵ Alaska's act of admission defines the state as including appurtenant "territorial waters," but there is no particularization of the means by which those waters are to be measured.¹²⁶ Other acts contain similar, or even less specific, language.¹²⁷

123. The Supreme Court was careful to note the distinction in its analysis of the meaning of the Submerged Lands Act. In the Court's view, congressional insertion of § 2(b), which restricted the extent of state boundaries for purposes of the act to not more than three miles from the coast, was a specific limitation on the historic boundaries of the states. Without that limitation on the grant, the Court's analysis would necessarily have been directed toward the historic nature of state claims over inland waters and, more specifically, the maximum extent of inland waters which had been expressly or impliedly approved for the states when Congress admitted them to the Union. See 381 U.S. at 150-60.

124. 44 U.S. (3 How.) 212 (1845).

125. Constitution of 1849, art. XII.

126. Act of July 7, 1958, 72 Stat. 339.

127. See acts of admission of Alabama, Louisiana, and Mississippi cited note 21 *supra*.

The problem of interpretation, therefore, is not alleviated by the existence of a stated maritime boundary. Delineation of inland waters is no less complex a task in that context than is a derivation of the term from general principles which recognize that a state with no defined maritime boundary has "inherent sovereignty" over inland waters, the seaward limit of which, together with the low-water mark on the shore, comprises its coast. In both cases an analysis must be made of the manner in which inland waters were defined at the time the state entered the Union, for it is reasonable to assume from analogous situations that the boundary was determined as of that date.¹²⁸ In this regard, the problem is strikingly similar to the one faced by the Court in the second *California* case. Some basis for interpretation must be utilized, and the selection of any particular source is at least as difficult as the situation which confronted the Court.

If international law is utilized as a means of delineating the coast of a particular state, the difficulties inherent in the absence of clear standards of measurement are obvious. Courts would be faced with vague tests involving economic and geographic factors peculiar to the subject state, and ascertainment of the boundary would be a purely subjective matter, not subject to any predictable certainty. In addition, severe inequities could be created among the states. Our developing technology implies that the later the state is admitted, the greater will be the nexus which exists between the land and adjoining maritime areas, since the technology makes that nexus possible. Since such a relationship is at the heart of the decision in the *Fisheries Case*, states which joined the Union recently would be able to claim much greater areas of inland waters than would the states admitted earlier.

An alternative means of determining inland waters as of the date of admission of a state is to look not to general principles of international law, but rather to the United States' application of those principles. However, there are three difficulties involved in this approach. First, it assumes that the executive branch had a clearly defined policy on inland waters at the time the various coastal states were admitted. Yet, in the pre-1912 period, when the vast majority of states were admitted, and certainly prior to 1888, when the ten-mile rule for bays was first proposed, the United States' position on inland waters was somewhat confused.

128. On admission to the Union, each state receives title to land underlying "navigable" waters within its boundaries. See *Donnelly v. United States*, 228 U.S. 243, 260 (1913); *Shively v. Bowlby*, 152 U.S. 1, 26-27 (1894). "Navigability" is determined as of the date of admission. *United States v. Utah*, 283 U.S. 64 (1931).

A second objection to utilization of the policy of the executive branch to define inland waters for a state lies in the fact that such a procedure would be unrelated to the basis for which the policy was initially formulated. The executive branch, vested with full authority over foreign affairs, has the power to limit state authority within established boundaries. However, effectuation of sound foreign policy does not require that the boundaries be set at the limiting point. Indeed, there is no rational foundation for using standards adopted for purposes of foreign policy to define state boundaries when the boundary, in and of itself, does not affect that policy.

The third objection to defining state inland-water boundaries through reference to Executive policy is one of practicality. This method of definition would create serious inequities between the states which, although perhaps constitutionally permissible, would be logically indefensible. The policy of the executive branch on inland waters is dictated by the exigencies of foreign affairs, which may change from day to day. Thus, if the states' inland water boundaries had been fixed by the policy of the executive branch at the time they entered the Union, many states would have a six-mile closing line for bays, and those admitted after 1888 would have a ten-mile closing line. Similarly, because of the change in Executive policy in 1961,¹²⁹ any states admitted to the Union after that date would have a 24-mile closing line for bays, and if in the future the State Department modified its policy to adopt straight baselines, new states would come in with inland-water boundaries completely unrelated to those of previous states. As a practical matter, it would seem far better to utilize some system of boundary definition which produces uniform inland-water boundaries throughout all the coastal states rather than make the issue turn on the day-to-day problems of foreign affairs.

As suggested by California's argument in reference to the Submerged Lands Act,¹³⁰ there is conceivably a third framework within which to determine the extent of a state's inland waters on the date of its admission into the Union. It is arguable that in passing the act Congress impliedly recognized as valid the states' beliefs as to the location of their boundaries insofar as inland waters are concerned; however, the Supreme Court's analysis in *California* to the effect that such a limitation would prove to be "none at all"¹³¹

129. See note 82 *supra* and accompanying text.

130. See text accompanying note 105 *supra*.

131. See *ibid.*

applies with equal effect in this context. In addition, the argument can apply equally well in reverse. It is just as easy to assume that when a state enters the Union without a geographically described inland-water boundary, by implication it accepts the congressional understanding of where that boundary lies. Indeed, if a selection must be made between these two alternatives, the latter would appear to be the better, since it is consistent with the established doctrine that Congress alone has the authority to set state boundaries.

Delineation of the inland-water boundaries of the states, therefore, will present the same difficulties which accompanied the definition of inland waters for the purpose of the Submerged Lands Act. There is no reason to assume that the courts will adopt any different philosophy than has been exhibited by the Supreme Court in the related context of the *California* case. If the Supreme Court was willing to assume that Congress left to the courts the "selection" of a standard for definition of inland waters in the Submerged Lands Act, is there any reason to assume that the same analysis will not be utilized for interpreting congressional acts defining state boundaries?

Certainly the practical reasons for selecting the Geneva Convention as a basis for defining inland waters under the Submerged Lands Act were no more pressing than those attending the need to delineate the inland-water boundaries of the states. First, the Geneva Convention supplies the sort of objective standards of measurement which are desirable in ascertaining the extent of a boundary. Second, the standards in the Convention are reasonable, and represent an international consensus as well as the policy of our own national government. Third, selection of the same standard of measurement utilized in the Submerged Lands Act avoids the possible anomaly noted earlier¹³² that a few states might otherwise receive vast areas of submerged lands which would have been denied to sister states similarly located.

Of course, a standard of definition for inland-water boundaries adopted years after any state entered the Union raises obvious logical problems. These problems, however, are no greater than those which confronted the Court in the *California* case, and, while not necessarily susceptible of easy refutation, should prove equally simple to avoid.

IV. CONCLUSION

There are, of course, certain remaining problems of boundary delineation. Outstanding among these is the determination of a basis

132. See text accompanying note 124 *supra*.

for defining "historic waters" within the boundaries of the states. First, the standards by which claims to historic waters will be measured must be established, a matter which could possibly be resolved by reference to the requirement of the Geneva Convention that there have been an exercise of continuous and exclusive authority. Second, assuming established standards, a determination will be required as to which authority, state or federal, must assert the necessary claim. Judging from the Supreme Court's analysis of the propriety of California's straight-baseline method, it is reasonable to assume that a state's exercise of jurisdiction will be deemed insufficient. These tentative conclusions, however, suggest the most difficult problem. Assuming that a state claims that federal authority has been extended to certain waters, what significance will be placed on a specific present disclaimer by the executive branch of either past or present jurisdiction over the area?

The continued existence of difficult problems does not detract from the fact that the basic rules of boundary delineation are now either established or reasonably predictable. Commencing with the first *California* case, and culminating with the second, the Supreme Court has created a framework for orderly division of maritime jurisdiction between state and federal authorities. Those rules represent a major step in bringing order from chaos in this field of the law.