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Situation, Documents, and Commentary on Recent Developments in the International Law of the
Sea

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SECTION II

UNITED STATES AIR AND SEA REGULATIONS

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A. Defensive Sea Areas

1. NOTE. By an Act of June 25, 1948, Section 44 of the Criminal Code, as amended, was revised and reenacted as Section 2152 of Title 18 of the United States Code.

Section 2152 provides, in part, that:

“Whoever . . . violates any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which the President for purposes of national defense, may from time to time establish by executive order. . . .” [shall be punished].

This Section is likewise made applicable to the Canal Zone.

In 1917 and 1918, thirty-three defensive sea areas were established by executive order. The texts of these orders are reprinted in the N.W.C., *I.L. Documents*, 1917, pp. 233, 240, 241; 1918, p. 164. Regulations governing the defensive sea areas created in 1917 are found in the N.W.C., *I.L. Documents*, 1917, p. 237; *Ibid.* 1943, p. 66; noted, *Ibid.* 1948-49, p. 157. By an executive order of 25 January 1919, these defensive sea areas were discontinued.

Since 1918, thirty-seven defensive sea areas, or as sometimes called “naval defensive sea areas,” have been established. Excerpts from these executive orders are reproduced in N.W.C., *I.L. Documents*, 1948-49, pp. 158-168. All except three of the areas were created during the early years of World War II, 1940 through 1942. One defensive sea area, Whittier, Alaska, was established as recently as 1952, by Executive Order No. 10361, of 11 June 1952, 17 F.R. 5357.

Twenty-one of these defensive sea areas located within the continental United States and the Philippine Islands were discontinued by five executive orders in 1945, 1946, 1947 and 1952.

Defensive sea areas, unlike maritime control areas, have generally been limited to the territorial waters of the United States, and have been established both in war and in time of peace as security measures. Regulations governing defensive sea areas, in general, were promulgated in Executive Order No. 8978, of 16 December 1941, 6 F.R. 6469, and Executive Order No. 9275 of 23 November 1942, 7 F.R. 9767. At present there are sixteen defensive sea areas in force, which are listed below. With the exception of an area off the coast of North Carolina, they are all outside the continental limits of the United States. All of the areas are under the control of the Secretary of the Navy, excluding the Whittier Defensive Sea Area, which is under control of the Secretary of Defense.

The limits applied by other countries for security and defensive purposes

are compiled in the International Law Commission's *Second Report on the Regime of the Territorial Sea*, A/CN.4/61, pp. 11-17.

2. Areas Currently in Force

- a. Defensive Sea Area off the Coast of North Carolina
[Executive Order No. 5786, 30 January 1932; *Laws Relating to the Navy* (1945), p. 1883.]
- b. Pearl Harbor Defensive Sea Area
[Executive Order No. 8143, 26 May 1939, 4 F.R. 2179.]
- c. Kiska Island and Unalaska Island Defensive Sea Areas
(These two separate defensive sea areas were established by the same executive order.)
[Executive Order No. 8680, 14 February 1941, 6 F.R. 1014; corrected by No. 8729, 2 April 1941, 6 F.R. 1791.]
- d. Kaneohe Bay Naval Defensive Sea Area
[Executive Order No. 8681, 14 February 1941, 6 F.R. 1014.]
- e. Palmyra Island, Johnston Island, Midway Island, Wake Island, and Kingman Reef Naval Defensive Sea Areas (These five separate defensive sea areas were established by the same executive order.)
[Executive Order No. 8682, 14 February 1941, 6 F.R. 1014; corrected by No. 8729, 2 April 1941, 6 F.R. 1791.]
- f. Guam Island, Rose Island and Tutuila Island Naval Defensive Sea Areas
[Executive Order No. 8683, 14 February 1941, 6 F.R. 1015; corrected by No. 8729, 2 April 1941, 6 F.R. 1791; discontinued as to Rose Island and Tutuila Island by No. 10341, 8 April 1952, 17 F.R. 3143.]
- g. Culebra Island Naval Defensive Sea Area
[Executive Order No. 8684, 14 February 1941, 6 F.R. 1016.]
- h. Kodiak Island Naval Defensive Sea Area
[Executive Order No. 8717, 22 March 1941, 6 F.R. 1621.]
- i. Guantanamo Bay Naval Defensive Sea Area
[Executive Order No. 8749, 1 May 1941, 6 F.R. 2252.]
- j. Honolulu Defensive Sea Area
[Executive Order No. 8987, 20 December 1941, 6 F.R. 6675.]
- k. Whittier Defensive Sea Area
[Executive Order No. 10361, 11 June 1952, 17 F.R. 5357.]

B. Airspace Reservations

1. NOTE. The authority to create airspace reservations was granted to the President nine years after the inception of the defensive sea areas. Section 4 of the Air Commerce Act of 1926 (44 Stat. 570; 49 U.S.C. 174)

empowered the President to establish by executive order airspace reservations in the United States for the purpose of national defense, and also in the District of Columbia for the purpose of public safety.

Airspace reservations, in general, prohibit all aircraft, other than public aircraft of the United States, from navigating within these areas unless authorized by the controlling department or agency. Similar to defensive sea areas, airspace reservations have been created over the territorial waters of the United States, both within and outside the continental United States. In fact, at times, both defensive sea areas and airspace reservations have been created over the same areas by a single executive order. They have also been established over portions of the District of Columbia and certain Atomic Energy Commission facilities in the interior of the United States. One airspace reservation, unrelated to public safety or defensive purpose, was established over the Superior National Forest in Minnesota in 1949 in order to maintain that area as a natural forest preserve. Executive Order No. 10092, December 17, 1949, 14 F.R. 7637. This airspace is under the control of the Secretary of Agriculture. In *Perko v. U.S.* the court declared Executive Order No. 10092 establishing the Superior National Forest Airspace Reservation valid and upheld the constitutionality of the airspace reservation. *U.S. v. Perko* (1952), D.C. Minn., 108 Federal Supplement 315, affirmed *Perko v. U.S.*, 204 Federal Reporter, Second, 446, *certiorari* denied 74 Supreme Court Reporter 48, 346 U.S. 832.

The first military airspace reservation was set up in 1929 over the Canal Zone. From 1929 through 1942 fifty-two such areas were established within and outside of the continental United States. N.W.C., *I.L. Documents, 1948-49*, pp. 199-206. Thirty-three of these airspace reservations have been discontinued, as of August 1956. Since 1942 five airspace reservations over certain Atomic Energy Commission facilities have been created by three executive orders in 1948 and 1951.

Twenty-four airspace reservations are now in force, and are under the control of one of the following: the Secretary of the Navy, the Civil Aeronautics Administration, the Atomic Energy Commission, and the Secretary of Agriculture. Information concerning these areas is given below.

2. Reservations Currently in Force

a. Airspace Reservation over the Canal Zone.

[Executive Order No. 5047, 18 February 1929; superseded by No. 8251, 12 September 1939, 4 F.R. 3899; amended by No. 8271, 16 October 1939, 4 F.R. 4277; superseded by Canal Zone Order No. 3, 21 January 1947, 12 F.R. 898.]

b. Airspace Reservations over Harbors closed to Foreign Vessels.

[Executive Order No. 5281, 17 February 1930; amended as to Tortugas, Florida, by Proclamation 2112, 4 January 1935; superseded as to Subic Bay by No. 8718, 22 March 1941; discontinued as to Subic Bay by No. 9720, 8 May 1946; superseded as to Kiska by No. 8680, 14 February 1941, 6 F.R. 1014.]

c. Airspace Reservations over certain Military and Naval Reservations and Other Areas.

[Executive Order No. 7138, 12 August 1935; discontinued as to places

within the continental limits of the United States by No. 8961, 6 December 1941, 6 F.R. 6325.]

- d. **Airspace Reservation over Portions of the District of Columbia.**
 [Executive Order No. 7910, 16 June 1938, 3 F.R. 1437; superseded by No. 8378, 18 March 1940, 5 F.R. 1114; superseded by No. 8950, 26 November 1941, 6 F.R. 6101; amended by No. 9153, 30 April 1942, 7 F.R. 3275; superseded by No. 10126, 9 May 1950, 15 F.R. 2867.]
- e. **Airspace Reservation over Kodiak.**
 [Executive Order No. 8597, 18 November 1940, 5 F.R. 4559.]
- f. **Airspace Reservations over Kiska Island and Unalaska Island. (Defensive sea areas established by the same executive order.)**
 [Executive Order No. 8680, 14 February 1941, 6 F.R. 1014, corrected by No. 8729, 2 April 1941, 6 F.R. 1791.]
- g. **Airspace Reservation over Kaneohe Bay. (Defensive sea area established by the same executive order.)**
 [Executive Order No. 8681, 14 February 1941, 6 F.R. 1014.]
- h. **Airspace Reservations over Palmyra Island, Johnston Island, Midway Island, Wake Island and Kingman Reef. (Defensive sea areas established by the same executive order.)**
 [Executive Order No. 8682, 14 February 1941, 6 F.R. 1015, corrected by No. 8729, 2 April 1941, 6 F.R. 1791; discontinued as to Palmyra Island by No. 9881, 4 August 1947, 12 F.R. 5325.]
- i. **Airspace Reservations over Guam Island, Rose Island and Tutuila Island. (Defensive sea areas established by the same executive order.)**
 [Executive Order No. 8683, 14 February 1941, 6 F.R. 1015, corrected by No. 8729, 2 April 1941, 6 F.R. 1791; discontinued as to Rose Island and Tutuila Island by No. 10341, 8 April 1952, 17 F.R. 3143.]
- j. **Airspace Reservation over Culebra Island. (Defensive sea area established by the same executive order.)**
 [Executive Order No. 8684, 14 February 1941, 6 F.R. 1016.]
- k. **Airspace Reservation over Guantanamo Bay. (Defensive sea area established by the same executive order.)**
 [Executive Order No. 8749, 1 May 1941, 6 F.R. 2252.]
- l. **Airspace Reservations over certain Atomic Energy Commission Facilities: Clinton Engineering Works, Oak Ridge, Tennessee; Hanford Engineer Works, Richland, Washington; Los Alamos Project, Santa Fe, New Mexico.**
 [Executive Order No. 9925, 17 January 1948, 13 F.R. 251; superseded by No. 10127, 23 May 1950, 15 F.R. 3171.]
- m. **Airspace Reservation over the Superior National Forest, Minnesota.**
 [Executive Order No. 10092, 17 December 1949, 14 F.R. 7637.]

n. **Airspace Reservation over the Las Vegas Project, Las Vegas, Nevada.**

[Executive Order No. 10218, 28 February 1951, 16 F.R. 1983; superseded by No. 10633, 9 August 1955, 20 F.R. 6209.]

o. **Airspace Reservation over the Savannah River Plant of the Atomic Energy Commission.**

[Executive Order No. 10291, 25 September 1951, 16 F.R. 9843.]

C. Harbors Closed to Foreign Vessels

1. NOTE. Executive Order No. 1613 of 23 September 1912 provided that commercial, non-commercial, and public foreign vessels were prohibited from entering seven harbors without special authorization from the U.S. Navy Department. *N.W.C., I.L. Documents, 1948-49*, pp. 156-157. In 1930, Executive Order No. 5281 created airspace reservations over the same seven harbors. Presidential Proclamation 2112, of 4 January 1935, revoked executive orders 1613 and 5281 insofar as they closed the harbor of Tortugas, Florida, to sea and air navigation. Further executive orders discontinuing the airspace reservations over certain of these harbors are listed in B., Airspace Reservations. The remainder of these airspace reservations are still in effect.

Executive Order No. 1613 remains in force and it closes, in the absence of special authority, the following six harbors to sea navigation:

Great Harbor, Culebra
Guantanamo Naval Station, Cuba
Pearl Harbor, Hawaii
Kiska, Aleutian Islands
Guam
Subic Bay, Philippine Islands

D. Maritime Control Areas

1. NOTE. All of the seventeen maritime control areas established by Presidential Proclamation during World War II were discontinued in 1945 and 1946. *N.W.C., I.L. Documents, 1948-49*, pp. 169-176. The maritime control areas generally extended beyond the limit of territorial waters for purposes of national defense and are considered to be wartime measures. There are no maritime control areas in existence at present.

E. Customs Enforcement Areas

1. NOTE. The "customs waters" of the United States, as defined in the Tariff Act of 1930, as amended, are limited to twelve miles. However, the Anti-Smuggling Act of 1935 authorizes the President to establish, under specified circumstances, customs enforcement areas extending up to sixty-two miles seaward from the coast. Five customs enforcement areas were established by Presidential Proclamation in 1935. These areas were discontinued in 1946. *N.W.C., I.L. Documents, 1948-49*, pp. 176-180. At the present time there are no customs enforcement areas in force.

