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International Law Topics and Discussions

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INTERNATIONAL LAW TOPICS AND DISCUSSIONS.

Topic I.

MARGINAL SEA AND OTHER WATERS.

What regulations should be made in regard to the use in time of war of the marginal sea and other waters?

REGULATIONS.

1. Acts of war are prohibited in neutral waters and in waters neutralized by convention.

2. "Belligerents are bound to respect the sovereign rights of neutral powers and to abstain in neutral waters from all acts which would constitute, on the part of the neutral powers, which knowingly permitted them, a nonfulfillment of their neutrality."

3. The area of maritime war:
   (a) The sea outside of neutral jurisdiction.
   (b) Gulfs, bays, roadsteads, ports, and other waters of the belligerents.

4. Limitations:
   (a) Marginal sea.—The jurisdiction of an adjacent state over the marginal sea extends to 6 miles (60 to a degree of latitude) from the low-water mark.
   (b) Roadsteads.—The jurisdiction over roadsteads is the same as over the sea.
   (c) Gulfs and bays.—The jurisdiction of an adjacent state over the sea extends outward 6 miles from a line drawn between the opposite shores of the entrance to the waters of gulfs or bays where the distance first narrows to 12 miles.
   (d) Straits.—(1) Straits not more than 12 miles in width are under the jurisdiction of the adjacent states. (2) Innocent passage through straits connecting open seas is permitted.
   (e) Canals.—(1) (a) Canals or artificial waterways within neutral jurisdiction are closed or open to vessels of war during hostilities, according to the regulations
which have been established prior to the declaration of war. (b) No act of hostility shall take place within these waters. (2) (a) Canals or artificial waterways within belligerent jurisdiction when national in character may be closed during war, but should, if possible, be open to innocent vessels of neutral powers. (b) Canals or artificial waterways of mixed character which are not of grand importance to the commerce of the world may be similarly closed. (c) Canals or artificial waterways which are strictly international and form main highways of world commerce may be closed to all vessels of a power at war with the power which in time of peace is in control of the canal or artificial waterway.

NOTES.

Early Ideas on Marginal Sea.—It is evident from the works of ancient writers that the sea was often regarded as susceptible of possession in the same manner as land. There were also early declarations, as among Roman jurists, that “the use of the sea is as free to all men as the air.” The idea of maritime sovereignty was the prevailing one, however, during the Middle Ages. The prevalence of lawlessness at sea in the form of piracy and otherwise during the Middle Ages required a strong hand to suppress. It was natural that a state should protect its neighboring trade routes, and its own traders, as well as foreign traders also, would gladly yield obedience in return for this protection. The commerce of the Italian states was, during this period, very important. The marriage of the sea celebrated by the city of Venice from the latter part of the twelfth century was emblematic of the authority which that city had at the time over the Adriatic. Venice from time to time claimed and exercised the privilege of excluding others from the use of the Adriatic. The restrictive measures were usually taken with a view to protecting trade and commerce in these early days.

Grotius sums up the best opinion of the early days of the seventeenth century, though not following Gentilis, saying:

It would seem that dominion over a part of the sea is acquired in the same manner as other dominion; that is, as said above,
because it appertains to a person or to a territory—as appertaining to a person when he has a fleet, which is a sea army, in that part of the sea; as appertaining to territory in so far as those who sail in the adjacent part of the sea can be commanded from the shore no less than if they were upon land. (De Jure Belli ac Pacis. Lib. II., c. 3, 13.)

Bynkersonhoek in 1702 tried to make this more definite by stating that the dominion over the sea ceased with the limit of the range of cannon shot. (De Domino Maris, c. 2.)

To the position of Grotius, Selden in 1635 had been bitterly opposed. Molloy, writing later in the seventeenth century, says:

After the writings of the illustrious Selden, certainly it is impossible to find any prince or republic or single person induce with reason or sense that doubts the dominion of the British sea to be entirely subject to that imperial diadem. (De Jure maritimó, Bk. I, chap. 5, 1.)

And as the sea is capable of protection and government, so is the same no less than the land subject to be divided amongst men, and appropriated to cities and potentates, which long since was ordained of God as the thing most natural. (Ibid., 4.)

The point of view of those who claimed that the open sea was, as said in the Roman law, “by nature common to all,” however, gradually prevailed, particularly in the eighteenth century, yet the line at which the open sea began in distinction from the line of the marginal sea continued to be a subject of controversy.

Early control.—In ancient times the control of the sea was not considered a matter of much importance. During the period of Roman power, that state exercised a considerable control for the protection of the different parts of its dominion.

During the Middle Ages, with the development of maritime commerce and of competition, the Mediterranean and the waters about the coasts of western Europe became the subject of conflicting claims. The Venetians seemed to have maintained their control of the waters of the Adriatic till the seventeenth century, requiring that those who sailed its waters have permission, and in return they afforded a degree of protection.
In the extreme and positive practice early followed by Great Britain can be found precedents for the claims to most absolute control of later days. King Edgar in 964 seems to have assumed the title not merely of King of the land but of the circumjacent seas. Later, acts of Parliament were passed assuming sovereignty over the neighboring seas. The formula used by the English kings usually implied that while they assumed the dominion, they proposed to exercise the authority and defend the seas.

In the English seas, as elsewhere, the exercise of protection was not a gratuitous function of the state. In some seas tolls had been collected for protecting the foreign vessels from pirates, etc. The requirement of a salute of the flag was common in the English seas. The sovereignty of the English seas was formally recognized to reside in the English crown by a memorial presented by the representatives of merchants of several states in the early part of the fourteenth century. These British claims and the exercise of control continued. Selden, in his book "Mare Clausum" (1635), gave expression to the most extreme forms of these claims.

What had been done by England was done by many other states, so that the movement of vessels upon the seas and in the waters near the coasts of many countries was often fraught with impediments and inconveniences. The extreme claims to control by Spain and by Portugal in the period of the sixteenth century to all the neighboring waters to 100 miles' limit and even beyond if the waters were not under another sovereignty, and some claims to the whole Atlantic Ocean within certain lines, seem to have brought a reaction. From the beginning of the seventeenth century, particularly from the issue of Grotius's "Mare Liberum" in 1609, the doctrine of limited control gained in influence. That this control should be effective was the principle advocated by Bynkershoek in 1702 in his "De Dominio Maris." That effective control could be maintained to a limit of cannon shot from shore appealed to the minds of men as reasonable, and this is the form which was embodied in many treaties;
and this doctrine became the basis of modern practice. The varying methods which had been resorted to in earlier times gradually assumed a degree of uniformity under the spread of the doctrine of Bynkershoek that the land dominion ended with the range of arms, "potestas terrae finitur ubi finitur armorum vis." The doctrine of the Roman law freedom of the sea was revived and amplified and brought to the support of the modern doctrine of the exercise of control.

Later ideas.—The ideas of the right to exercise jurisdiction within the marginal sea became more definite as the limits of this area became better established. The questions most frequently arising related to fishing. It has gradually come to be recognized that in absence of treaties the exclusive right to regulate fishing in marginal seas is in the adjacent state and also that a state or states can make regulations for their own nationals beyond the marginal limits. The basis of later ideas changed somewhat, and it was considered that the marginal sea should be under jurisdiction of the adjacent state, not merely because a shot could reach across the area, but because such jurisdiction was necessary for the well-being of the state, and even for its safe and convenient existence, and that the exercise of such jurisdiction within a limited area would not involve any disadvantage to other states which would be commensurate with the advantage to the adjacent state.

The exercise of jurisdiction within this marginal area has now come to cover in time of peace the execution of municipal laws in regard to revenue, sanitary and fishery regulations in an exclusive manner, and the execution of somewhat less rigorous regulations in regard to navigation and criminal offenses, unless the criminal act takes effect outside the vessel. In time of war there is still much difference in the practice of states. Examples of varying domestic regulations may be found in the legislation of many states. During the eighteenth century maritime jurisdiction received much attention.

Great Britain.—A statute of 9 George II, c. 35 (1736), assumes jurisdiction over any person or persons who
“shall be lurking, waiting, or loitering within 5 miles from the seacoast or from any navigable river” and suspected of intended violation of the revenue laws. (Sec. 18.) In the same act jurisdiction is assumed “within 2 leagues of the shore” (sec. 22) and transshipment of goods without payment of duties is prohibited “within the distance of 4 leagues from any of the coasts of this kingdom.” The regulation relating to the jurisdiction over 2 leagues was in 1763, by a statute of 4 Geo. III, Cap. 15, extended to the American colonies.

Early opinion in United States.—A letter of Jefferson, Secretary of State, to the British minister, of November 8, 1793, showed the attitude of the Government at that time:

SIR: The President of the United States, thinking that, before it shall be finally decided to what distance from our seashores the territorial protection of the United States shall be exercised, it will be proper to enter into friendly conferences and explanations with the powers chiefly interested in the navigation of the seas on our coasts, and relying that convenient occasions may be taken for these hereafter, finds it necessary in the meantime to fix provisionally on some distance for the present government of these questions. You are sensible that very different opinions and claims have been heretofore advanced on this subject. The greatest distance to which any respectable assent among nations has been at any time given has been the extent of the human sight, estimated at upward of 20 miles, and the smallest distance, I believe, claimed by any nation whatever is the utmost range of a cannon ball, usually stated at a sea league. Some intermediate distances have also been insisted on, and that of three sea leagues, has some authority in its favor. The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation as any nation whatever. Reserving, however, the ultimate extent of this for future deliberation, the President gives instructions to the officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea league, or three geographical miles, from the seashores. This distance can admit of no opposition, as it is recognized by treaties between some of the powers with whom we are connected in commerce and navigation and is as little, or less, than is claimed by any of them on their own coasts.
The law of June 5, 1794, the Neutrality Act, declares:

SEC. 6. And be it further enacted and declared, That the district courts shall take cognizance of complaints by whomsoever instituted in cases of capture made within the waters of the United States or within a marine league of the coasts or shores thereof.

It is possible that the limits of the marginal sea may be extended by pushing out from land the line from which the marine league is to be measured. Such a method is mentioned in a letter of President Jefferson to the Secretary of the Treasury in 1804.

DEAR SIR: As we shall have to lay before Congress the proceedings of the British vessels at New York, it will be necessary for us to say to them with certainty which specific aggressions were committed within the common law, which within the admiralty jurisdiction, and which on the high seas. The rule of the common law is that wherever you can see from land to land all the water within the line of sight is in the body of the adjacent country and within common-law jurisdiction. Thus, if in this curvature \( a \) to \( b \) you can see from \( a \) to \( b \), all the water within the line of sight is within common-law jurisdiction, and a murder committed at \( c \) is to be tried as at common law. Our coast is generally visible, I believe, by the time you get within about 25 miles. I suppose that at New York you must be some miles out of the Hook before the opposite shores recede 25 miles from each other. The 3 miles of maritime jurisdiction is always to be counted from this line of sight.

The United States has made other extreme claims at various times. The Gulf Stream has seemed to some the natural and proper limit of maritime jurisdiction. John Quincy Adams relates in his Memoirs that in 1805, on November 30, he paid a visit to President Jefferson.

The President mentioned a late act of hostility committed by a French privateer near Charleston, S. C., and said that we ought to assume as a principle that the neutrality of our territory should extend to the Gulf Stream, which was a natural boundary, and within which we ought not to suffer any hostility to be committed. M. Gaillard observed that on a former occasion, in Mr. Jefferson's correspondence with Genet, and by an act of Congress at that period, we had seemed only to claim the usual distance of 3 miles from the coast; but the President replied that he had then assumed that principle because Genet by his intemperance forced us to fix on some point, and we were not then prepared to assert the claim of jurisdiction to the extent
we are in reason entitled to; but he had then taken care expressly to reserve the subject for future consideration, with a view to this same doctrine for which he now contends. I observed that it might be well, before we ventured to assume a claim so broad, to wait for a time when we should have a force competent to maintain it. But in the meantime, he said, it was advisable to squint at it, and to accustom the nations of Europe to the idea that we should claim it in future. (Memoirs, J. Q. Adams, p. 375.)

**Bering Sea.**—After the acquisition of Alaska by purchase from Russia in 1867 the United States came into possession, according to the terms of the convention with the Czar, of "all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands" within the specified limits of the Russo-British treaty of February 28/16, 1825. Under this convention the United States advanced some of the claims that Russia had previously advanced. In 1890 Mr. Blaine, Secretary of State, maintained that the irregular taking of seals in the Bering Sea was contra bonos mores, and that the United States had jurisdiction sufficient to prevent such acts. Great Britain maintained that fur seals in the high seas were res nullius. The matter of jurisdiction of the United States in Bering Sea was referred in 1892 to a tribunal of arbitration. This tribunal decided that the United States had no exclusive jurisdiction outside the ordinary 3-mile limit.

**Revenue purposes.**—The act of March 2, 1797, provided that the United States would assume jurisdiction for revenue purposes 4 leagues from the coast.

Sec. 2760. The officers of the revenue cutters shall respectively be deemed officers of the customs and shall be subject to the direction of such collectors of the revenue or other officers thereof, as from time to time shall be designated for that purpose. They shall go on board all vessels which arrive within the United States or within 4 leagues of the coast thereof, if bound for the United States, and search and examine the same, and every part thereof, and shall demand, receive, and certify the manifests required to be on board certain vessels, shall affix and put proper fastenings on the hatches and other communications with the hold of any vessel, and shall remain on board such vessels until they arrive at the port or place of their destination.
This practice for the enforcement of revenue laws seems to meet with little objection, and is also observed by other states.

American treaty provisions.—In the treaty between the United States and Great Britain in 1794, Article XXV, it is provided that—

Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other to be taken within cannon shot of the coast, nor in any of the bays, ports, or rivers of their territories, by ships of war or others having commission from any prince, republic, or state whatever. But in case it should so happen, the party whose territorial rights shall thus have been violated shall use his utmost endeavors to obtain from the offending party full and ample satisfaction for the vessels so taken, whether the same be vessels of war or merchant vessels.

This article expired in 1807.

The treaty of Gaudalupe-Hidalgo of 1848 between the United States and Mexico states:

Art. V. The boundary line between the two Republics shall commence in the Gulf of Mexico, 3 leagues from land, opposite the mouth of the Rio Grande.

This portion of the treaty was reaffirmed in the Gadsden treaty of 1853. To a complaint of the British minister in regard to this clause in 1848, Mr. Buchanan, Secretary of State, replied:

I have had the honor to receive your note of the 30th April last objecting, on behalf of the British Government, to that clause in the fifth article of the late treaty between Mexico and the United States by which it is declared that "the boundary line between the two Republics shall commence in the Gulf of Mexico 3 leagues from land" instead of 1 league from land, which you observe "is acknowledged by international law and practice as the extent of territorial jurisdiction over the sea that washes the coasts of states."

In answer I have to state that the stipulation in the treaty can only affect the rights of Mexico and the United States. If for their mutual convenience it has been deemed proper to enter into such an arrangement, third parties can have no just cause of complaint. The Government of the United States never intended by this stipulation to question the rights which Great Britain or any other power may possess under the law of nations. (1 Moore, Digest Int. Law, p. 730.)
Opinions.—Pradier-Fodéré, summing up various doctrines, says:

La prolongation de la souveraineté et de la jurisprudence de l'état sur la portion de mer qui, touchant immédiatement ses côtes, ferme en quelque sorte la ligne défensive de son territoire et peut être considérée comme une continuation de sa frontière, est fondée sur le droit de l'état d'assurer sa sécurité et la protection des intérêts commerciaux et fiscaux du pays. (Cours de Droit Int. Pub. II, ch. 5.)

Wheaton, speaking of the "marine league, or as far as a cannon shot will reach from the shore," says:

Within these limits its (the state's) rights of property and territorial jurisdiction are absolute, and exclude those of every other nation. (International Law, Pt. II, sec. 177.)

British territorial waters jurisdiction act of 1878 says:

Any part of the open sea within 1 marine league of the coast measured from low-water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominions.

The British Manual of Naval Prize Law, prepared by Prof. Holland and issued in 1888, declares, in regard to war powers, that—

2. These powers may be exercised in any waters except the territorial waters of a neutral state. The territorial waters of a state are those within 3 miles from low-water mark of any part of the territory of that state, or forming bays within such territory; at any rate, in the case of bays the entrance to which is not more than 6 miles wide.

Hautefeuille shows that the early publicists fixed varying limits to maritime domain. Casaregis gives 100 miles; Baldus and others, 60 miles; Loccenius, two days' journey; many treaties indicate 2 leagues; some writers think the extent and power of the state should determine. (I Droits et Devoirs de Nations Neutres, Titre I, chap. 3, sec. 1.) He finally concludes: "La plus grande portée du cannon monté à terre est donc réellement la limite de la mer territoriale." (Ibid.) He argues for this, as many since have argued, that this area, being within range of cannon, is under effective control of the adjacent state and should belong to that state.
The proposition that hostilities in time of war be restricted to the area within the jurisdiction of the two belligerents, and that the high seas be free from conflict, has been made. Neutral and belligerent commerce would under this plan be exempt on the high sea and belligerent war vessels would be liable only in belligerent waters. Under such a regulation it would seem necessary to extend the jurisdiction in the marginal sea in order to permit hostilities with the long-range guns of the present day.

It should be said of all declarations by states, or by rulers fixing or claiming maritime jurisdiction of an exceptional character or to an exceptional extent, that such declarations do not create rights as against other states. The citizens of the states making the declarations may be under obligations to observe their provisions, but the rights appertaining to the citizens of other states by the law of nations are not abridged by domestic acts of adjacent states.

Waters of belligerents.—In time of war the marginal sea or other waters may be within the jurisdiction of a belligerent or within the jurisdiction of a neutral. The marginal seas or other waters within the jurisdiction of the belligerent, unless exempt by special treaty agreement, are within the legitimate area of hostilities.

Neutral waters.—The neutral has the right of jurisdiction of waters which appertain to neutral territory. In early times the belligerent paid little attention to neutral claims. From the days of the armed neutrality of 1780 neutral rights have gradually received more consideration. For a considerable period the obligation rested upon the neutral to protect its neutrality. The authorities upon international law enumerated degrees and kinds of neutrality, and the belligerents took advantage of any special privileges which would be of service to them. Treaties were often made in times of peace which would give to one state special privileges not enjoyed by other states in time of war. Later even the idea of impartiality
was considered as insufficient evidence of a spirit of neutrality because the operation of impartial rules might easily be favorable to one state while unfavorable to another; e. g., the grant of unlimited loans to each belligerent might be of great service to a belligerent which had no resources, and of no service to a belligerent which had abundant resources.

Toward the end of the nineteenth century, particularly after the Alabama award, the doctrine of neutrality became more and more defined, and the idea that a neutral should refrain from all connection with the hostilities became general. Certain burdens were placed on the neutral by the expansion of the "due-diligence" clause. The idea that there were certain duties of abstention, prevention, toleration, and regulation was gradually recognized, as in state loans, use of territory as base, visit and search, sojourn of vessels in neutral ports, etc.

National regulations and claims.—The regulations enacted by domestic legislation show considerable variation, and the claims are sometimes even more divergent.

Austria-Hungary.—The Austro-Hungarian regulations seem generally to recognize a cannon shot and a marine league as interchangeable expressions, but have special regulations extending revenue jurisdiction to 12 miles, and special regulations for fisheries and in time of war.

Belgium.—The Belgian regulations of 1901 contain very detailed and specific provisions in regard to the use of territorial waters. These regulations provided for the duration of sojourn of foreign ships of war even in time of peace. In time of war the regulations are very stringent; e. g., the commander of any belligerent vessel may be invited "to furnish accurate information touching the flag, the name, the tonnage, the engine power, the crew of his vessel, her armament, the port of departure, the destination, as well as other information necessary to determine, if need be, the repairs or supplies of provisions and coal that may be necessary." (Art. XII.)
Brazil.—The regulations in regard to the use of Brazilian waters, issued at the time of the Spanish-American war in 1898, were definite in form, though not describing exactly what area is included in territorial waters.

xx. Neither of the belligerents may take prizes in the territorial waters of Brazil, place themselves in ambush in the ports or anchorages, islands, or capes situated in those waters to watch for hostile ships coming in or going out; try to get information in regard to those which are expected, or are to go out; or, finally, to make sail to chase a hostile ship sighted or signaled.

All necessary means, including force, will be employed to prevent prize taking in territorial waters.

xxi. If prizes brought to the ports of the Republic shall have been taken in territorial waters, the things coming out of them shall be taken possession of by the competent authorities, in order to restore them to their lawful owners, the sale of such things being always taken and considered as void.

xxii. Ships which shall try to violate neutrality shall be immediately warned to leave the maritime jurisdiction of Brazil, and nothing shall be furnished them.

The belligerent who shall infringe the requirements of this circular shall be no more admitted into the ports of Brazil.

France.—The Instructions issued by France on December 19, 1912, provide:

Article V.—Respect des droits des États neutres.—22. Vous vous conformerez strictement aux interdictions imposées aux belligérants par la Convention XIII de La Haye, du 18 octobre 1907, concernant les droits et devoirs des Puissances neutres en cas de guerre maritime.

23. Pour l’application de cette Convention, vous considérerez les eaux territoriales comme ne s’étendant jamais à moins de trois milles des côtes, des flots ou des bancs découvrant qui en dépendent, à compter de la laisse de basse mer, et jamais au delà de la portée de canon.

Vous trouverez dans l’annexe II le tableau des Puissances qui, soit dans un texte légal ou réglementaire, soit dans une déclaration de neutralité, ont fixé la limite de leurs eaux territoriales, quant au droit de la guerre, à une distance de la côte supérieure à trois milles.

Vous respecterez toute limite de cette nature qui se trouverait ainsi régulièrement fixée avant l’ouverture des hostilités. (See Appendix.)
The Annexe II referred to above is as follows:

Tableau des États qui ont fixé une étendue de leurs eaux territoriales supérieure à trois milles, quant au droit de la guerre.

<table>
<thead>
<tr>
<th>États</th>
<th>Étendue des eaux territoriales.</th>
<th>Observations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Russie</td>
<td>Portée de canon.</td>
<td></td>
</tr>
<tr>
<td>Suède</td>
<td>4 milles, et, près d'une forteresse, la portée des canons de cette forteresse.</td>
<td>Pour la mer Blanche, limite s'étend à 3 milles, au large de la ligne joignant les caps Sviatoi Noss et Kanim Noss.</td>
</tr>
<tr>
<td>Norvège</td>
<td>4 milles.</td>
<td></td>
</tr>
<tr>
<td>Danemark</td>
<td>4 milles.</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>6 milles.</td>
<td>A partir de l'ilot non submergé le plus éloigné de la côte.</td>
</tr>
<tr>
<td>Espagne</td>
<td>6 milles.</td>
<td>A partir de l'ilot non submergé le plus éloigné de la côte.</td>
</tr>
<tr>
<td>Portugal</td>
<td>6 milles.</td>
<td></td>
</tr>
<tr>
<td>Italie</td>
<td>Portée de canon.</td>
<td></td>
</tr>
</tbody>
</table>

Germany.—Germany has usually claimed a cannon shot as the limit of jurisdiction seaward. Some German authorities, realizing that the range of cannon would probably increase, have proposed that the powers meet to readjust the limits of marginal sea from time to time and at intervals of 10 years.

Italy.—A law of June 16, 1912, regulates the passage and stay of merchant vessels upon Italian coasts:

**ARTICLE 1er.** Le transit et le séjour des navires marchands nationaux ou étrangers peuvent être défendus, en quelque temps que ce soit et dans un lieu déterminé quelconque, intérieur ou extérieur des mers de l'État, quand cela sera reconnu nécessaire à l'intérêt de la défense nationale. Aux seuls effets de la présente loi, par "mers de l'État" on entend la zone de la mer comprise entre dix milles marins du rivage. En ce qui concerne les golfs et les baies, la zone des dix milles est mesurée à partir d'une ligne droite tirée en travers de la sinuosité dans la partie la plus extérieure où l'ouvrure n'a pas une largeur supérieure à vingt milles. (Gazzetta ufficiale du 27 juin, 1912, n° 151.)

Japan.—The Japanese regulations governing captures at sea, of March 15, 1904, contain a provision similar to the Russian regulations.

Art. II. No visit, search, or capture shall be made in neutral waters, nor in waters clearly placed by treaty stipulations outside the zone of hostile operations.
Norway and Sweden.—Both Norway and Sweden, before, during, and since their union, have maintained 4 miles as the limit of maritime jurisdiction. Even their early laws specify that this distance shall be measured from the most remote islet which is exposed at low tide. Scandinavian writers argue that as many continental states maintain the extent of jurisdiction as the range of a cannon shot from shore, their contention for 4 miles is really a moderate one, as the range of cannon shot is much greater.

For control of fishing, the Norwegian claim in the seventeenth century (1636) extended even to 4 or 6 leagues.

The Swedish jurisdiction for revenue purposes has been fixed ordinarily at 6 miles.

The above jurisdiction becomes of special importance because practically uniform rules of neutrality were proclaimed for the waters of Denmark, Norway, and Sweden by concurrent agreement on December 21, 1912, and published on December 24. No change in the rules were to be made by one state without consulting the others.

Russia.—A Russian ukase of September 7, 1821, relating to the Bering Sea, forbade all foreign vessels, except in case of distress, "not only to land on the coasts and islands belonging to Russia, as stated above, but also to approach them within less than a hundred Italian miles."

Both the United States and Great Britain protested against this position of Russia.

In 1911 a bill was before the Russian Duma proposing to restrict fishing within 12 miles along the coast of the White Sea. This proposed law raised protests from several states and became a matter of inquiry in the British Parliament, where the sentiment of the Government was opposed to the elimination of the 3-mile limit of jurisdiction.

The Russian Regulations on Maritime Prizes, approved by the admiralty board September 20, 1900, and made
operative for the Russo-Japanese War of 1904–5, provide in article 16 that—

The stoppage, examination, and detention of hostile or suspicious vessels and cargoes is permitted throughout the extent of the ocean and other waters, with the exception of those under the dominion of a neutral power or those excluded from military operations by special international agreements. (Foreign Relations, U. S. 1904 p. 737.)

Spain.—The Spanish claims to jurisdiction seem to extend in ordinary cases to 6 marine miles.

Special regulations.—During the Russo-Japanese war of 1904–5 several states made known in their neutrality proclamation that they proposed to restrict the use of certain waters in special respects.

Denmark.—"If warlike operations should extend to the vicinity of Denmark, the inner waters south of Sealand limited by the meridians of Omö and Stege shall be closed by means of stationary submarine mines; and ships of war belonging to either belligerent shall not be permitted to enter these waters nor the roadstead and harbor of Copenhagen, except in evident stress of weather, in which case such entrance shall be made public." (Foreign Relations, U. S., 1904, p. 21.)

Sweden and Norway.—The King has decided—

1. To interdict to war vessels of the belligerents entry to the territorial waters within the fixed submarine defenses, as well as to the following ports:

(a) In Sweden:
Stockholm, comprising the waters within a line commencing at Spillersboda, on the Swedish Continent, and passing Furusund, Sandhamn, and Fiversätraö, to Dalarö and another line, Herrhamra-Landsort-Ledskär.
Karlskrona, within the fixed submarine defenses;
Fårösund, the entrance from the north, comprising the waters within a line connecting Vialmsudsde with Hällergrundszdde, and the entrance from the south, comprising the waters within a line Ryssniö—boundary of Bungeö-Bungnäs; and
Slite, comprising the waters within the true north and west lines connecting the boundary of Magö with the mainland of the island of Gottland.

(b) In Norway:
The port of Fredrikshald;
The fjord of Kristiania inside of Bastö;
The fjord of Tönöber inside of Natholmen and of the light-houses of Östre Vakerholmen, of Mogerötingen, and of Vallö;
The port of Kristianssand with the waters inside of Fredriksholm and of the lighthouses of Oxø, of Grønningen, and of Torsø;
The port of Bergen with its entrances (a) Byfjorden inside of Hjelteskjær-Stangen, (b) The entrance from the north inside of Herlø-Agnø-Bognø;
The fjord of Trondhjem inside of the fortifications of Agdenes; and
The port of Vardo. (Ibid, p. 31.)

Institute of International Law, 1894.—The question of the limit of jurisdiction over the marginal sea has received much attention from the Institute of International Law. The report of Sir Thomas Barclay, in 1894, showed that there had been such lack of unanimity as to the limit of jurisdiction that he had deemed it expedient to leave the number of miles in the proposed rules to be filled in by the Institute.

The report of 1894 showed a tendency to make a distinction between the limit to be prescribed for the exercise of jurisdiction in time of war and the limit which should be prescribed for the exercise of control of fishing and similar purposes. Some authorities of great weight stood firmly for an extension of the maritime jurisdiction to the limit of the range of cannon shot. M. de Martens, of Russia, held that this range was the real basis upon which the limit of jurisdiction should be determined, and that accordingly the limit would vary as the range of cannon increased. To M. de Martens the 3-mile limit seemed obsolete and illogical. He proposed 10 miles as a convenient conventional limit. If the doctrine of Bynkershoek is to be followed to its logical conclusion, and “the land dominion is to be limited by the range of cannon,” then there is reason for extending the marginal jurisdiction. If the question is one of the distance to which the adjacent state can in fact control the marginal waters, then the limit may be extended. This was frequently shown to be the attitude in the eighteenth century claims and writings.

The ideas expressed by the Institute of International Law in 1894 indicate that there is a common belief that the adjacent state has not merely jurisdiction, but also
sovereignty, over the marginal sea. The rule proposed by the Institute was:

Article premier. L'État a un droit de souveraineté sur une zone de la mer qui baigne la côte sauf le droit de passage inoffensif réservé à l'article 5. (XIII Annuaire, 1894-95, p. 329.)

Art. 5. Tous les navires sans distinction ont le droit de passage inoffensif par la mer territoriale, sauf le droit des belligérants de réglementer et, dans un but de défense, de barrer le passage dans ladite mer pour tout navire, et sauf le droit des neutres de réglementer le passage dans ladite mer pour les navires de guerre de toutes nationalités.

The Institute was basing its action upon a marginal limit of 6 miles instead of the generally recognized 3 miles. The Institute by another regulation had proposed to give the neutral state a right to extend the zone of control in time of war even to the range of a cannon shot.

It may be said that Sir Thomas Barclay, in 1894, after considering all the propositions which had been made to him as the reporter of the committee, judged 6 miles to be the limit which would be most in accord with general opinion, though in special cases this limit might be extended. The investigations and discussions resulted in the formulation of the proposed regulation in the following form:

Art. 2. La mer territoriale s'étend à 6 milles marins (60 au degré de latitude) de la laisse de basse marée sur toute l'étendue des côtes. (13 Annuaire de l' Institut de Droit International, p. 329.)

The same regulation was presented to the Institute in 1912.

The Institute in 1894 also proposed to give the neutral state a right in time of war to extend its zone of neutrality to the range of a cannon.

Art. 4. En cas de guerre, l'État riverain neutre a le droit de fixer, par la déclaration de neutralité ou par notification spéciale, sa zone neutre au delà de 6 milles, jusqu'à portée du canon des côtes. (XIII Annuaire, p. 329.)

The extent of marginal waters would, under this regulation if adopted, be very much enlarged, and the area of possible hostile action by belligerents would be cor-
respondingly decreased as regards neutral waters, but increased as regards the area which might be regarded as within belligerent jurisdiction. It would not be reasonable to grant that the neutral marginal sea could be extended in time of war unless the belligerent marginal sea might be similarly extended. The liability for cutting cables on the high sea, for example, would under this regulation be reduced, as nearly all cables if cut at all must be cut within range of cannon shot though perhaps not within 3 miles. If the neutral may thus extend the zone of neutrality to the range of a cannon, violations of neutrality will be more liable to occur, and the neutral will, under recent conventions, be under great obligations to prevent these violations. These and other possible consequences seem to have led to the suggestion in the report of 1912 that this article be eliminated from the proposed regulations.

Position of United States, 1896.—The proposition of the Institute of International Law in 1894 for a 6-mile limit of marginal sea was brought to the attention of the United States by the Netherlands minister, and a reply was made by Secretary Olney in 1896:

In conformity with your recent oral request, I have now the honor to make further response to your unofficial note of November 5 last, which was acknowledged on the 9th of the same month, by informing you that careful consideration would be given to the important inquiry therein made as to the views of the United States Government touching the expediency of settling by treaty among the interested powers the question of the extent of territorial jurisdiction over maritime waters.

This Government would not be indisposed, should a sufficient number of maritime powers concur in the proposition, to take part in an endeavor to reach an accord having the force and effect of international law as well as of conventional regulation, by which the territorial jurisdiction of a state, bounded by the high seas, should henceforth extend 6 nautical miles from low-water mark, and at the same time providing that this 6-mile limit shall also be that of the neutral maritime zone.

I am unable, however, to express the views of this Government upon the subject more precisely at the present time, in view of the important consideration to be given to the question of the effect of such a modification of existing international and conventional
law upon the jurisdictional boundaries of adjacent states and the application of existing treaties in respect to the doctrine of headlands and bays.

I need scarcely observe to you that an extension of the headland doctrine, by making territorial all bays situated within promontories, 12 miles apart instead of 6, would affect bodies of water now deemed to be high seas and whose use is the subject of existing conventional stipulations. (Quoted in Moore, International Law Digest, Vol. I, p. 734.)

Institute of International Law, 1912.—A report to the Institute of International Law in 1912 by Sir Thomas Barclay retained the provision recommending 6 miles as the limit of jurisdiction over marginal sea, but it was proposed to strike out the regulation giving to a neutral state the right to extend its zone of marginal neutral waters in time of war to the range of a cannon shot, thus leaving the zone in peace, as in war, at the 6-mile line.

Conclusion.—The report presented to the Institute of International Law in 1912, to be more particularly considered at a later session, makes the following provision in regard to the area of hostilities.

Art. 1. Théâtre des hostilités.—Le théâtre de la guerre maritime comprend: 1° la mer ouverte; 2° les golfs, les baies, les rades, les ports et les eaux territoriales des belligérants, y compris leurs détroits et leurs canaux maritimes; 3° leurs eaux continentales servant à la navigation maritime, autant que des navires de guerre ennemis y pénètrent de la mer.

Des actes d'hostilité ne peuvent avoir lieu ni dans les eaux des États neutres, ni dans les parties de la mer, les détroits et les canaux conventionnellement neutralisés.

This does not, however, determine what are the limits of the respective waters.

General trend of the coast.—In measuring the limits of marginal sea the opinion seems to be that it may not be wise to follow all the minor sinuosities of the coast. These small indentations can not easily be discovered from the sea and may vary. The reasonable position has been held to be that in establishing the lines of limitation of the marginal sea, the general trend of the coast shall be followed in cases where questions arise. (Hague Arbitration, Norway v. Sweden, 1909.)
Regulations of The Hague conventions.—The regulations of the conventions agreed upon at The Hague in certain respects recognized a somewhat modern idea, viz, that the burden of the war should, so far as possible, fall exclusively upon the belligerents, and that neutrals should be freed from its consequences.

The first article of The Hague convention concerning the rights and duties of neutral powers in maritime war, which was signed in 1907 and proclaimed in 1910 by the United States, provides—

**ARTICLE 1.** Belligerents are bound to respect the sovereign rights of neutral powers and to abstain, in neutral territory or neutral waters, from all acts which would constitute, on the part of the neutral powers which knowingly permitted them, a non-fulfillment of their neutrality.

This article, which was adopted by the representatives at The Hague, was emphatically declared by the British delegate who presented it to be a formal recognition that the belligerents are bound to respect the rights of neutrals. (Deuxième Conférence, vol. 3, p. 572.)

In a general way "all acts of hostility" are forbidden in neutral waters. Some of the specific acts which are forbidden to belligerents are enumerated in this same convention; such are the setting up of prize courts in neutral jurisdiction, the use of neutral waters as a base, sojourn by belligerent ships in neutral waters for more than 24 hours, the bringing in of prize, etc. Under articles 25 and 26 the neutral state is bound to "exercise such surveillance as the means at its disposal allow to prevent" violations of its neutrality, and the exercise of its rights "can not be considered as an unfriendly act."

The report accompanying this convention, which is an official commentary upon its meaning, says:

Le principe qu'il convient d'affirmer tout d'abord c'est l'obligation pour les belligerants de respecter les droits souverains des États neutres. Cette obligation ne résulte pas de la guerre, pas plus que le droit d'un État à l'inviolabilité de son territoire ne résulte de sa neutralité. C'est une obligation et c'est un droit qui sont inhérents à l'existence même des États, mais qu'il est bon de rappeler expressément dans des circonstances où ils sont plus exposés à être méconnus. Suivant une parole de Sir Ernest Satow,
commentant un article de la proposition britannique auquel a été emprunté presque textuellement l'article 1 de notre projet, il y a là “l’expression de la pensée maîtresse de cette partie du droit international.” (Séance du 27 juillet.)

Le principe est applicable à la guerre continentale comme à la guerre maritime, et il ne faut pas s’étonner que le règlement élaboré par le Deuxième Commission au sujet des droits et des devoirs des États neutres sur terre commence par cette disposition : “Le territoire des États neutres est inviolable.”

D’une manière générale, les belligérants doivent s’abstenir dans les eaux neutres de tout acte qui, s’il était toléré par l’État neutre, constituerait un manquement à la neutralité. Il importe de remarquer, dès à présent, qu’un devoir du neutre ne correspond pas nécessairement à un devoir du belligérant et cela est conforme à la nature des choses. On peut imposer au belligérant l’obligation absolue de s’abstenir de certains actes dans les eaux de l’État neutre ; il lui est aisé, et, dans tous les cas, possible de satisfaire à cette obligation, qu’il s’agisse des ports ou des eaux territoriales. On ne peut, au contraire, imposer à l’État neutre l’obligation de prévenir ou de réprimer tous les actes que voudrait faire ou ferait un belligérant, parce que très souvent l’État neutre ne sera pas en situation de remplir une pareille obligation. Il peut ne pas savoir tout ce qui se passe dans ses eaux et il peut n’être pas en état de l’empêcher. Le devoir n’existe que dans la mesure où on peut le connaître et le remplir. Cette observation rec. It son application dans un certain nombre de cas. (Deuxième Conférence Internationale de la Paix, Vol. I, p. 297.)

*Use of terms in The Hague conventions.*—In different articles of The Hague conventions different expressions are used. Sometimes the general terms “neutral waters” or “territorial waters” are used; sometimes more special terms, as “neutral ports and waters,” “ports, roadsteads, or territorial waters,” “neutral ports,” “ports or roadsteads.”

While the variation in the use of terms may not in some instances be entirely consistent with the plan of the conventions, in the convention concerning the rights and duties of neutral powers in maritime war, the use was recognized as giving rise to some difference of obligation as regarded the neutral power, but not as regard belligerents.

On a parfois à se demander s’il y a lieu de distinguer entre les ports et les eaux territoriales : la distinction se comprend en
ce qui concerne les devoirs du neutre, qui ne peut être au même degré responsable de ce qui se passe dans les ports soumis à l'action directe de ses autorités ou dans ses eaux territoriales sur lesquelles il n'a souvent qu'un faible contrôle; la distinction ne se comprend pas pour le devoir du belligérant, qui est le même partout. (Deuxième Conférence de la Paix, Vol. I, p. 298.)

If the limits of jurisdiction in marginal waters should be extended to 6 or more miles, there would be an increased difficulty in maintaining these rules.

Consideration of projects.—The admission of the claim of the right to exercise jurisdiction over the marginal sea would carry the corresponding obligation to exercise this jurisdiction. There would therefore be an increase in the extent of right together with that of duty.

The proposed assumption of a jurisdiction by the United States to the Gulf Stream in the Atlantic Ocean would involve obligations which the Government would probably be reluctant to assume. The claims to 100 miles, 60 miles, 20 miles, etc., would likewise involve large obligations. It should therefore be emphasized that the possession of jurisdiction, if granted, carries obligations as well as rights.

The extension of jurisdiction in the marginal seas is a corresponding reduction of the area which has formerly been considered as the high seas, an area generally recognized by all the states of the world as being outside the limits of possible appropriation or exclusive jurisdiction. Any change from the 3-mile limit which may be regarded as properly accepted should therefore be by general agreement of the maritime states.

The rights and duties of belligerents and neutrals would be materially modified by such a change.

The exercise of jurisdiction over area beyond the 3-mile limit has been generally admitted for purpose of enforcement of revenue laws and granted by convention for fishing and other purposes. There would accordingly be little difficulty in introducing more uniformity in these practices. Several states have signified willingness to make changes in their domestic regulations.
Summary.—A review of opinions, practice, treaties, and decisions shows that for fishing and neutrality the 3-mile limit has been generally recognized. For revenue, sanitary, and certain police purposes a wider jurisdiction has been admitted. Certain states in early times claimed very wide sovereignty over the sea. Some states at present claim more than 3 miles as the range of their jurisdiction. The present tendency as shown in international conferences is to extend the limits of maritime jurisdiction. Many states have shown a tendency to adopt 6 miles as the limit of maritime jurisdiction. Many treaties still exist which provide that the range of cannon shot determines the limit. It would seem, therefore, that indefiniteness has been and is common in the fixing of the limits of the jurisdiction of marginal seas. A definite limit is particularly to be desired. The development of guns and their increased and increasing range makes the doctrine of the limit of cannon shot uncertain. An uncertain and varying standard of measurement must lead to misunderstandings and often produce difficulties which should be avoided. Admittedly the present range of cannon shot would be an extreme limit of claim of jurisdiction. The 3-mile limit would be a most conservative claim. Many states have under differing conditions supported a claim to a limit between these. Such a limit should be within reasonable control of the adjacent state and should not be an undue impairment of the acknowledged freedom of the seas. It should be a limit which has received a reasonable support. Such requirements seem to be met in the following provisions:

Conclusion.—(1) The jurisdiction over the marginal sea extends to 6 miles (60 to a degree of latitude). (2) The adjacent state has the right to exercise such jurisdiction over the marginal sea as is necessary for its well-being and for the maintenance of its obligations. (3) "Belligerents are bound to respect the sovereign rights of neutral powers and to abstain, in neutral waters, from all acts which would constitute, on the part of the neutral
powers which knowingly permitted them, a nonfulfillment of their neutrality."

Gulfs and bays.—Geographically a gulf is sometimes defined as a large bay, and a bay is defined as an expanse of water between two headlands. The headlands may be relatively near, and the definition is clear; but headlands may be very remote, and questions as to the nature of the expanse may arise. The Gulf of Mexico, the Bay of Biscay, the Gulf of Guinea, the Bay of Bengal, show the possible range of the terminology. Such areas as these may in most respects at the present time be treated in the same manner as open seas.

There are, however, smaller gulfs and bays as to the jurisdiction of which there are controversies. When the mouth of the gulf or bay is not more than 6 miles wide, the jurisdiction is admittedly within the adjacent state or states. If one state is sovereign over all the coast of such a bay, its jurisdiction is exclusive.

In the North Atlantic fisheries arbitration the British contention was that the word "bays" in the treaty of 1818 meant "all those waters which, at the time, everyone knew as bays," while the United States maintained that it was confined "to coast indentations whose headlands are not more than 6 miles apart."

The United States has, however, maintained a wider limit for gulfs, from time to time, since the founding of the Republic. In 1793 an opinion of the Attorney General, in regard to the capture of the British ship Grange by the French frigate L’Embuscade, claimed "that the Grange was arrested in the Delaware, within the capes, before she had reached the sea," and that "to attack an enemy in a neutral territory is absolutely unlawful." The question then arises as to whether the attack within the Capes Henlopen and May was within neutral jurisdiction, and the question of jurisdiction on the sea was by specific statement excluded. In support of the claim that the bay was within the jurisdiction of the United States, the Attorney General, Edmund Randolph, further says of Delaware Bay:
It communicates with no foreign dominion; no foreign nation has ever before exacted a community of right in it, as if it were a main sea; under the former and present Governments the exclusive jurisdiction has been asserted; by the very first collection law of the United States, passed in 1789, the county of Cape May, which includes Cape May itself and all the waters thereof, theretofore within the jurisdiction of the State of New Jersey, are comprehended in the district of Bridgetown; the whole of the State of Delaware, reaching to Cape Henlopen, is made one district. Nay, unless these positions can be maintained, the Bay of Chesapeake, which, in the same law, is so fully assumed to be within the United States, and which, for the length of the Virginia territory, is subject to the process of several counties to any extent, will become a rendezvous to all the world, without any possible control from the United States. Nor will the evil stop here. It will require but another short link in the process of reasoning to disappropriate the mouths of some of our most important rivers.

Such a statement implies that neutral jurisdiction may be claimed in bays where the headlands are more than 6 miles apart. The demand for the restoration of the ship Grange was granted by France, thus giving a provisional recognition of the exclusive jurisdiction of the United States in the Delaware Bay.

A somewhat more definite provision in regard to the method of measurement of the line of jurisdiction was proposed in a letter of Secretary of State Madison, May 17, 1800, to Messrs. Monroe and Pinckney, who were representing the United States in London. Madison suggested that an article be negotiated as follows:

It is agreed that all armed vessels belonging to either of the parties engaged in war, shall be effectually restrained by positive orders, and penal provisions, from seizing, searching, or otherwise interrupting or disturbing vessels to whomsoever belonging, whether outward or inward bound, within the harbours or the chambers formed by headlands, or anywhere at sea, within the distance of four leagues from the shore, or from a right line from one headland to another; it is further agreed, that, by like orders and provisions, all armed vessels shall be effectually restrained by the party to which they respectively belong, from stationing themselves, or from roving or hovering so near the entry of any of the harbours or coasts of the other, as that merchantmen shall apprehend their passage to be unsafe, or in danger of being set upon and surprised; and that in all cases where death shall be
occasioned by any proceeding contrary to these stipulations, and the offender cannot conveniently be brought to trial and punishment under the laws of the party offended, he shall, on demand made within ________ months, be delivered up for that purpose.

If the distance of four leagues cannot be obtained, any distance not less than one sea league may be substituted in the article. It will occur to you that the stipulation against the roving and hovering of armed ships on our coasts so as to endanger or alarmed trading vessels, will acquire importance as the space entitled to immunity shall be narrowed.

The discussion in regard to this matter led to the drawing up of a convention which named 5 marine miles as the limit of maritime jurisdiction, but this convention was never ratified.

There was a long period of discussion over what constituted a bay, particularly in the claims as to fishing rights.

*Headland doctrine.*—The Netherlands declared in the neutrality proclamation during the Russo-Japanese war of 1904–5 for the 10-mile limit of bays:

**ART. VIII.** Under the territory of the Kingdom is also included the seacoast to within a distance of 3 nautical miles of 60 degrees latitude at low-water mark. In regard to bays, that distance of 3 nautical miles shall be measured from a straight line athwart the bay as close as possible to the entrance at the first point at which the entrance to the bay exceeds 10 miles of 60 degrees latitude. (Foreign Relations U. S., 1904, p. 27.)

*North Atlantic coast fisheries arbitration, 1909.*—Question 5, submitted to arbitration at The Hague in the contention between the United States and Great Britain in regard to the North Atlantic coast fisheries under the treaty of 1818, raised the following point:

From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said article?

The British contention in regard to bays was summarized in the British case, as follows, in a statement as to "Rights over inclosed waters:"

It is also undoubted law that a state can exercise sovereignty over certain portions of the sea inclosed within its territory by headlands or promontories.
But different considerations apply in the case of inclosed waters from those which affect the open sea. The possession of headlands gives a greater power of control over waters contained within them than there can be over the open sea, and the safety of a state necessitates more extended dominion over the bays and gulfs inclosed by its territories than over open waters. Moreover, the interest of other nations in bays and gulfs is not so direct if, as is commonly the case, they lie off the ocean highways. For these reasons the 3-mile rule has never been applied to inclosed waters, nor has any defined limit been generally accepted in regard to them. It is true that the understanding of nations has imposed some restrictions on the exercise of sovereignty over these waters, and that states do not now assert claims, such as were common in former times, over waters which from their size or configuration can not be effectively controlled or which from their situation can not be fairly held to be the exclusive property of any one state. But these restrictions must depend on the particular circumstances of each case; they have never become formulated in any rule of general application. There was therefore no definite meaning which could have been assigned in 1818 to the term “bays in His Majesty's dominions” unless it were the meaning which His Majesty's Government contends should be put upon it, and there was no principle of the law of nations under which the meaning could be limited to bays of a certain extent only. (North Atlantic Coast Fisheries Arbitration, British Case, p. 108, Vol. IV, U. S. Sen. Doc. S70, 61st Cong., 3d sess., p. 96.)

Attempts have been made, it is true, by some writers to suggest a general principle capable of application to all inclosed waters. But these suggestions have led to no practical result. The difference in the considerations which affect particular cases has made it difficult, if not impossible, to formulate any general rule, and the difference in the considerations which affect the open sea on the one hand and inclosed waters on the other hand has made it impossible to apply the same general rule to both.

It is submitted, therefore, that the opinions of jurists establish that there is not any definite limit, whether 6 miles miles or more, beyond which inclosed waters, such as bays, may not be claimed as territorial waters by the state within whose shores they are inclosed, and that a fortiori there was no such limit in 1818. It follows that the word “bay” as used in the treaty was used in its ordinary sense and included all those tracts of water known at the time as bays. (North Atlantic Coast Fisheries, British Case, p. 121, Vol. IV, U. S. Sen. Doc. S70, 61st Cong., 3d sess, p. 108.)

American contention, 1909.—The contention of the United States in the North Atlantic coast fisheries arbitration was to restrict, under the treaty of 1818, the
opening of bays to the 6-mile limit. The conclusion was stated as follows:

5. The position of the United States with reference to question 5 is that the distance of "3 marine miles of any of the coasts, bays, creeks, or harbors" referred to in the said article, must be measured from low-water mark, following the indentations of the coast; and the United States requests the tribunal to answer and decide this question accordingly. (Case of the United States, Ibid., vol. 1, p. 248.)

Opinion of Dr. Drago.—Dr. Drago, in a dissenting opinion, refers to the award which states that the line from which the 3-mile limit shall extend shall be drawn "across the body of water at the place where it ceases to have the configuration characteristic of a bay. At all other places the 3 miles are to be measured following the sinuosities of the coast." In criticizing this, he justly says:

But no rule is laid out or general principle evolved for the parties to know what the nature of such configuration is or by what methods the points should be ascertained from which the bay should lose the characteristics of such. (Ibid., vol. 1, pp. 102-112.)

Chesapeake Bay.—In the case of the Alleganeean, considered by the Alabama Claims Commission, it was said (Stetson v. The United States) of the Chesapeake Bay:

Considering, therefore, the importance of the question, the configuration of Chesapeake Bay, the fact that its headlands are well marked and but 12 miles apart; that it and its tributaries are wholly within our own territory; that the boundary lines of adjacent States encompass it, that from the earliest history of the country it has been claimed to be territorial waters and that the claim has never been questioned; that it can not become the pathway from one nation to another; and remembering the doctrines of the recognized authorities upon international law, as well as the holdings of the English courts as to the Bristol Channel and Conception Bay, and bearing in mind the matter of the brig Grange and the position taken by the Government as to Delaware Bay, we are forced to the conclusion that Chesapeake Bay must be held to be wholly within the territorial jurisdiction and authority of the Government of the United States and no part of the "high seas" within the meaning of the term as used in section 5 of the act of June 5, 1872. (Moore, International Arbitrations, Vol. IV, p. 4341.)
Opinion of Azuni.—Azuni, whose work had great authority in the early nineteenth century, showed clearly the opinion at that time:

It is already established among polished nations that in places where the land by its curve forms a bay or a gulf we must suppose a line to be drawn from one point of the inclosing land to the other or along the small islands which extend beyond the headlands of the bay, and that the whole of this bay or gulf is to be considered as territorial sea, even though the center may be in some places at a greater distance than 3 miles from either shore. (Maritime Law of Europe, ed. 1806, vol. 1, p. 206.)

This opinion of Azuni was an expression of the ideas which had been developing since the conception of any limits had arisen, generally following Grotius and Bynkershoek, to the effect that a state should have jurisdiction over such bodies of water, because it could exercise dominion over them from the shore.

Far as the svereign can defend his sway,
Extends his empire o’er the wat’ry way;
The shot sent thundering to the liquid plain
Assigns the limits of his just domain.

—(Azuni, Maritime Law, vol. 1, p. 194.)

Opinion of Prof. Westlake.—Prof. Westlake, who died in 1913, one of the leading English authorities, said:

As to bays, if the entrance to one of them is not more than twice the width of the littoral sea enjoyed by the country in question—that is, not more than 6 sea miles in the ordinary case, 8 in that of Norway, etc.—there is no access from the open sea to the bay except through the territorial water of that country, and the inner part of the bay will belong to that country, no matter how widely it may expand. The line drawn from shore to shore at the part where, in approaching from the open sea, the width first contracts to that mentioned, will take the place of the line of low water, and the littoral sea belonging to the state will be measured outward from that line to the distance, 3 miles or more, proper to the state. But although this is the general rule, it often meets with an exception in the case of bays which penetrate deep into the land and are called gulfs. Many of these are recognized by immemorial usage as territorial sea of the states into which they penetrate, notwithstanding that their entrance is wider than the general rule for bays would give as a limit to such appropriation. Examples are the Bay of Conception in Newfoundland, penetrating 40 miles into the land and being 15 miles in average breadth, which is wholly British;
Chesapeake and Delaware Bays, which belong to the United States; and the Bay of Cancale, 17 miles wide, which belongs to France. Similar exceptions to those admitted for gulfs were formerly claimed for many comparatively shallow bays of great width—for example, those on the coast of England from Orfordness to the North Foreland and from Beachy Head to Dunnose, which, together with the whole of the Bristol Channel and various other stretches of sea bordering on the British Isles, were claimed under the name of the King's Chambers. But it is only in the case of a true gulf that the possibility of occupation can be so real as to furnish a valid ground for the assumption of sovereignty, and even in that case the geographical features which many warrant the assumption are too incapable of exact definition to allow of the claim being brought to any other test than that of accepted usage. It is sometimes said and may be historically true that all sovereignty now enjoyed over the littoral sea or certain gulfs is the remnant of the vast claims which, as we have seen, were once made to sovereignty over the open sea, and which it is held have been gradually reduced to a tolerable measure through such intermediate stages as that of the King's Chambers; and the impossibility of putting the claim to gulfs in a definite general form may be thought favorable to that view. None the less, however, the rights which are now admitted stand on a basis clear and solid enough to distinguish and support them. (International Law, Vol. I, p. 187.)

Institute of International Law, 1894.—At the session of the Institute of International Law in 1894, the reporter of the commission having in charge the matter of regulations for maritime jurisdiction favored a 10-mile limit for distance between headlands of closed bays. The institute, however, by a large vote adopted 12 miles as the proposed limit, the argument being that if 6 miles was the limit for marginal sea, that logically twice this distance would be the proper limit between headlands of bays.

The proposed regulation of 1894 took the following form:

Art. 3. Pour les baies, la mer territoriale suit les sinuosités de la côte, sauf qu'elle est mesurée à partir d'une ligne droite tirée en travers de la baie dans la partie la plus rapprochée de l'ouverture vers la mer, où l'écart entre les deux côtes de la baie est de douze milles marins de largeur, à moins qu'un usage continu et séculaire n'ait consacré une largeur plus grande. (XIII Annuaire, 1894–5, p. 329.)
It was clear that there was no consensus of opinion upon the subject in 1894, either among authors or among the governmental officials.

Roadstead.—The idea of a roadstead seems to have been clear, even in early times. It was well understood in the early part of the nineteenth century:

Quand l’ordonnance parle de rade, elle entend parler de tous les lieux d’ancrage qui sont à quelque distance de la côte où les vaisseaux trouvent fond, pour pouvoir y demeurer à l’ancrage; et où ils mouillent ordinairement, en attendant le vent ou la marée, pour entrer dans le port, ou pour faire voile; la rade, comme dit la loi 1, § 13, ff., de fluminibus, est locus minimæ portuosus, sed in quo naves in salo esse et commorari queunt. Mais on doit observer les formalités prescrites à ce sujet, tant aux Français qu’aux étrangers: de sorte que s’ils y manquent, ils ne pourroient pas se plaindre des poursuites qui pourroient être faites contre eux, comme d’un trouble et d’un empêchement. (Boucher, Institution au droit maritime, 1803, p. 707.)

Straits.—The extension of maritime jurisdiction to 6 or more miles would have a decided bearing upon the jurisdiction over straits. Some of the most important straits of the world are not twice 6 miles wide, but are more than twice 3 miles wide. It is recognized that straits not more than twice 3 miles in width are under the jurisdiction of the adjacent states, but that free passage between open seas may not be impaired under ordinary circumstances. In time of war it may be doubted whether a state if under stress may not temporarily bar a strait not more than 6 miles wide if it has jurisdiction of both shores. If the limit is extended to 12 miles the conditions are changed in a ratio which does not seem similar to that in case of extension of jurisdiction in the open sea. For this reason some who have favored extension of marginal sea jurisdiction have not favored it for straits. A strait is, however, an extension of the sea in most instances and no plan seems to have been suggested for determining when the marginal sea jurisdiction shall be reduced to the limits of the proposed jurisdiction for straits.

Straits connecting open seas.—As in claims of jurisdiction over the marginal sea, so in claims of jurisdiction...
over straits, there has been a relaxation of extreme pretensions. The English claim to exclusive jurisdiction over the North, Bristol, and St. Georges Channels would probably no longer be maintained. While claims to exclusive jurisdiction over wide channels and straits were gradually waived or allowed to lapse, claims over narrow straits were maintained.

Straits which connected open seas, even though narrow, were gradually opened, and a general right of innocent passage was recognized. One of the longest controversies was in regard to the passage of the Danish Sounds. The so-called “sound dues” were levied for many years upon vessels passing through these waters. The United States maintained that such a tax upon passage between open seas was contrary to the principles of freedom of navigation. The powers of Europe were opposed to the continued payment of such a tax, and finally an indemnity was paid to Denmark, in 1857, for relinquishing its claim to collect these dues. The United States, not recognizing the right of Denmark, made a treaty in 1858 by which, in consideration of the payment of a lump sum, the Sounds and Belts should be made free to American vessels, and the means of convenient navigation should be maintained at the cost of Denmark. The United States had maintained the contention of many writers that the freedom of the sea would be a fiction if the passage between the different seas was closed.

Strait of Magellan.—In a letter of the American minister to Argentine to the Secretary of State of June 12, 1879, it was stated that a convention was pending which provided that “the Strait of Magellan is to be considered neutral and open to the flags of all nations, and neither Government is to exercise jurisdiction in its waters, which are to be considered an open or free sea.” (Foreign Relations U. S., 1879, p. 23.)

The treaty of July 23, 1881, between the Argentine Republic and Chile, in article 5 provided:

The Strait of Magellan is neutralized, and free navigation thereon insured to the flags of all nations. With a view to guaranteeing
this freedom and neutrality, no fortification or military defenses will be raised that may clash with that object. (Foreign Relations U. S., 1881, p. 12.)

The United States had, in 1879, said that the Strait of Magellan could not be claimed as under the exclusive control of any state or states.

*Straits connecting with inland waters.*—The idea that restrictions could be placed upon straits which led to closed seas has received considerable support, both in theory and practice.

The Bosphorus and Dardanelles were regarded as under the sole control of Turkey as long as Turkey held control of all of the Black Sea. After Russia obtained a footing on the Black Sea freedom of passage was granted by treaty to merchant vessels. However, in the convention of 1841 the European powers recognized the right of Turkey to exclude ships of war. The same principle was included in the treaties of 1856 and 1871. The United States has never admitted the binding force of this provision, though always asking permission to pass. Questions were raised when, in 1902, Russian torpedo destroyers passed through on condition that they be transformed and placed under the commercial flag; and again, in 1904, at the time of the Russo-Japanese War, when under the commercial flag vessels of the volunteer fleet passed through and were subsequently transformed into ships of war.

Such examples show the nature of the questions which may arise.

*Extent of jurisdiction.*—It would be admitted that a strait not wider than 6 miles would be under the jurisdiction of the adjacent state or states. According to circumstances, in absence of conventional agreement, if two or more states had territory along the shores the jurisdiction would be to the middle of the strait or to the middle of the navigable channel, but innocent passage could not be denied between open seas.

The claims for jurisdiction over straits more than 6 miles wide have been variously supported. The range
of cannon shot has been the common basis of measurement and for straits has naturally been reckoned from each shore. Just what area would thus be covered by twice the range of cannon shot has not been determined. An arbitrary limit of 10 miles width for straits which should be under the control of the coast states has often been proposed. The Institute of International Law proposed 12 miles. Certain writers have suggested 24 miles.

An extension beyond 6 miles necessarily carries with it the obligations to submit to jurisdiction which may not have been exercised in certain areas up to the present time.

When it is considered that such straits as Gibraltar, Bab el Mandeb, and others might be under coast jurisdiction if the limits are much extended beyond 6 miles, it is evident that there may be objections. Of course, war-like operations must not be carried on within neutral jurisdiction, and an increase in neutral jurisdiction is a decrease in area for war-like operations in that region.

Institute of International Law, 1894.—The Institute of International Law, in 1894, gave attention to the subject of straits in considering maritime jurisdiction. After prescribing rules for the use of territorial waters in general, the institute, after discussion, continues:

Art. 10. Les dispositions des articles précédents s'appliquent aux détroits dont l'écart n'excède pas douze milles, sauf les modifications et distinctions suivantes:

1° Les détroits dont les côtes appartiennent à des États, différents font partie de la mer territoriale des États riverains, qui y exerceront leur souveraineté jusqu'à la ligne médiane.

2° Les détroits dont les côtes appartiennent au même État et qui sont indispensables aux communications maritimes entre deux ou plusieurs États autres que l'État riverain font toujours partie de la mer territoriale du riverain, quel que soit le rapprochement des côtes.

3° Les détroits qui servent de passage d'une mer libre à une autre mer libre ne peuvent jamais être fermés.

This extent is, however, greater than that accepted even at the present time.

The International Law Association in 1895 proposed that straits mentioned under the second paragraph should never be closed, and also as a new regulation—

Dans les détroits dont les côtes appartiennent au même État, la mer est territoriale bien que l’écartement des côtes dépasse douze milles, si à chaque entrée du détroit cette distance n’est pas dépassée.

These same modifications were proposed by Sir Thomas Barclay to the Institute of International Law in 1912.

The idea of various regulations seems to be to make a distinction between straits connecting what may be called open seas and those connecting seas wholly within the jurisdiction of a single state or a sea not regarded as generally open to the ships of the world.

Innocent passage.—As the adjacent state has jurisdiction over its marginal sea according to the above discussion, the general principle has been developed that “belligerents are bound to respect the sovereign rights of neutral powers and to abstain, in neutral territory or neutral waters, from all acts which would constitute, on the part of the neutral powers which knowingly permitted them, a nonfulfillment of their neutrality.” (Hague Convention, Rights and Duties of Neutral Powers in Maritime War, Art. I.)

On the other side, “the neutrality of a power is not affected by the mere passage through its territorial waters of ships of war or prizes belonging to belligerents.” Also a certain number of belligerent ships of war may be permitted to remain for a specified period within neutral waters, and to take on provisions or fuel and to make certain repairs.

Summary.—While there may be arguments for different regulations for gulfs, bays, straits, roadsteads, etc., it is difficult to adjust these so as to reconcile the principles of maritime jurisdiction unless the same limits as for marginal seas are assumed. Accordingly, if a limit of 6 miles is accepted for marginal seas, the same should be used for other waters.
Conclusion.—b (1) (a) The limits of gulfs or bays shall be the line where the distance between the opposite shores of the entrance to the waters first narrows to 12 miles and the marginal sea extends 6 miles from this line. (b) Roadsteads according to their situation are regarded as subject to jurisdiction corresponding to that over marginal sea or over gulfs and bays. (c) Straits, when not more than 12 miles in width, are under the jurisdiction of the adjacent state or states.

Canals.—Canals may be national, constructed purely for national purposes and within national jurisdiction. The canal connecting the waters of Lake Michigan with the Mississippi River would unquestionably be such a canal. Some of the other canals along the Great Lakes have a mixed character. The Suez Canal is regarded as international.

General.—It is admitted that there are routes along which commerce between certain points would pass if left free. The diversion of commerce to other routes would be an additional burden to those engaged in such enterprises.

There are also certain routes which have been or are closed to commerce by natural obstructions. If these obstructions are removed and commerce is allowed to follow a direct route, it will tend to take such a course.

Sometimes on land the obstruction may be a river, a mountain, a valley, or other obstruction. If the river or valley is bridged or the mountain is tunneled, the party performing this service is usually recompensed by the privilege of regulating the use of the means by which the new route has been made possible.

Sometimes the obstruction to maritime commerce may be a shallow channel, a rock, or the entire absence of a waterway. If the channel is deepened or if the rock is removed it often happens that the cost of such work is recompensed by charges upon commerce using such routes.

If a waterway is made where previously none existed, the use of such a route is usually under control of the party which bears the cost of the construction.
When the general principles and conditions under which an artificial waterway may be used have been established, and the use of the waterway under these conditions has become customary, there is reason for protest if sudden or unjust restrictions are placed upon the future use. Contracts may have been made based upon the expectation of the continuation of the status quo. Boats of special design or for the special service may have been constructed, etc. Conditions should not therefore be suddenly changed.

*Interparliamentary Union, 1913.*—A set of rules upon the subject of the regulation of the use of canals is contained in a report of the committee of the Interparliamentary Union, approved March 18, 1913. It was as follows:

**CONCLUSIONS DU RAPPORT DE LA COMMISSION DES DÉTROITS ET DES CANAUX.**

L’application du régime intégral des conventions du 23 juillet 1881 pour le détroit de Magellan, du 29 octobre 1888 pour le canal de Suez, et du 18 novembre 1901 pour le canal de Panama, à tous les détroits et canaux interocéaniques présente trop de difficultés pour qu’on puisse d’ores et déjà la prôner comme une solution possible.

Il y a pourtant certains principes dans ce domaine qu’on peut considérer comme étant susceptibles d’être adoptés dès à présent par la généralité des États civilisés dans l’intérêt des communications internationales et de la paix mondiale.

Ces principes seraient:

(a) La reconnaissance expresse du droit de libre passage des navires de commerce sans distinction de pavillon en temps de paix et de guerre dans tous les détroits reliant deux mers non intérieures et dans les canaux interocéaniques proprement dits;

(b) La stricte prohibition du blocus de ces détroits et canaux;

(c) L’interdiction de placer des mines ou des torpilles pouvant barrer totalement le passage de ces détroits et canaux et l’obligation de donner avis à la navigation quant au placement des mines et des torpilles dans les eaux territoriales avoisinantes;

(d) L’interdiction d’éteindre, même en temps de guerre, les phares qui balisent le passage de ces détroits et canaux;

(e) La reconnaissance dans les traités sur les détroits et canaux, de l’emploi de l’arbitrage, ou d’autres moyens amiables ou judiciaires, pour la solution des litiges relatifs à l’application ou à l’interprétation de ces traités.
Les moyens d'obtenir la consécration de ces principes par le droit international conventionnel doivent être soigneusement étudiés au point de vue de l'action de l'Union interparlementaire.

III. Certains cas particuliers, qui par leur caractère exceptionnel constituent un sérieux empêchement à l'adoption de règles générales plus complètes, ont besoin, par leur complexité, d'une étude plus longue et de nouvelles discussions.

La c'opération des groupes nationaux dans l'étude de ces questions servira beaucoup à les éclairer et aidera puissamment la Commission.

Opinion of Prof. Holland.—Prof. Holland, of Oxford University, writing of the international position of the Suez Canal, and referring to canals in general, said:

In time of peace the territorial power is, according to modern usage, obliged to allow "innocent passage," under reasonable conditions as to tolls and the like, to the vessels of other powers. Whether the passage of ships of war would be "innocent" is a question of some doubt, but should probably be answered in the affirmative.

In time of war the territorial power, if belligerent, may of course deal with the ships of the enemy as it pleases. It will endeavor to capture them, be they public or private, within the straits as elsewhere. The enemy will similarly exercise his belligerent rights within the straits as well as outside of them. Should the territorial power be neutral, the channel, as neutral territorial water, will probably be open, as in time of peace, for the innocent passage of all ships, public as well as private, although it has been suggested that the territorial power, if neutral, might be called upon, as such, by either belligerent to close the channel to the warships of the other. The straits will be, of course, closed to belligerent operations, the occurrence of which within them the territorial power is not only entitled, but obliged, to prevent: (Studies in International Law, p., 278.)

These words are from a lecture delivered in 1883, but Prof. Holland had apparently found no reason to modify these statements when the lecture was added to and published in 1898.

The Suez Canal was, according to Article I of the convention of 1888, to be free and open:

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.
Consequently, the high contracting parties agree not in any way to interfere with the free use of the canal, in time of war as in time of peace.

The canal shall never be subjected to the exercise of the right of blockade.

Great Britain made a reservation which caused the convention to be regarded as not in "practical operation" as regards Great Britain till April 8, 1904, by the declaration of Great Britain and France respecting Egypt and Morocco.

_Suez and Panama Canal._—By many the Suez and Panama Canals are regarded as in a class by themselves. The reason for this is that they unite great bodies of water in such manner as to materially change the course of the commerce of the world, and in such manner as to create a dependence upon their use similar to that of the open sea. Some have used the argument that so far as these canals are filled with the waters of the sea, the rights of other states in the open sea flow in with the waters. This argument can easily be shown to have little weight. The fact is that the areas through which these two great canals pass are practically under the jurisdiction of the two great English-speaking states, and the jurisdiction of the states earlier in nominal control of these areas is at an end. The regulation of the use of these canals has, therefore, become the subject of conventional agreement.

In a general way the attitude of the United States toward the Panama Canal seems to have changed from time to time and may be divided into three periods. During the period of the nineteenth century before 1850 the idea of internationalization of the canal was common. From 1850 to 1880 the doctrine of neutralization received approval. Since 1880 there has been a growing sentiment in favor of nationalization. In certain respects there are similarities between the Panama and Suez Canals.

The Suez Canal is an artificial waterway, the use of which has been regulated by conventional agreement to which a considerable number of states are parties, and the United States is not of this number. The use of the
Panama Canal is regulated by an agreement to which the United States and Great Britain are parties and to which other states are not parties.

In other respects there are many and striking parallels in the physical and historical aspects of the two waterways. These have often been pointed out and have received much discussion. Both canals are practically under control of English-speaking powers; they are within the area of comparatively weak states; they have been constructed by foreign enterprise and capital; they are of great strategic importance; they have great importance for the world commerce; they both form means of communication with great seas and shorten by many miles the route between these seas.

The conventional rules for the regulation of the use of the two waterways are also similar in many respects.

**Conclusion.**—1. (a) Canals or artificial waterways within neutral jurisdiction are closed or open to vessels of war during hostilities according to the regulations which have been established prior to the declaration of war. (b) No act of hostility shall take place within these waters.

2. (a) Canals or artificial waterways within belligerent jurisdiction when national in character may be closed during war, but should if possible be open to innocent vessels of neutral powers. (b) Canals or artificial waterways of mixed character which are not of grand importance to the commerce of the world may be similarly closed. (c) Canals or artificial waterways which are strictly international and form main highways of world commerce may be closed to all vessels of a power at war with the power which in time of peace is in control of the canal or artificial waterway.

**General conclusion.**—It is evident that there is wide diversity in the ideas as to maritime jurisdiction. This diversity had led to an increasing number of complications in recent years because of the development of closer international relations and the more general use of the area under maritime jurisdiction. The ancient rules do
not seem adapted to modern conditions. The policies and practices of the leading maritime states have often been inconsistent. The maritime states are beginning to seek for a sound basis for exercise of jurisdiction over neighboring waters. This basis may be limited in some degree by the changing range of cannon, but ultimately must have a more substantial basis in the reciprocal well being of the shore state and of the states which use the waters. This latter idea has more and more entered into the recent propositions in regard to defining maritime jurisdiction. While belligerents have rights upon the open sea and in their own waters, these rights are conditioned by the rights of neutrals, and the reverse may be equally true. It is necessary that regulations recognize this reciprocity of rights as well as the practice and precedents. The following regulations seem to embody the broad principles coming to be generally recognized in regard to maritime jurisdiction in time of war.

REGULATIONS.

1. Acts of war are prohibited in neutral waters and in waters neutralized by convention.
2. “Belligerents are bound to respect the sovereign rights of neutral powers and to abstain in neutral waters from all acts which would constitute, on the part of the neutral powers which knowingly permitted by them, a nonfulfillment of their neutrality.”
3. The area of maritime war:
   (a) The sea outside of neutral jurisdiction.
   (b) Gulfs, bays, roadsteads, ports, and other waters of the belligerents.
4. Limitations:
   (a) Marginal sea.—The jurisdiction of an adjacent state over the marginal sea extends to 6 miles (60 to a degree of latitude) from the low-water mark.
   (b) Roadsteads.—The jurisdiction over roadsteads is the same as over the sea.
   (c) Gulfs and bays.—The jurisdiction of an adjacent state over the sea extends outward 6 miles from a line
drawn between the opposite shores of the entrance to the waters of gulfs or bays where the distance first narrows to 12 miles.

(d) Straits.—(1) Straits not more than 12 miles in width are under the jurisdiction of the adjacent states. (2) Innocent passage through straits connecting upon seas is permitted.

(e) Canals.—(1) (a) Canals or artificial waterways within neutral jurisdiction are closed or open to vessels of war during hostilities according to the regulations which have been established prior to the declaration of war. (b) No act of hostility shall take place within these waters. (2) (a) Canals or artificial waterways within belligerent jurisdiction when national in character may be closed during war, but should if possible be open to innocent vessels of neutral powers. (b) Canals or artificial waterways of mixed character which are not of grand importance to the commerce of the world may be similarly closed. (c) Canals or artificial waterways which are strictly international and form main highways of world commerce may be closed to all vessels of a power at war with the power which in time of peace is in control of the canal or artificial waterway.