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COMMENTS

MARITIME CONTIGUOUS ZONES

This comment deals with problems involved when a coastal state asserts authority for special purposes over a zone of the sea outside its territorial waters.¹ For two centuries it has been generally recognized that each nation has sovereignty over a belt of marginal sea, while the regime of freedom of the seas applies to the seas outside such territorial waters. Within its marginal sea belt, known as "territorial waters," a state has much the same rights as over its land territory, although foreign ships do have the rights of innocent passage and entry in distress, and even in port their internal affairs may to some extent escape the control of the shore state. There is, however, no agreement on the permissible breadth of territorial waters. Sweeping sixteenth and seventeenth century assertions of ownership of broad maritime areas had shrunk by 150 years ago,² and many nations came to agree upon three nautical miles³ as the maximum breadth of territorial waters, although broader bands were claimed by various countries. In recent years, national claims to more than three miles of territorial waters have become widely prevalent; and no agreement was reached at either the 1930 Hague Codification Conference⁴ or the 1958 and 1960 Geneva Conferences on the Law of the Sea⁵ as to the breadth of territorial sea permitted under customary international law.⁶

During the past two centuries, various states which had previously limited their claims of full sovereignty⁷ to narrow marginal seas have also asserted special types of jurisdiction over high seas zones outside what they

¹ On territorial waters, see generally BISHOP, *INTERNATIONAL LAW CASES AND MATERIALS* 481-549 (2d ed. 1962); 3 GDEL, *DROIT INTERNATIONAL PUBLIC DE LA MER* (1934); JESSUP, *TERRITORIAL WATERS AND MARITIME JURISDICTION* (1927); Harvard Research in International Law, *Territorial Waters*, 23 AM. J. INT'L L. SPEC. SUPP. 241 (1929).

² See FULTON, *SOVEREIGNTY OF THE SEA* (1911); JESSUP, *op. cit. supra* note 1; Kent, *Historical Origin of the Three-Mile Limit*, 48 AM. J. INT'L L. 537 (1954); Waldock, *International Law and the New Maritime Claims*, 1 INTERNATIONAL RELATIONS 163 (1956); Walker, *Territorial Waters: The Cannon Shot Rule*, 1945 BRIT. YB. INT'L L. 210.

³ Unless otherwise specified, the "mile" referred to is the "nautical mile," which is approximately 1.15 "land miles" or "statute miles." It is fixed by different countries at distances between 1,852 and 1,855 meters, or approximately 6,080 feet. See BISHOP, *op. cit. supra* note 1, at 496.

⁴ See GDEL, *op. cit. supra* note 1; Reeves, *Codification of the Law of Territorial Waters*, 24 AM. J. INT'L L. 486 (1930).

⁵ See SORENSON, *THE LAW OF THE SEA* (Int'l Conciliation Pamphlet No. 520, 1958); Dean, *The Geneva Conference on the Law of the Sea: What Was Accomplished*, 52 AM. J. INT'L L. 607 (1958); Fitzmaurice, *Some Results of the Geneva Conference on the Law of the Sea*, 8 INT'L & COMP. L.Q. 73 (1959); Jessup, *The United Nations Conference on the Law of the Sea*, 59 COLUM. L. REV. 234 (1959); Dean, *The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas*, 54 AM. J. INT'L L. 751 (1960).

⁶ Predictably, however, there was general acquiescence in the earlier conclusion of the United Nations International Law Commission that claims to territorial waters in excess of twelve miles are not approved in international law.

⁷ For a discussion of the elements and attributes of sovereignty, see HOFELD, *FUNDAMENTAL LEGAL CONCEPTIONS AS APPLIED IN JUDICIAL REASONING* 35-40 (1923).

claimed (or what others accepted) as territorial waters. This comment deals with such claims to contiguous zones of the high seas over which the littoral state asserts authority which may affect the interests of other states.⁸

As the width of the territorial sea narrowed, the importance of contiguous zones increased. Nations like Great Britain and the United States found three miles too narrow a band for effective enforcement of customs laws. In the eighteenth century, Great Britain extended its competence for customs enforcement to one hundred leagues,⁹ and soon after independence the United States claimed four leagues for customs enforcement.¹⁰

These early contiguous zones were acquiesced in when they appeared reasonable.¹¹ On this basis, some modern writers have discussed contiguous zones in terms of a "rule of reason"¹² or a theory of "interests,"¹³ both of which in essence consist of the proposition that if the littoral state has a legitimate interest the protection of which requires action outside its territorial sea, and the contiguous zone asserted is reasonable, such action is not internationally illegal. However, acceptance of this proposition as having become a rule of international law, with no limit on the maximum distance from shore over which the zone may extend or specific limitations on the purposes for which it may be used, could open the door to unconscionable proliferation of contiguous zones, with a resultant risk of jeopardizing the freedom of the seas.¹⁴

Although states have long asserted these special types of authority over high seas areas adjacent to their territorial waters, the use of the term "contiguous zones" to describe these areas is relatively recent.¹⁵ However

⁸ No international law question arises if the coastal state exerts authority within the zone solely against its own nationals.

⁹ The "league" referred to is three nautical miles. See note 3 *supra*.

¹⁰ See MASTERSON, *JURISDICTION IN MARGINAL SEAS* (1929). See also JESSUP, *op. cit. supra* note 1, at 75-86.

¹¹ Cf. *Church v. Hubbard*, 6 U.S. (2 Cranch) 187 (1804), in which Mr. Chief Justice Marshall said of the seizure by Portuguese authorities of an American vessel hovering four or five leagues off the coast of Brazil (then Portuguese), that a nation's "power to secure itself from injury, may certainly be exercised beyond the limits of its territory. . . . Any attempt to violate the laws made to protect this right, is an injury to itself which it may prevent, and it has a right to use the means necessary for its prevention. These means do not appear to be limited within any certain marked boundaries, which remain the same at all times and in all situations. If they are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to." *Id.* at 234-35.

¹² See HYDEMAN & BERMAN, *INTERNATIONAL CONTROL OF NUCLEAR MARITIME ACTIVITIES* 237-39 (1960).

¹³ See MASTERSON, *op. cit. supra* note 10, at 381.

¹⁴ Even enforcement of ordinary customs regulations may cause undue harassment. See GIDEL, *op. cit. supra* note 1, at 475; SECOND UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, OFFICIAL RECORDS 155 (1960) [hereinafter cited as 1960 OFFICIAL RECORDS] (remarks of the Yugoslav delegate).

¹⁵ The term "contiguous zone" was that employed by the first and second United Nations Conferences on the Law of the Sea (Geneva 1958, 1960), as well as by the Conference for Codification of International Law (Hague, 1930). For earlier designations, see GIDEL, *op. cit. supra* note 1, at 361 n.2

they may be referred to in particular cases, the term "contiguous zone" has now generally come to be applied to those areas in which the littoral state exercises limited competence for special purposes,¹⁶ as distinguished from the "territorial waters," over which it has sovereignty. Confusion in terminology arises because in some cases national claims to so-called "contiguous zones" cover sea areas falling within what is claimed as territorial sea;¹⁷ in such cases the assertion of limited competence would seem to be embraced within the broader rights over the territorial sea, and this type of "contiguous zone" is not discussed in this comment.¹⁸ True contiguous zones, in which limited competence is asserted for control of customs, sanitation, security, fishing, and other purposes, extend beyond the area subject to littoral sovereignty, and are claimed in one form or another by thirty-six states.¹⁹

I. CURRENT STATE PRACTICE

Each presently asserted contiguous zone has connected with it certain regulations. For example, the zone established by Canada for customs purposes requires ships which have unloaded dutiable goods without official authorization to permit boarding and search. Violation of these regulations makes the ship liable to forfeiture, and if the ship refuses to stop and be

¹⁶ See *id.* at 364; WIEBRINGHAUS, LA QUESTION DE LA ZONE CONTIGUE DEVANT LA CONFÉRENCE DE GENÈVE DE 1958 at 15 (1960); Harvard Research, *supra* note 1, at 335. See also McDOUGAL & BURKE, THE PUBLIC ORDER OF THE OCEANS 610-11 (1962).

¹⁷ Confusion in terminology occurs in regard to such instances as Chile, which claims a "territorial sea" of fifty kilometers, a "customs zone" of 100 kilometers, and asserts sovereignty over the water superjacent to its continental shelf for a distance of 200 miles; and El Salvador, which asserts a territorial sea of 200 miles while apparently maintaining a security zone of twelve miles.

¹⁸ Although a few states assert zones for civil or criminal jurisdiction, or with respect to neutrality (see authorities cited note 19 *infra*), this comment is further limited by confining discussion to security, fishing, immigration, sanitation, customs, and fiscal zones. Although "customs" and "fiscal" zones purport to describe different kinds of zones, the distinction is far from clear.

¹⁹ A compilation of the various state claims with regard to adjacent sea areas was prepared by the United Nations legislative research staff in advance of the 1958 Geneva Conference and was brought up to date for the 1960 Conference. See 1960 OFFICIAL RECORDS 157-63. Similar studies may be found in FRANKLIN, U.S. NAVAL WAR COLLEGE INTERNATIONAL LAW STUDIES 1959-1960 at 275-87 (1961); HOOG, DIE GENEËR SEERECHTSKONFERENZEN VON 1958 & 1960 at 122-27 (1961). The following national claims accord with accepted principles: France asserts a territorial sea of three miles and a customs zone of twenty kilometers. Italy: territorial sea, six miles; security zone, ten miles. Colombia: territorial sea, six miles; fishing zone, twelve miles. Saudi Arabia: territorial sea, twelve miles; sanitary zone, eighteen miles. *Ibid.* A number of states, however, make unusual jurisdictional claims over marginal waters. Chile asserts a territorial sea of fifty kilometers, a customs zone of one hundred kilometers, and asserts sovereignty over the water superjacent to the continental shelf for a distance of two hundred miles from shore. Cambodia: territorial sea, six miles; security zone, twelve miles; sovereignty over the waters superjacent to the continental shelf out to a depth of fifty meters. Argentina: territorial sea, three miles; fishing and sanitary zones, ten and twelve miles respectively; sovereignty over the waters superjacent to the continental shelf. Costa Rica: territorial sea in accordance with international law; fishing zone, two hundred miles; and sovereignty over the waters extending two hundred miles from shore. *Ibid.*

searched, it may be fired upon.²⁰ Regulations regarding security zones tend to be quite vague. Thus, an Iranian statute provides simply that in such zones the state will exercise a "*droit de surveillance*" to ensure the national security and defense.²¹ Fishery zones present a spectrum of severity in enforcement regulations, ranging from simple loss of license to fish in the particular waters²² to fines of up to three million dollars.²³ United States regulations respecting oil pollution within its sanitary zone subject violators to fine or imprisonment or both, with the ship held as security for payment of the fine.²⁴

These zones exist and are generally obeyed, despite the fact that they have the practical effect of removing large and often critical areas from the realm of completely unfettered high seas. This is especially true when it is remembered that the traditional breadth of the territorial sea, and, indeed, the breadth that is still asserted by such major maritime powers as the United States, the United Kingdom, and Japan, is three miles.²⁵ Furthermore, although nineteen states assert no specialized competence outside their territorial sea, they do claim territorial seas of twelve miles or more, resulting in a further lessening of the high seas area.²⁶ In contrast, eleven states with territorial seas of only three miles have made no official provision for any contiguous zones.²⁷ It is thus clear that there is no necessary relation between the width of the territorial sea and the establishment of contiguous zones. Some states with wide territorial seas set up specialized zones, while others with narrow territorial seas do not. Nevertheless, there appears to be a tendency for newly independent states and states with narrow territorial seas to do one of two things: either to establish specialized zones outside the territorial sea or to increase the width of the territorial sea itself.

Although it has sometimes been argued that a littoral state may not validly enforce laws beyond the limits of its territorial waters unless such enforcement is directed against acts impinging on the littoral state's rights within its territorial sea, actual state practice effectively puts this argument to rest.²⁸ As has been seen, a majority of the states asserting contiguous zones have laws directed solely at enforcing the rights claimed within the zones, and, in general, the enforcement of such laws has been tolerated.²⁹

²⁰ UNITED NATIONS LEGISLATIVE SERIES, LAWS AND REGULATIONS ON THE REGIME OF THE TERRITORIAL SEA 96-97 (1957) [hereinafter cited at LEGISLATIVE SERIES].

²¹ LEGISLATIVE SERIES 24.

²² LEGISLATIVE SERIES 462 (Costa Rica).

²³ See the discussion of the seizure of the Onassis whalers by Peru in BISHOP, *op. cit. supra* note 1, at 542.

²⁴ 33 U.S.C. §§ 433-34 (1958).

²⁵ See the synoptical chart in 1960 OFFICIAL RECORDS ANNEXES AND FINAL ACT 157-63.

²⁶ See 1960 OFFICIAL RECORDS 157-63; HOOG, *op. cit. supra* note 19, at 122-27.

²⁷ *Ibid.*

²⁸ See GARCIA-AMADOR, THE EXPLOITATION AND CONSERVATION OF THE RESOURCES OF THE SEA 63-64 (2d ed. 1959).

²⁹ See McDUGAL & BURKE, *op. cit. supra* note 16, at 623-25.

II. THE 1958 UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

In its report for 1956, the International Law Commission recommended that an international conference be held to draft a convention on the law of the sea.³⁰ The General Assembly of the United Nations adopted a resolution embodying this recommendation, and the Conference convened in Geneva on February 24, 1958, eighty-eight states being represented.³¹ Five major committees were established, and the problems of the breadth of territorial seas and contiguous zones were assigned to the First Committee. Discussion of contiguous zones was based on Article 66 of a draft convention prepared by the International Law Commission:

"1. In a zone of the high seas contiguous to its territorial sea, the coastal state may exercise the control necessary to

"(a) Prevent infringement of its customs, fiscal, or sanitary regulations within its territory or territorial sea;

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

"2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured."³²

Discussion in the First Committee revealed a difference of opinion as to whether territorial seas should be six or twelve miles wide. Since the wording of the draft would make discussion of contiguous zones superfluous if the latter width were adopted, debate centered primarily on the question of the proper breadth of territorial seas. The discussion of contiguous zones tended to concentrate on two areas: (1) problems involving interpretation and clarification of the draft; (2) whether to include in the draft, zones other than those listed.

A. *Interpretation and Clarification*

Several states were troubled by the phrase "within its territory or territorial sea" at the end of clauses 1(a) and 1(b) of the first paragraph of Article 66. It was feared that this might allow a state to take preventive or punitive measures only if some "infringement" actually occurred within its territorial sea.³³ A situation might arise, for example, in which a ship

³⁰ INTERNATIONAL LAW COMMISSION REPORT, U.N. GEN. ASS. OFF. REC. 11th Sess., Supp. No. 9 (A/3159) (1956) [hereinafter cited as 1956 REPORT].

³¹ 7 UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, OFFICIAL RECORDS iii [hereinafter cited as 1958 OFFICIAL RECORDS]. A number of specialized agencies and inter-governmental organizations were represented by observers. *Ibid.*

³² 1956 REPORT 39.

³³ See § 3 1958 OFFICIAL RECORDS 13. Italy stated that it was essential to allow coastal states to take appropriate measures for infringement of its customs, fiscal, health, and immigration regulations, even if the regulations were violated, or the violation was discovered, in the contiguous zone itself. To insure that preventive action could be taken in the contiguous zone, Poland proposed replacing the first paragraph of the International Law Commission draft with this provision: "In a zone of the high seas contiguous to its territorial sea, the coastal State may take the measures necessary to prevent and punish infringements of its customs, fiscal or sanitary regulations, and violations of its security." *Id.* at 107, 232.

was discharging atomic waste while in the contiguous zone of state X.³⁴ Assuming state X had forbidden such activities, it might be argued that at the moment of discharge X could take no preventive or punitive action because there was as yet no "infringement of its . . . regulations within its . . . territorial sea."³⁵ As was seen in the discussion of current state practice, such an interpretation is not consistent with actual practice. Although the First Committee adopted a draft which would have avoided these problems,³⁶ this version was rejected in plenary session, and the phrasing finally adopted was substantially identical to the International Law Commission draft on this point.³⁷

Another interpretative problem was raised by the Peruvian delegate, who feared that Article 66 would be construed as an exclusive listing of permissible contiguous zones, and thus be incompatible with Peru's special fishing zone.³⁸ Accordingly, he suggested that it be provided that Article 66 was "without prejudice to the provisions of this convention concerning the other rights vested in the coastal state."³⁹ This problem will be discussed below.

Finally, to forestall disagreement concerning the boundaries of contig-

³⁴ Nuclear maritime activities are covered in detail in HYDEMAN & BERMAN, *op. cit. supra* note 12, especially ch. 3.

³⁵ In both the International Law Commission draft and the draft adopted by the 1958 Geneva Conference, there is a variation between the wording of § 1(a) and that of § 1(b). The former speaks of preventing "infringement . . . within its territory," while the latter speaks of punishing "infringement . . . committed within its territory." (Emphasis added.) It could be argued that, since it is explicitly stated that punitive action may be taken only when infringements are committed within the territorial sea, the absence of such a limitation in § 1(a) means that preventive action may be taken either in the territorial sea or the contiguous zone. However, § 1(a), dealing with prevention, is anticipatory in nature, and so it would be improper to speak of an infringement as being "committed"; after an infringement has occurred, *i.e.*, has been committed, it can no longer be prevented. Consequently, omission of "committed" from § 1(a) should not be taken to permit action under it which is forbidden under § 1(b).

³⁶ The draft adopted by the First Committee was as follows:

"1. In a zone of the high seas contiguous to its territorial sea, the coastal State may take the measures necessary to prevent and punish infringements of its customs, fiscal, immigration or sanitary regulations, and violations of its security.

"2. This contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

"3. The delimitation of this zone between two States the coasts of which are opposite each other at a distance less than the breadth of their contiguous zones, or between two adjacent States, is constituted, in the absence of an agreement, by the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured." 3 1958 OFFICIAL RECORDS 260-61. This draft was adopted by the First Committee by a vote of 50 to 18, with 8 abstentions. *Id.* at 109.

³⁷ The phrasing used was that of the American proposal, which was adopted 60 to 0, with 13 abstentions, after rejection of the draft of the First Committee by a vote of 40 to 27, with 9 abstentions. 2 *id.* at 40. Decisions in plenary session require a majority of two-thirds of the 88 representatives present and voting. 2 *id.* at xxxiii. The invited observers had no right to vote. *Id.* at xxxii.

³⁸ Peru has asserted control over adjacent waters to a distance of two hundred miles. LEGISLATIVE SERIES 39.

³⁹ 3 1958 OFFICIAL RECORDS 109.

uous zones of opposite and adjacent states, a third paragraph was added to Article 66:

"3. Where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line, every point of which is equidistant from the nearest points on the base lines from which the breadth of the territorial seas of the two states is measured."⁴⁰

B. Addition of Other Zones

Most of the time spent debating contiguous zones was devoted to suggestions for increasing the kinds of contiguous zones which would be allowed. A zone for the control of immigration was added without controversy. Denmark proposed giving states jurisdiction in certain areas where they had assumed responsibility for safe navigation, but this proposal was not adopted.⁴¹ Zones for security and fishing control, although not incorporated into the final convention, were discussed at length.

1. Security Zones

States favoring a twelve-mile territorial sea asserted that such a width was necessary to provide adequately for the security⁴² and defense⁴³ of littoral states. These states, and some which were not demanding such a wide territorial sea, wanted to include a "security zone" in Article 66.⁴⁴ Adherents of this proposal spoke in terms of both "security" and "defense," and some suggested a "defense zone" rather than a "security zone." It would seem that two distinct interests were being confused: (1) the desire of a state to be free from intimidation tactics, such as fleet maneuvers off

⁴⁰ 2 *id.* at 135.

⁴¹ U.N. Doc. No. A/CONF.13/5 at 32-33 (1958).

⁴² *E.g.*, the U.S.S.R. See 3 1958 OFFICIAL RECORDS 31-32.

⁴³ *E.g.*, Jordan. Although Jordan still officially maintains a three-mile limit, it supported a twelve-mile limit at the Conference. For a detailed table of national maritime claims and voting records at the 1958 and 1960 Geneva Conferences, see Hoog, *op. cit.* *supra* note 19, at 122-27.

⁴⁴ *E.g.*, Yemen (3 1958 OFFICIAL RECORDS 16); Poland (*id.* at 38); Korea (*id.* at 44); Czechoslovakia (*id.* at 61); Philippines (*id.* at 107); Byelorussia (*id.* at 139). The Philippines recommended use of the term "defense" as less vague than "security." The International Law Commission had not included a security zone in its draft, maintaining: "the extreme vagueness of the term 'security' would open the way for abuses and . . . the granting of such rights was not necessary. The enforcement of customs and sanitary regulations will be sufficient in most cases to safeguard the security of the State. In so far as measures of self-defence against an imminent and direct attack are concerned, the Commission refers to the general principles of international law and the Charter of the United Nations." 1956 REPORT 39-40. It is interesting to note, however, that the Commission did not think "security" too vague a term when, in Article 15, it stated that "Passage is innocent so long as a ship does not use the territorial sea for committing any acts prejudicial to the security of the coastal State. . . ." *Id.* at 19. Also, the 1958 Geneva Convention on the Territorial Sea provides in Article 15, paragraph 4 that "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State."

its coast,⁴⁵ and (2) the desire of a state to be able to take forcible action in its own defense. Despite the apparent validity of these national interests, however, the proposals for such zones were properly rejected. In an age of nuclear intercontinental ballistic missiles and Polaris submarines, it is debatable whether a twelve-mile zone would provide a state any real security.⁴⁶ Furthermore, customary international law appears to recognize a right of innocent passage for warships through the territorial sea in times of peace. Arguably, this is also true under the provisions of the 1958 Geneva Convention.⁴⁷ If such a right exists in territorial seas, where the littoral state possesses sovereignty, a fortiori there could be no interference with such innocent passage in contiguous zones. Although this right of innocent passage obtains only in times of peace, if war or hostilities were imminent, regulations limiting passage would probably be disregarded.

Even admitting that a special zone for security might be militarily justifiable, it would nevertheless seem inappropriate to subsume it under the heading of "contiguous zones." Prior to the establishment of the United Nations, international law apparently allowed a state to take preventive action outside its own territory only in the case of "an instant and overwhelming necessity for self-defense, leaving no choice of means and no moment of deliberation."⁴⁸ The United Nations Charter preserves "the inherent right of . . . self-defence if an armed attack occurs against a Member of the United Nations,"⁴⁹ but it also provides that "all Members shall . . . refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."⁵⁰ This would seem

⁴⁵ Outside of vague references to former colonial powers, this desire was not made explicit in the 1958 Conference. However, in the 1960 Conference the delegate from Iran stated: "[T]he tragic memory of the appearance of warships in the coastal sea, threatening all liberation movements in this nation, will not be obliterated so easily. At a distance of six miles warships would still be visible and thus distance would not afford to this nation a guarantee conducive to a feeling of security. These anxieties and fears might seem exaggerated to the great maritime powers; however, it is a question of a psychological element. . . ." 1960 OFFICIAL RECORDS 317. This apprehension does not appear to be entirely without basis. See FRANKLIN, *op. cit. supra* note 19, at 123, where it is pointed out that at a distance of twelve miles the identification and even sighting of ships becomes difficult, and that it would therefore be desirable for the United States to campaign for a narrow territorial sea.

⁴⁶ This point seems to have been recognized by Ceylon. 1960 OFFICIAL RECORDS 285. Furthermore, certain military reasons were among the considerations prompting the United States to advocate restricting the competence of littoral states. See FRANKLIN, *op. cit. supra* note 19, at 120-26.

⁴⁷ See *id.* at 121. Paragraph one of Article 15 of the 1958 Geneva Convention on the Territorial Sea provides that "ships of all States shall enjoy the right of innocent passage through the territorial sea." § 1958 OFFICIAL RECORDS 210. This right is somewhat qualified by paragraph four, which defines "innocent" as "not prejudicial to the peace, good order or security of the coastal State," but in theory, at least, the right of innocent passage exists.

⁴⁸ See Webster's note regarding the Caroline affair in 2 MOORE, INTERNATIONAL LAW 409-14 (1906), and the discussion in BISHOP, *op. cit. supra* note 1, at 776-79.

⁴⁹ U.N. CHARTER art. 51.

⁵⁰ U.N. CHARTER art. 2, para. 4.

to limit even further any right to take preventive or punitive action in self-defense.⁵¹ In short, if there is actual or imminent attack, a right of self-defense exists independent of any special zone;⁵² where the right does not exist, there is no "defense" or "security" justification for establishing contiguous zones which might impede free navigation.

2. Fishing Zones

The 1958 Geneva Conference devoted even more discussion to contiguous fishing zones. Economic arguments predominated,⁵³ but some political overtones were also present.⁵⁴ Underdeveloped countries argued that it was economically necessary for them to control fishing up to twelve miles from their coasts, and some states claimed even more extensive areas.⁵⁵ A few economically advanced states also sought control of offshore fisheries.⁵⁶ Despite considerable support, however, contiguous fishing zones were rejected,⁵⁷ and this decision seems correct. Asserting control over fishing activities amounts to claiming authority akin to sovereignty, for such control involves, in effect, the enforcement of property rights of the littoral state.⁵⁸ Conventional contiguous zones are designed to exclude prohibited

⁵¹ This point is not of great weight, but it illustrates the argumentative difficulties confronting such zones. And certainly there is a distinction with regard to the potentiality of armed clashes, between enforcing regulations against unarmed merchants, and against warships.

⁵² This appears to be the view of the International Law Commission. See MURCHISON, *THE CONTIGUOUS AIR SPACE ZONE IN INTERNATIONAL LAW* 46-47 (1956).

⁵³ See, e.g., comments by the Canadian delegate, 3 1958 OFFICIAL RECORDS 52; by the Viet-Nameese delegate, *id.* at 53; by the Irish delegate, *id.* at 56; and by the Ecuadorian delegate, *id.* at 62. An exhaustive report, *The Economic Importance of the Sea Fisheries in Different Countries*, appears in 1 *id.* at 245.

⁵⁴ The underdeveloped and newly independent states were particularly vocal in denouncing any provisions which might tend to restrict the authority of a littoral state. The Saudi Arabian delegate stated that "the newly independent States were determined to take part in the codification of the law of the sea, but they were equally determined not to renounce their vital interests The Committee should not allow itself to be influenced by any outmoded rules of international law which were based on the custom and usage of one or two States only." 3 1958 OFFICIAL RECORDS 3. The U.S.S.R. favored expanding the authority of shore states, since this furthered "its policy of helping small and economically less advanced countries to develop their national economies and improve their standards of living." *Id.* at 32.

⁵⁵ E.g., Ceylon, 100 miles; Costa Rica, 200 miles; El Salvador, 200 miles. See the synoptical table listing various state claims in FRANKLIN, *op. cit. supra* note 19, at 275.

⁵⁶ Canada was in the forefront of these. See the Canadian comments on Article 66 of the International Law Commission draft in the preparatory work of the 1958 Conference, U.N. Doc. No. A/CONF.13/5 at 6-7 (1958).

⁵⁷ The First Committee adopted, 37 to 35, with 9 abstentions, a Canadian proposal to the effect that there existed a twelve mile contiguous zone in which the littoral state "has the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea." 3 1958 OFFICIAL RECORDS 176-77. However, this proposal was later rejected in plenary session 35 to 30, with 20 abstentions. *Id.* at 39.

⁵⁸ "[Sovereignty] is considered to be closely related to ownership in private law Whatever rights, privileges, powers and immunities the law attaches to the owner, those are enjoyed by that nation which is sovereign of the object. In this sense it is believed that a State is sovereign over the territorial sea and over the air space." JESSUP, *TERRITORIAL WATERS AND MARITIME JURISDICTION* 116-17 (1927). See also, VERDROSS, *VÖLKERRECHT* 215 (1960).

items from the territory of the littoral state or its adjacent waters; they are aimed at preventing use of the sea which is potentially dangerous to the littoral state.⁵⁹ Fishing, however, does not introduce anything harmful into a state's territory; to the contrary, something valuable is removed from the sea. Removal of fish would give a littoral state legal cause for complaint only if it had sovereignty over the area in question.

The distinction between immigration and emigration is a useful analogy here. The International Law Commission draft makes no mention of the latter, because emigration must occur from the area, sea or land, subject to the sovereignty of the littoral state. Immigration, however, originates outside the area of sovereignty; it involves introducing people into the littoral state via the sea; hence, it is a proper object for control through special zones.⁶⁰

C. *The 1958 Geneva Convention Draft*

The article concerning contiguous zones, as ultimately approved by the 1958 Geneva Convention, read as follows:

"1. In a zone of the high seas contiguous to its territorial sea, the coastal state may exercise the control necessary to:

"(a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

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

"2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

"3. Where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line, every point of which is equidistant from the nearest points on the base lines from which the breadth of the territorial seas of the two states is measured."⁶¹

Several interpretative and policy questions are raised by this draft. One ambiguity was discussed earlier, namely, whether preventive and punitive measures are authorized only with respect to infringements occurring within the territorial sea, or whether such measures may also be taken with respect to infringements occurring within the contiguous zone itself. The language in plenary session was identical to that in the International Law Commission's report, except for the addition of the overlapping zones provision.

⁵⁹ "Conventional contiguous zones" refers to, e.g., customs, fiscal, and sanitary zones, and after the Geneva Conference, immigration zones.

⁶⁰ The table in 1960 OFFICIAL RECORDS 157-63 lists claims to the continental shelf, along with special regulations concerning customs, security, fishing, neutrality, sanitation, and criminal or civil jurisdiction, but apparently the compilers could find no immigration regulations. In the 1958 Conference the Philippine delegate urged the inclusion of "immigration" in the draft because of the peculiar problems faced by an island state in controlling it. 3 1958 OFFICIAL RECORDS 107.

⁶¹ 2 1958 OFFICIAL RECORDS 135.

It will be recalled that the First Committee's draft avoided this ambiguity by providing that "in a zone . . . contiguous to its territorial sea, the coastal state may take the measures necessary to prevent and punish infringements" of its regulations,⁶² but this draft was rejected in the plenary session. The reversion to the International Law Commission's draft could be cited for divergent conclusions. Those in favor of permitting littoral states to take punitive and preventive action against infringements occurring within contiguous zones could say that, since a majority of the participants in the Conference voted in the First Committee to give littoral states such authority, the rejection of the First Committee's draft should be taken to mean merely that the plenary session felt that such authority was implicit in the International Law Commission's draft. The rejection of the First Committee's draft could be ascribed to its inclusion of a security zone, the propriety of which was much more in dispute than were enforcement measures. On the other hand, those desiring to restrict the authority of littoral states to the prevention or punishment of infringements occurring within the territorial sea would maintain that the plenary session meant to adopt the restrictive interpretation which flows from the literal meaning of the words.

Such speculations assume, however, that an international tribunal would look to the debates preceding adoption of the convention. This is by no means certain. As the Permanent Court of International Justice has stated, "there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself."⁶³ On the other hand, some authorities indicate that more liberal resort is to be made to pre-enactment materials when construing an international convention than when a domestic statute is involved.⁶⁴ If pre-enactment materials are consulted, it must be admitted that, despite the arguments on both sides, such materials favor the restrictive interpretation. It seems difficult to overcome the fact that the plenary session rejected express attempts by the First Committee to allow enforcement for infringement of contiguous zones. Nevertheless, a contiguous zone would be of little value if preventive or punitive action could not be taken in it. For this reason any decision on the matter should

⁶² Speaking of this draft, the Polish delegate who proposed it said that the "text did not limit the coastal State's rights to the prevention and punishment of infringements of regulations committed within its territory or territorial sea. The purpose was to cover such infringements committed within the contiguous zone itself." § 1958 OFFICIAL RECORDS 107.

⁶³ Interpretation of the 1919 Convention concerning the Employment of Women at Night, P.C.I.J., ser. A/B, No. 50 (1938).

⁶⁴ Although in interpreting the Convention, *supra* note 62, the majority of the Permanent Court of International Justice stated that there was no need to resort to preparatory work if the convention's terms were clear, it nonetheless went on to examine preparatory material, excusing departure from the rule because of "confident opinions expressed by several delegates with expert knowledge of the subject" who were present at the adoption of the convention. See BISHOP, INTERNATIONAL LAW CASES AND MATERIALS 171-72 and authorities there cited; Lauterpacht, *Some Observations on Preparatory Work in the Interpretation of Treaties*, 48 HARV. L. REV. 549 (1935).

hold such action permissible.⁶⁵ The possibility of such a controversy arising could have been prevented had the drafters made their meaning more explicit by providing, for example, that a state might exercise the control necessary to "prevent infringement within its territorial sea, territory or contiguous zone" and that a state might punish such infringements if committed.⁶⁶ If this were done, a ship releasing nuclear contaminants within a contiguous sanitary zone would clearly be subject to both preventive and punitive action. Allowing the littoral state this power would be more in harmony with present-day state practice than would be the contrary result.⁶⁷

Another problem arises because, as the Convention draft now stands, it is arguable that a littoral state could apply its regulations to vessels passing laterally through a contiguous zone with no intention of entering the internal waters or even the territorial sea of the state. Other articles of the Convention providing for certain specialized jurisdictional rights for the littoral state draw a distinction between actions which may be taken against a ship proceeding to or from internal waters and those simply passing laterally through the area.⁶⁸ No such distinction is intimated in contiguous zone provisions, apparently indicating that contiguous zone regulations may be indiscriminately applied.⁶⁹ Although the regulation of

⁶⁵ Arthur Dean, chief of the United States delegation, believes that, under paragraph 1(a) of Article 24, the littoral state can at least "adopt laws prohibiting activity in the contiguous zone the effect of which involved an infringement of the . . . territory of the state." Dean, *The Geneva Conference on the Law of the Sea: What Was Accomplished*, 52 AM. J. INT'L L. 607, 624 (1958). He doubts, however, the right of a littoral state to take punitive action with regard to infractions of its regulations. *Id.* at 624. For a view of paragraph 1(a) contrary to that of Mr. Dean, see McDUGAL & BURKE, *op. cit. supra* note 16, at 620-21.

⁶⁶ If the drafters actually intended the contrary result, they should have inserted another paragraph to the effect that prevention or punitive actions may not be taken in the contiguous zones.

⁶⁷ See text accompanying notes 28, 29 *supra*. Curiously, however, the phrasing of the introduction to the Convention on the Territorial Sea and The Contiguous Zone lends credence to the postulate that state practice contemporaneous with the 1958 Conference was not the same as the standards set up in the Convention. The introduction simply states that the Convention parties "Have agreed as follows." 2 1958 OFFICIAL RECORDS 132. This is in contrast to the Convention on the High Seas, the introduction to which states that the parties "desiring to codify the rules of international law relating to the high seas, *Recognizing* that the United Nations Conference . . . adopted the following provisions as generally declaratory of established principles of international law, Have agreed as follows." *Id.* at 135. Apparently the former convention was thought not to be declaratory of existing practice.

⁶⁸ See, e.g., Article 16, paragraph 2: "In case of ships proceeding to internal waters, the coastal State shall also have the right . . ." § *id.* at 134; Article 19, paragraph 2: "The above provisions do not affect the right of the coastal State to take any step authorized by its laws . . . on board a foreign ship passing through the territorial sea after leaving internal waters." *Id.* at 134.

⁶⁹ A somewhat analogous problem has arisen in connection with Air Defense Identification Zones. These are areas extending several hundred miles off the coast of the United States and Canada. All aircraft entering these zones are required to identify themselves to shore stations, so that potentially hostile aircraft may be detected. The United States requires only in-bound aircraft to identify themselves, but Canada requires identification

lateral traffic could interfere with free navigation, power to make such regulations is probably necessary if a contiguous zone is to fulfill its function. In the case of a sanitary zone, a ship passing parallel to the shore could as easily pollute the water as a ship heading into or out from territorial or internal waters. Even though customs, fiscal, and immigration control do not at first appear to require control of lateral traffic, a ship moving laterally can, if the ingenuity and expertness are available, transship prohibited articles for delivery to shore. It might have been desirable, however, for the Convention to have provided that vessels merely passing parallel to the shore could be interfered with only if there is an obvious danger of infringing coastal regulations.⁷⁰ Such a provision would allow the littoral state to protect its vital interests while at the same time granting a partial immunity to lateral traffic. Regardless of how this problem is resolved, some clarification of the status of laterally traversing vessels is needed.

Another impediment to the authorizing of contiguous zones by international convention was especially prevalent at the Hague Convention in 1930. It was feared that international approval of such zones might induce some states to extend the boundaries of their territorial waters to encompass the permissible area for contiguous zones.⁷¹ If contiguous zones were permitted up to twelve miles from shore, it would not be as great a departure from past practice for a state to claim sovereignty over that entire area as it would be if there were, for instance, territorial seas of only three miles and no contiguous zones. A state claiming such increased rights could better rationalize its aggrandizement if it had already been operating jurisdictionally in the area.⁷² This fear does not appear to be entirely without justification. Bulgaria, for example, has engaged in an analogous practice. When it proclaimed that its "territorial sea" extended twelve miles from shore, it at the same time established a distinct "maritime frontier zone," extending three miles from shore. Although the "territorial sea" is regu-

by all aircraft, even those travelling laterally through the zone. As yet no objection has been raised to the Canadian practice. See generally MURCHISON, *op. cit. supra* note 52.

⁷⁰ Admittedly, such a provision would be primarily exhortatory. However, its inclusion in an international agreement would give it a certain moral force which might help restrain overly zealous states.

⁷¹ CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW REPORT OF THE SECOND COMMITTEE 13 (1930) (Territorial Sea).

⁷² For instance, the Iranian delegate to the Second Geneva Conference stated that although Iran had maintained a territorial sea of six miles and a contiguous zone of six miles since 1934, in 1959 it had, for reasons of security, extended its control and united the two parts into a territorial sea of twelve miles. 1960 OFFICIAL RECORDS 316. It would be of particular argumentative value to states seeking to extend their territorial waters if zones such as fishing and security were internationally approved. Establishment and enforcement of these zones involves the exercise of certain sovereign attributes, and classifying them as contiguous zones would enable a state to argue that there is little difference between exercising a certain species of sovereignty in an area, and exercising complete sovereignty therein.

lated extensively, foreign ships are permitted to "pass through or stop or anchor" in it, a right not accorded them in the "maritime frontier zone."⁷³ By being able to point to a limited three-mile zone in which its regulation is more severe, Bulgaria can thus purport to justify assertion of sovereignty over a twelve-mile zone. Similar arguments could be made by a state claiming a territorial sea wider than six miles but narrower than its contiguous zone.⁷⁴

It has been argued that assuring littoral states some competence to act beyond their territorial waters, by establishing contiguous zones through international convention, serves to remove the pressure on littoral states to widen their territorial seas. Even before the Geneva Conference, however, there seems to have been a fairly general acquiescence in the validity of the type of zones authorized by Article 24.⁷⁵ Yet this fact did not prevent a number of states from extending their territorial seas. Indeed, it might be argued that specific enumeration of protectible interests in Article 24 will tend to make extension of territorial seas more likely than before, for if such enumeration is taken to be exclusive, a state feeling a need to extend its competence to protect an unlisted interest will have no alternative but to do so by an extension of its territorial sea.

Article 24 of the territorial sea convention fixes twelve miles as the maximum width of the contiguous zone. Fixing such a single maximum width has eminent support,⁷⁶ but also weighty opposition.⁷⁷ If uniformity for uniformity's sake is a virtue, then Article 24 is praiseworthy. Yet the price of uniformity is loss of flexibility, and in the case of the contiguous zones it is particularly questionable whether the gain in uniformity is worth the price. As circumstances change, it may be necessary to alter the width of a contiguous zone dealing with a single matter; it seems highly unlikely that twelve miles will prove sufficient for all contiguous zones. Even though Article 24 would permit variation in the width of contiguous zones actually claimed, such variation must occur within twelve miles; certain sovereign interests may demand extension beyond that limit. An alternative to placing a maximum limit on width would be to permit

⁷³ Decree of 10 October 1951 in LEGISLATIVE SERIES 80-81.

⁷⁴ The possibility of such a contention is not entirely speculative. Saudi Arabia, for instance, now claims a territorial sea of twelve miles, and contiguous zones for customs, security, and sanitation of eighteen miles. FRANKLIN, U.S. NAVAL WAR COLLEGE 1959-1960 at 284 (1961).

⁷⁵ See text accompanying notes 28, 29 *supra*.

⁷⁶ Gidel felt that the maximum width of the contiguous zone should be twelve miles, and therefore criticized the work of the Harvard researchers. 3 GIDEL, DROIT INTERNATIONAL PUBLIC DE LA MER 480 (1934).

⁷⁷ See, e.g., MASTERTON, JURISDICTION IN MARGINAL SEAS xiv (1929): "The attempt within recent years, on the part of some writers, judges, and governments, to fix a single zone beyond which the application or enforcement of [contiguous zone regulations] is forbidden, thus treating them as a single problem, has cast this extremely difficult subject into hopeless confusion, and has littered the juristic literature on the subject with careless assertion." See also VISSER 'T HOOFT, LES NATIONS UNIES ET LA CONSERVATION DES RESSOURCES DE LA MER 99 (1958).

extension beyond twelve miles if a littoral state could make a strong showing that effective protection of its customs, fiscal, sanitary, or immigration interests required a contiguous zone wider than twelve miles and that only reasonable steps would be taken to provide protection. If these conditions were met, a littoral state should be allowed to extend its competence to the extent necessary to accomplish its purpose. To prevent such a scheme from degenerating into a mere *carte blanche* for widespread assertions of competence, however, some sort of appeal machinery would have to be provided. The idea of an international committee of experts to settle such disputes is not without precedent,⁷⁸ and the Convention on Fishing and Conservation of the Living Resources of the High Seas made provision for such a commission.⁷⁹ A committee of maritime experts, established to oversee contiguous zones, could consider the needs of the littoral state seeking to extend its zone, the reasonableness of the proposed regulations, and the probable impact of the regulations on high-seas navigation. States which feel that they would be unduly hampered by the regulations would be charged with initiating appeal to the committee. Through use of such an international commission, states would not only be guaranteed free exercise of competence within the first twelve miles, but would also have open to them an avenue for lawfully extending their control when necessary.

A draft convention incorporating this proposal for an international appeal commission would probably attract substantial support. Since it would not deal with fishing and security rights, it would not be repugnant to the Latin American or Soviet blocs. Maritime powers should be willing to accept it, for the commission would not approve extensions of competence which would unreasonably infringe freedom of the seas. To nations

⁷⁸ At its 1934 Paris session, the Institut de Droit International recommended the adoption of a convention establishing a permanent maritime committee. According to its draft, a special committee composed of persons particularly versed in international maritime law would act as a conciliation commission in case of differences among members of the organization. U.N. Conference on the Law of the Sea, PREP. Doc. No. A/CONF. 13/21 at 91 (1958). The International Law Association at its 1924 Stockholm meeting advanced a somewhat more ambitious scheme. *Id.* at 103-11. Its purpose, according to Article 1, was to facilitate freedom of communication and of maritime commerce, while safeguarding the national interests of the littoral states. Article 3 set up an international commission to ensure that the convention regulations were observed and to prevent or peaceably resolve disputes between states with regard to the routes of maritime commerce. Article 30 lists the various powers of the commission, among which were to watch over and keep complete freedom of navigation, conformable to the convention, and to adopt whatever means might prove necessary to ensure that end. Article 31 then supplies the commission with sanctions, including the power to fine states violating commission regulations, and to close the ports of the violator to shipping, and also to close the ports of other states to the shipping of the violator.

⁷⁹ Article 9 provides for a commission of five members, to be selected by mutual agreement of the states involved. Article 11 provides that the decisions of the commission shall be binding, and makes the provisions of paragraph 2 of Article 94 of the U.N. Charter applicable to such decisions. 2 1958 OFFICIAL RECORDS 139. That Article of the Charter gives recourse to the Security Council in case a state should not accept the judicial determinations. A like recourse could be established in the case of the proposed commission, if its determinations were not followed.

jealous of their sovereignty, it would provide a possible means for expansion of, rather than restriction upon, their powers.

III. THE 1960 GENEVA CONFERENCE

The 1960 Geneva Conference was convened because of the inability of the 1958 Conference to agree on the width of territorial waters.⁸⁰ Some discussion on contiguous zones for fishing was also planned.⁸¹ The arguments advanced were repetitious of those presented at the 1958 Conference, and it would serve little purpose to examine them.⁸² It is interesting to note, however, that proposals for a wider territorial sea received fewer votes in 1960 than in 1958, while the proposal of a six-mile territorial sea coupled with a six-mile contiguous zone giving the littoral state special fishing rights received more votes in 1960 than had a similar proposal in 1958.⁸³

IV. CONCLUSION

The Geneva Conferences removed any reasonable doubt concerning the validity of customs, fiscal, immigration, and sanitary zones, so long as they do not extend more than twelve miles from shore. Actually, however, there was little doubt regarding the validity of such zones before the Conferences. Many states had already regulated such matters in areas beyond their territorial seas. With regard to these states, Article 24 of the Convention on the High Seas and Contiguous Zones is, in a sense, a step backward, for it imposes a single maximum limit of twelve miles on diverse interests, and also makes it doubtful whether littoral states can take preventive and punitive action in contiguous zones. For these reasons, the effect that the Convention will have on states that ratify it is speculative.⁸⁴ It is difficult to believe that such a state would forbear from taking measures against a ship hovering outside its territorial sea, but within twelve miles of the shore, when that ship is unloading contraband for carriage to the shore, or even that it would forbear from acting against such a ship if it were just beyond twelve miles. Under the Convention, however, the former arguably and the latter certainly would be forbidden. The Convention can, of course, be expected to have even less effect on states that have not ratified it.

In addition to limiting the width of contiguous zones to twelve miles, the Convention limited the subjects amenable to contiguous zone treat-

⁸⁰ *Id.* at 113.

⁸¹ *Id.* at 77, 113.

⁸² See McDUGAL & BURKE, *THE PUBLIC ORDER OF THE OCEANS* 544-45 (1962).

⁸³ The 1960 Conference is discussed in Dean, *The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas*, 54 *AM. J. INT'L L.* 751 (1960). Voting patterns are also compared. *Id.* at 782-85.

⁸⁴ According to U.N. Doc. No. ST/LEG/3, rev. 1, eighteen states had ratified or acceded to the Convention on the Territorial Sea and the Contiguous Zone as of December 31, 1962. Article 29 of the Convention provides that it will come into force thirty days after deposit of the twenty-second ratification or accession with the Secretary-General.

ment to four: customs, fiscal matters, sanitation, and immigration. This circumscription of subject matter, while limiting the flexibility of the provision, is not entirely without merit. It at least assures states of the validity of zones established for these limited purposes, and though fishing rights and security interests are of great importance, their exclusion from the draft was wise. Fishing and security zones are highly controversial and moreover constitute the assertion of rights generically different from the other four types of zones. Their omission makes it possible for a state to improve effective customs, fiscal, sanitary, or immigration regulations. A state objecting to these limited types of regulation would not only be flying in the face of settled state practice strongly indorsed by the draft convention, but would appear to be advocating the existence of a right to smuggle, to pollute the sea, or to enter another country illegally. Inclusion of security and fishing zones in the convention would actually weaken the position of states claiming these traditional rights, for such a convention would serve only to unhinge settled principles. Intermixed with the sound policy of permitting nations to exclude or prohibit injurious articles or practices would be dubious assertions of novel defense and property rights. Instead of codifying and clarifying accepted rules, the convention would thus open the door to argument over the meaning of sovereignty and the scope of freedom of the seas. Security and fishing, in marginal sea areas should be the subject of international negotiation, but they should be covered in separate agreements, independent of the Geneva Conference draft convention.

Contiguous zones are a practical method of protecting national interests only in specific areas, but they are coming to have a fixed and meaningful content. It must be recognized, however, that the whole notion of zones of limited competence lying outside territorial waters may be denied any future importance. If the present-day expansion of the width of territorial waters continues until the largest area of marginal waters that could reasonably be subjected to the control of littoral states is encompassed, states bordering the sea would then exercise the full complement of powers attendant upon sovereignty, and there would be no need for zones of limited competence. Thus, the ultimate role of contiguous zones will remain undefined so long as the question of the permissible width of territorial waters is unsettled. In the meantime, despite the Geneva Conferences, state practice regarding contiguous zones will continue to follow the pattern of the past.

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