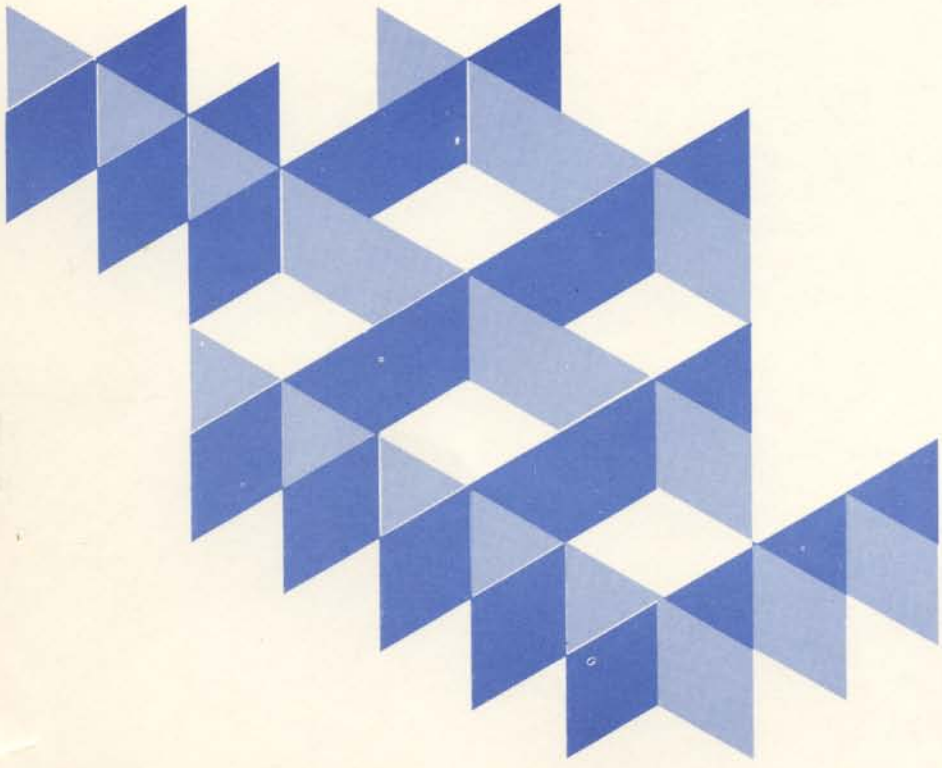
United States Department of State
Bureau of Oceans and International
Environmental and Scientific Affairs

Limits in the Seas

No. 112

United States Responses to Excessive National Maritime Claims



This paper is one of a series issued by the Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs in the Department of State. The aim of the series is to provide information on national maritime claims by coastal States. It is intended for background use only. This paper reflects the position of the United States towards excessive claims by coastal States which are inconsistent with international law.

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LIMITS IN THE SEAS

No. 112

UNITED STATES RESPONSES TO EXCESSIVE NATIONAL MARITIME CLAIMS

March 9, 1992

Office of Ocean Affairs
Bureau of Oceans and International
Environmental and Scientific Affairs

TABLE OF CONTENTS

TABLES:

GRAPHS:

MAPS:

INTRODUCTION

The purpose of this study is to publicize efforts undertaken by the United States Government to preserve and enhance navigation freedoms worldwide. Particularly, this study will focus on the U.S. Freedom of Navigation (FON) Program, begun in 1979 and designed to be a peaceful exercise of the rights and freedoms of navigation and overflight recognized under international law. United States policy is to:[1]

> accept and act in accordance with the balance of interests relating to traditional uses of the oceans--such as navigation and overflight. In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

In addition, United States policy is to:

> exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

Under the FON Program the United States undertakes diplomatic action at several levels to preserve its rights under international law. It conducts bilateral consultations with many states stressing the need for and obligation of all states to adhere to customary international law, as reflected in the 1982 United Nations Convention on the Law of the Sea (LOS Convention).[2] When appropriate, the United States delivers formal diplomatic protests addressing specific maritime claims that are inconsistent with international law. Since 1948, the United States has filed more than 140 such protests, including more than 110 since the FON Program began. Portions of these notes are reprinted, or cited, in this study.

Operations by U.S. naval and air forces designed to emphasize internationally recognized navigational rights and freedoms complement U.S. diplomatic efforts. These assertions of rights and freedoms tangibly exhibit U.S. determination not to acquiesce in excessive claims to maritime jurisdiction by other States. Although some operations receive public scrutiny (such as those that have occurred in the Black Sea and in the Gulf of Sidra), most do not. Since 1979, U.S. military ships and aircraft have exercised their rights and freedoms in all oceans against objectionable claims of more than 35 countries at the rate of some 30-40 per year.

Two caveats should be noted in regard to this study. First, it does not purport to discuss all

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[1] Statement on United States Oceans Policy, March 10, 1983, International Legal Materials, Vol. 22, p. 464; American Journal of International Law, Vol. 77, p. 619 (1983). See Annex I for the text of this Statement.

[2] The Los Convention was concluded December 10, 1982, and will enter into force one year following the deposit of the 60th instrument of ratification with the United Nations. As of February 15, 1992, 51 states had deposited their instruments of ratification. See Annex II for a list of states that have ratified the Convention.

coastal state maritime claims that may be inconsistent with the law of the sea, nor does it set out all actions taken by the United States (and other States) in response to these excessive claims. Thus, the failure to mention a particular claim should not be construed as acceptance of that claim by the United States.

Second, this paper does not attempt to identify the overwhelming practice of States which conforms to the provisions of the LOS Convention. Although the discussion which follows focuses on excessive claims, the fact remains that the general practice by States reflects acceptance as customary international law of the non-seabed parts of the LOS Convention.

IDENTIFICATION OF EXCESSIVE MARITIME CLAIMS

Claims by coastal states to sovereignty, sovereign rights, or jurisdiction over ocean areas that are inconsistent with the terms of the LOS Convention are, in this study, called "excessive maritime claims". They are illegal in international law. Since World War II, more than 80 coastal states have asserted various claims that threaten the rights of other states to use the oceans. These excessive maritime claims include, but are not limited to, claims inconsistent with the legal division of the ocean and related airspace reflected in the LOS Convention, such as:

- unrecognized historic water claims;

- improperly drawn baselines for measuring maritime claims;

- territorial sea claims greater than 12 miles;[3]

- other claims to jurisdiction over maritime areas in excess of 12 miles, such as security zones, that purport to restrict non-resource related high seas freedoms;

- contiguous zone claims at variance with Article 33 of the LOS Convention;

- exclusive economic zone (EEZ) claims inconsistent with Part V of the LOS Convention;

- continental shelf claims not in conformance with Part VI of the LOS Convention; and

- archipelagic claims inconsistent with Part IV of the LOS Convention.

Other categories of excessive maritime claims include claims to restrict navigation and overflight rights reflected in the LOS Convention, such as:

- territorial sea claims that impose impermissible restrictions on the innocent passage of military and commercial vessels, of ships owned or operated by a state and used only on government noncommercial service, and of nuclear-powered warships (NPW) or warships and naval auxiliaries carrying nuclear weapons or specific cargoes;

[3] All miles in this study, unless otherwise noted, refer to nautical miles. One nautical mile equals 1,852 meters.

- claims requiring advance notification or authorization for innocent passage of warships and naval auxiliaries through the territorial sea or EEZ or applying discriminatory requirements to such vessels;

- territorial sea claims not exceeding 12 miles that overlap straits used for international navigation and do not permit transit passage, including submerged transit of submarines, overflight of military aircraft, and surface transit of warships and naval auxiliaries (including transit in a manner of deployment consistent with the security of the forces involved), without prior notification or authorization; and

- archipelagic claims that do not permit archipelagic sea lanes passage, including submerged passage of submarines, overflight of military aircraft, and surface transit of warships and naval auxiliaries (including transit in manner of deployment consistent with the security of the forces involved), without prior notice of authorization.

LEGAL DIVISION OF THE OCEAN AND AIRSPACE

HISTORIC WATERS

Criteria

To meet the international legal standard for establishing a claim to historic waters, a state must demonstrate its open, effective, long term, and continuous exercise of authority over the body of water, coupled with acquiescence by foreign states in the exercise of that authority. The United States has taken the position that an actual showing of acquiescence by foreign countries in such a claim is required, as opposed to a mere absence of opposition.[4]

The United States Supreme Court has found two bodies of U.S. waters to be historic: Mississippi Sound[5] and Long Island Sound.[6] The supreme Court has held that certain other bodies of U.S. waters do not meet the criteria for historic waters including Cook Inlet, Alaska,[7] Santa Monica Bay and San Pedro Bay, California,[8] Florida Bay,[9] numerous bays along the coast of Louisiana,[10] Nantucket Sound, Massachusetts,[11] and Block Island Sound.[12]

Prior to 1958 there was no agreement on the maximum closing line distance for a juridical bay. A

[4] 1973 Digest of U.S. Practice in International Law 244-45 (1974); Goldie, "Historic Bays in International Law--An Impressionistic Overview," 11 Syracuse Journal of International Law and Commerce, 205, 221-23, 248 & 259 (1984); 4 Whitman, Digest of International Law, 233-58.
[5] United States v. Louisiana et al. (Alabama and Mississippi Boundary Case), 470 U.S. 93 (1985).
[6] United States v. Maine et al. (Rhode Island and New York Boundary Case), 469 U.S. 509 (1985).
[7] United States v. Alaska, 422 U.S. 184 (1975).
[8] United States v. California, 381 U.S., at 173-175 (1965).
[9] United States v. Florida, 420 U.S. 531, 533 (1975).
[10] Louisiana Boundary Case, 420 U.S. 529 (1975).
[11] Massachusetts Boundary Case, 475 U.S. 89 (1986).
[12] Rhode Island and New York Boundary Case, 469, U.S. 509 note 5 (1985).

maximum 24-mile closing line rule was agreed to in the 1958 Convention on the Territorial Sea and the Contiguous Zone. Several bodies of water previously claimed by the U.S. as historic now met the requirements of a juridical bay: Chesapeake Bay (with a 12-mile entrance); and, Delaware Bay (with a 10-mile mouth). Similarly, the Gulf of Amatique, which Guatemala claimed as historic waters in 1940, now qualifies as a juridical bay, as do Samana and Neiba Bays claimed by the Dominican Republic as historic in 1952.

Foreign Waters Considered Not to be Historic

Table 1 lists known claims to historic waters and actions taken by the United States. The following is a description of several claims made to historic waters that have been protested by the United States.

Argentina and Uruguay - Rio de la Plata:

Some authorities have stated that the Rio de la Plata estuary is an historic bay (see Map 1).[13] However, in drawing a straight line across the mouth of the estuary, the joint Declaration of the Governments of Uruguay and Argentina of 30 January 1961 did not assert an historic claim to the Rio de la Plata. Rather the declaration took into account the provisions of Article 13 of the 1958 Convention on the Territorial Sea and the contiguous Zone regarding river closing lines.

Map 1

[13] See, for example, the 1910 dissenting opinion of Luis M. Drago in the North Atlantic Coast Fisheries Case (U.K. v. U.S.), reprinted in Scott, The Hague Court Reports 199-200 (1916); Gidel, Le Droit International Public de la mer, v. III, pp. 653-54 (1934); "Historic Bays," UN Doc. A/Conf. 13/1, para. 43, reprinted in UN Conference on the Law of the Sea, Official Records, Vol. 1, p. 8, UN Doc. A/Conf. 13/37.

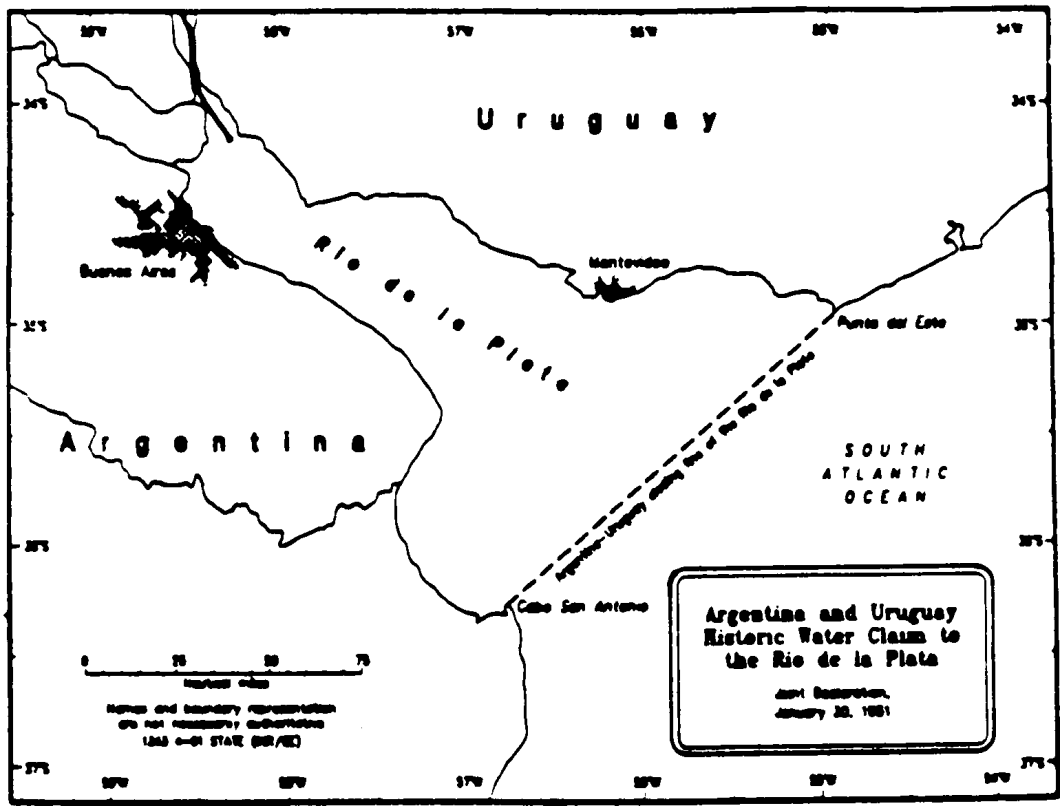

TABLE 1
CLAIMS MADE TO HISTORIC BAYS

State	Body of Water	Law & Date of Claim	U.S. Protest	U.S. Assertion of Rights
Argentina	Rio de la Plata	Joint declaration w/ Uruguay, Jan. 30, 1961	1963	
Australia	Anxious, Rivoli, Encounter, Lacepede Bays	Proclamation March 31, 1987	1991	
Cambodia	Part of Gulf of Thailand	Agreement w/ Vietnam July 7, 1982	1987	yes
Canada	Hudson Bay	Amendment to Fisheries Act July 13, 1906	1906	
Dominican Republic	Samana, * Ocoa, * Neiba * Bays Escocesa & Santo Domingo Bays	Law No. 3342, July 1952		yes

Egypt	Bay of el Arab#	Embassy Note June 4, 1951	1951	
El Salvador	Gulf of Fonseca&	Const. Amend. 1946. Art. 3: Const. Art. 84, Dec. 13, 1983		yes
Honduras		Constitution of 1982, art.10		
India	Gulf of Nammar, Palk Bay	Law No. 41, June 1, 1979; Agreement w/ Sri Lanka, June 28, 1974	1983	
Italy	Gulf of Taranto	Presidential Decree No. 816 April 26, 1977	1984+	
Kenya	Ungwana Bay	Territorial Waters Act. May 16, 1972		
Libya	Gulf of Sidra	Foreign Ministry Note Verbale; MQ/40/5/1/3325, Oct. 11, 1973	1974+	yes
Panama	Gulf of Panama	Law No. 9, Jan 30, 1956	1956+	yes
Portugal	Taus, Sado and associated bays	Decree Law 47,771; June 27, 1967		
Soviet Union	Peter the Great Bay, Laptav, Demitri, Sannikov Straits	Decree July 20, 1957; Aide Memoire July 21, 1964	1957 +; 1965	yes
Sri Lanka	Palk Bay, Balk Bay, Balk Strait, Gulf of Mannar	Agreement w/ India June 28, 1974; Proclamation Jan. 15, 1977		
Thailand	Part of Gulf of Thailand	Decree, Sept. 22, 1959	1963	
Uruguay	Rio de la Plata	Joint declaration w/ Argentina Jan. 30, 1961	1987	

Vietnam	Part of Gulf of Thailand, Gulf of Tonkin	Agreement w/ Cambodia July 7, 1982; Statement Nov. 12, 1982	1982	yes

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@ Operational assertion of right by U.S. Naval and/or air forces of internationally recognized navigational rights and freedoms against excessive maritime claim.
* Now qualifies as a juridical bay.
+ More than one protest against this claim.
# Not maintained.
& Case pending before ICJ.

The United States protested on January 23, 1963, on the grounds that article 13 "relates to rivers which flow directly into the sea which is not the situation of the River Plate which flows into an estuary or bay".[14] Also protesting this claim were the United Kingdom (On December 26, 1961), and the Netherlands (on June 26, 1962).[15]

Cambodia and Vietnam - Gulf of Thailand:

On July 7, 1982, Cambodia and Vietnam signed an agreement which, inter alia, made claim to a part of the Gulf of Thailand as historic waters.[16] The United States protested this claim in a note to the UN Secretary General, as follows:[17]

> Under the terms of this agreement the parties purportedly claim as historic certain waters in the Gulf of Thailand extending from the mainland to Tho Chu and Poulo Wai Islands.
>
> As is well known under longstanding standards of customary international law and State practice, historic waters are recognized as valid only if the following prerequisites are satisfied: (a) the State asserting claims thereto has done so openly and notoriously; (b) the State has effectively exercised its authority over a long and continuous period; and (c) other States have acquiesced therein.
>
> In the case of the historic waters claim made by the parties to the above agreement, the claim was first made internationally no earlier than July 7, 1982, less than five years ago, notwithstanding the assertion in the agreement that the waters "have for a very long time belonged to Vietnam and Kampuchea [Cambodia] due to their special geographical conditions and their important significance towards each country's national defense and economy."
>
> The brief period of time since the claim's promulgation is insufficient to meet the second criterion for establishing a claim to historic waters, and there is no evidence of effective exercise of authority over the claimed waters by either country before or after the date of the agreement. Moreover, without commenting on the substantive merits or lack thereof attaching to the "special geographical conditions" of the waters in question and their "important significance towards each country's defense and economy," such considerations do not fulfill any of the stated customary international legal prerequisites of a valid claim to historic waters.
>
> Finally, the United States has not acquiesced in this claim, nor can the community of States be said to have done so. Given the nature of the claim first promulgated in 1982, such a brief period of time would not permit sufficient acquiescence to mature.

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[14] 57 American Journal of International Law, 403-04 (1963); 4 Whiteman, Digest of International Law, 342-43.
[15] 4 Whiteman, Digest of International Law, 343.
[16] The text of this agreement can be found in FBIS Asia & Pacific, July 9, 1982, vol. IV, No. 132, pp. K3-K4.
[17] United States Mission to the United Nations at New York note dated June 17, 1987; reprinted in UN Law of the Sea Bulletin No. 10, November 1987, p. 23.

> Therefore, the United States views the historic claim to the waters in question as without foundation and reserves its rights and those of its nationals in this regard.

Thailand, Singapore, and Germany have also protested this claim.

India and Sri Lanka - Gulf of Manaar, Palk Bay:

By unilateral acts and by a bilateral agreement India and Sri Lanka have claimed that the Gulf of Manaar and Palk Bay are historic waters (see Map 2).[18] The United States protested this claim to India in a Note to the Indian Ministry of External Affairs in 1983.

Italy - Gulf of Taranto:

As part of its 1977 decree establishing straight baselines for portions of the Italian Coast, Italy for the first time claimed the Gulf of Taranto as an historic bay (see Map 3).[19] During bilateral discussions with Italian government officials in 1984, the United States stated its view that the Gulf of Taranto cannot be considered an historic bay since the requirements for such status were not met. The United States stated, in part, that "a coastal state claiming such status for a body of water must over a long period of time have openly and continually claimed to exercise sovereignty over the body of water, and its claims must have resulted in an absence of protest of foreign States, amounting to acquiescence on their part." The United Kingdom has stated that this claim "is not consistent with our interpretation of the 1958 Geneva Convention on the Territorial Sea."[20]

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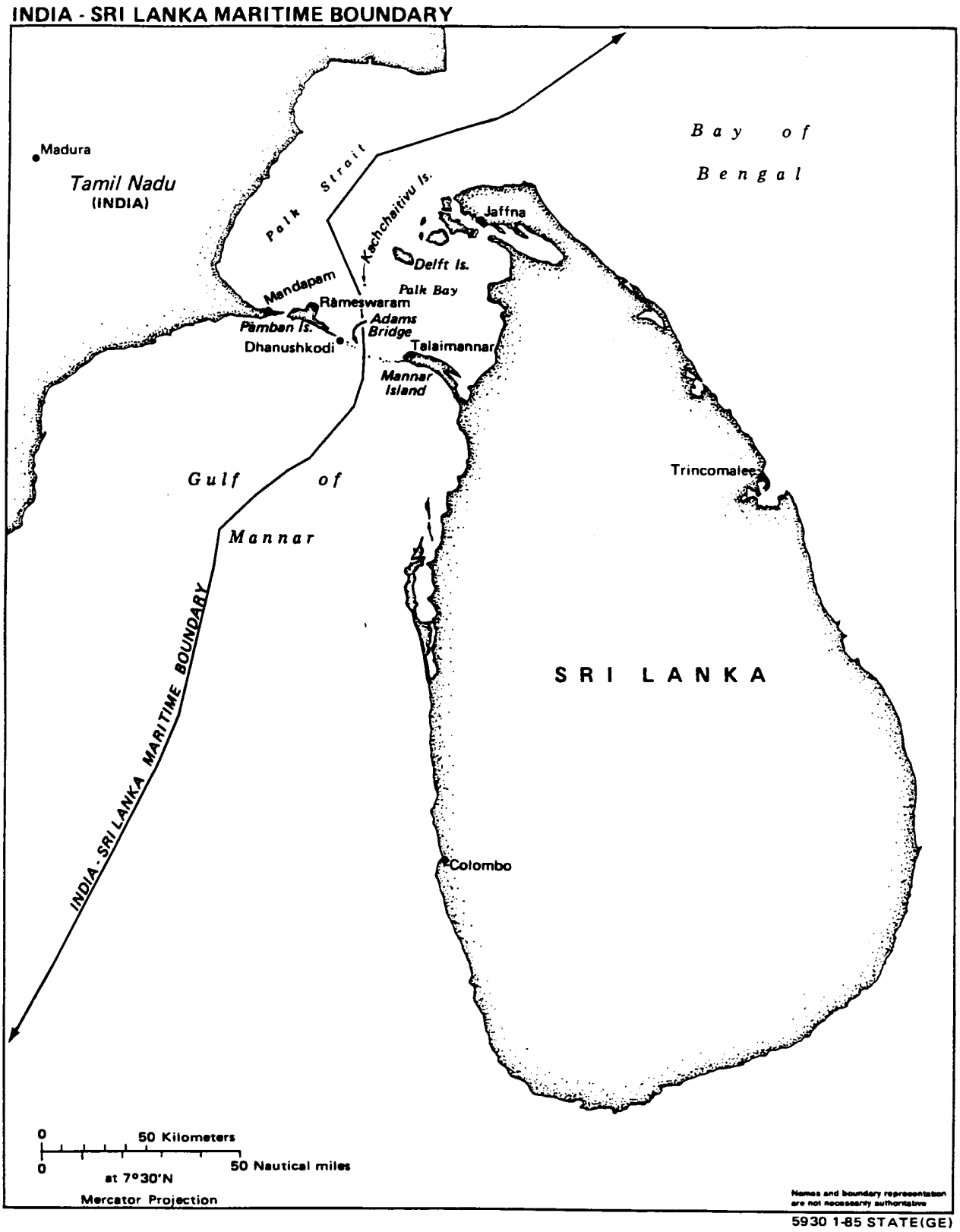
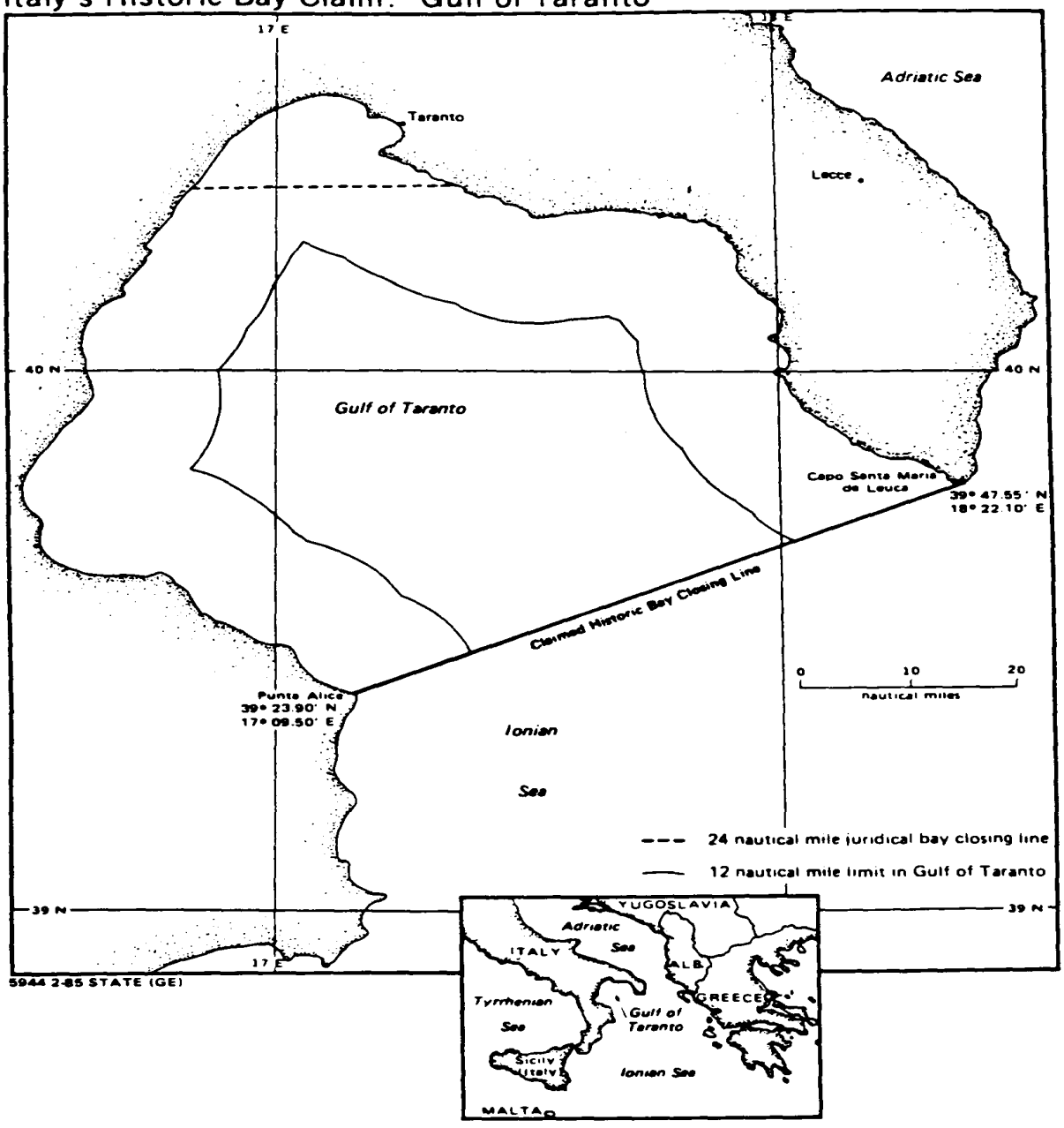
[18] See Limits in the Seas No. 66, "Historic Water Boundary: India-Sri Lanka," December 12, 1975.
[19] Presidential Decree No. 816 of April 26, 1977, may be found in 2 Western Europe and the Development of the Law of the Sea, Italy 1912-1977, Doc. L.26.4.1977, at 147-51 (F. Durante and W. Rodino, eds., 1979).
[20] 424 H.L. (5th Ser.) 367, reprinted in 52 British Yearbook of International Law 465 (1982).

Map 2


INDIA - SRI LANKA MARITIME BOUNDARY
Madura
Tamil Nadu
(INDIA)
Palk Strait
Kachchaitivu Is.
Bay of
Bengal
Jaffna
Delft Is.
Palk Bay
Mandapam
Rameswaram
Pamban Is.
Adams
Bridge
Dhanushkodi
Talaimannar
Mannar
Island
Gulf of
Mannar
Trincomalee
SRI LANKA
INDIA - SRI LANKA MARITIME BOUNDARY
Colombo
0
50 Kilometers
0
50 Nautical miles
at 7°30'N
Mercator Projection
Names and boundary representation
are not necessarily authoritative
5930 1-85 STATE(GE)

Map 3

Italy's Historic Bay Claim: Gulf of Taranto



Libya - Gulf of Sidra:

In 1973 Libya's Foreign Ministry circulated a note claiming the Gulf of Sidra as Libyan internal waters. The Gulf was defined by a closing line, approximately 300 miles long, along the 32° 30' parallel of north latitude (see Map 4). The United States first protested this claim in 1974.[21] In a 1985 Note to the UN Secretary General, the United States reiterated its protest and rejected "as an unlawful interference with the freedoms of navigation and overflight and related high seas freedoms, the Libyan claim to prohibit navigation" in the Gulf.[22]

Several other states including, Australia, France, the Federal Republic of Germany, Norway, and Spain have protested Libya's claim.[23] In December 1986, the U.S. State Department published "Navigation Rights and the Gulf of Sidra," in GIST, a reference aid on U.S. foreign relations. The study discussed the history of U.S. responses, dating to the 18th century, to attempts by North African states to restrict navigation in these waters. The GIST stated, in part that[24]

> Since Libya cannot make a valid historic waters claim and meets no other international law criteria for enclosing the Gulf of Sidra, it may validly claim a 12-nautical mile territorial sea as measured from the normal low-water line along its coast. Libya may claim up to a 200-nautical mile exclusive economic zone in which it may exercise resource jurisdiction, but such a claim would not affect freedom of navigation and overflight.

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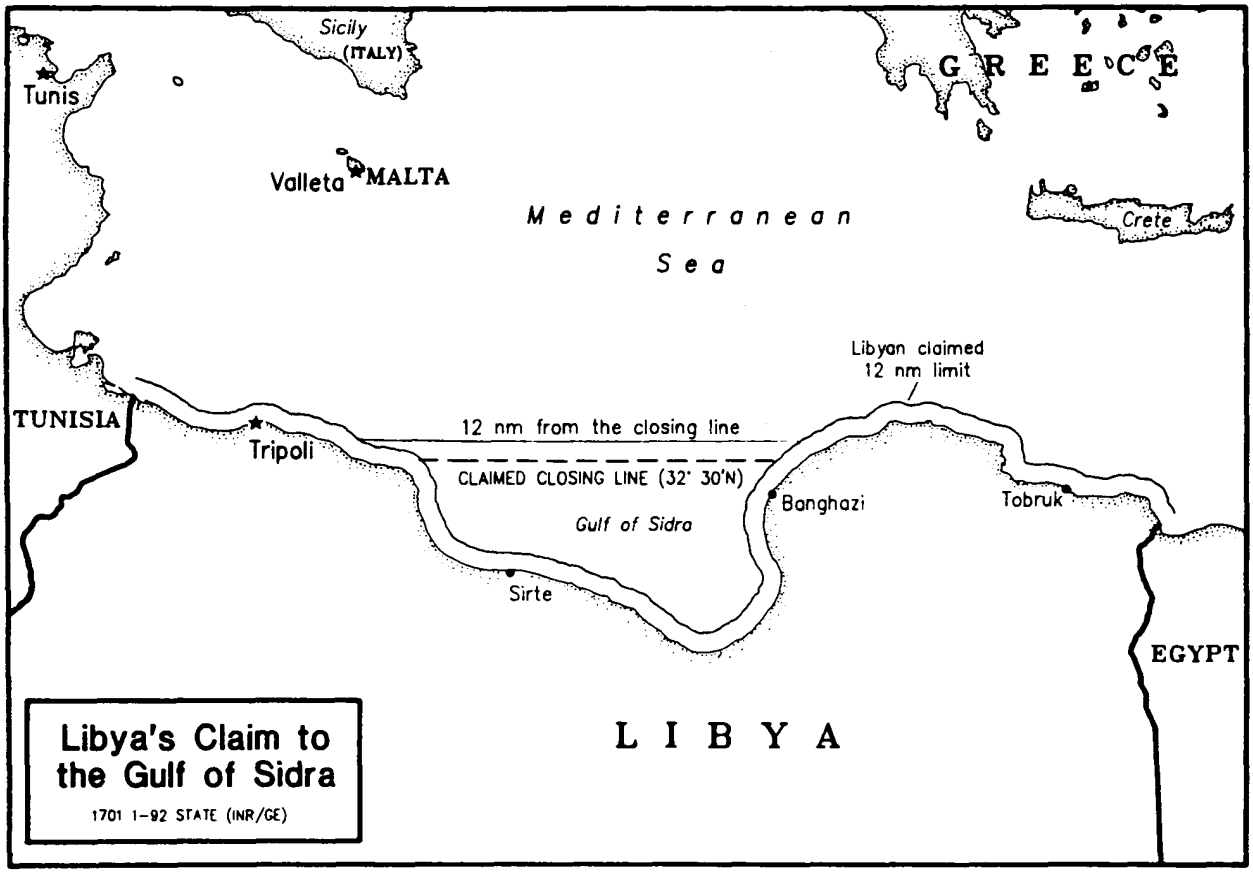
[21] 1974 Digest of US Practice in International Law, p. 293.

[22] The United Nations transmitted this note to the permanent missions in New York on July 10, 1985, as Document NV/85/11; subsequently the note was published in Law of the Sea Bulletin No. 6, October 1985, p. 40.

[23] Australia's protest can be found at 10 Australian Yearbook of International Law, pp. 405-06; France's protest at FBIS Western Europe, March 26, 1986, p.K1; the Federal Republic of Germany's protest at FBIS Western Europe, March 26, 1986, p. J1; Norway's protest at FBIS Western Europe, April 7, 1986, pp. P3-P4; Spain's protest at FBIS Western Europe, March 26, 1986, p. N1. The Libyan claim is examined in Spinatto, "Historic and Vital Bays: An Analysis of Libya's Claims to the gulf of Sidra," 13 Ocean Development & International Law Journal, 65 (1983); Francioni, "The Status of the Gulf of Sirte in International Law, 11 Syracuse Journal of International Law and Commerce 311 (1984).

[24] U.S. Department of State, GIST, "Navigation Rights and the Gulf of Sidra," December 1986.

Map 4



Panama - Gulf of Panama:

On January 30, 1956, Panama in its Law No. 9 claimed the Gulf of Panama as an historic bay.[25] Colombia and Costa Rica, in their respective maritime boundary agreements with Panama, did not "object" to Panama's claim.[26] The United States first protested this claim in a 1956 note to Panama which stated, in part,[27]

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[25] Law No. 9, published in the Gaceta Oficial of April 24, 1956, may be found in Atlas of the Straight Baselines (Scovazzi ed., 2nd ed. 1989), p. 44.

[26] See Article III of the 1976 Columbia-Panama Maritime Boundary Agreement and Article III of the 1980 Costa Rica-Panama Maritime Boundary Agreement. These agreements are translated and analyzed in Limits in the Seas Nos. 79 and 97, respectively.

[27] Diplomatic Note No. 199 of September 28, 1956 to the Panama Foreign Office.

> Particular note has been taken by my Government of the statements that "the Republic of Panama and its predecessors...have been exercising sovereignty over the waters of the Gulf of Panama in the Pacific Ocean from time immemorial" and that "the territorial character of the Gulf under reference and the exercise of Panamanian sovereignty over it always has had the tacit acquiescence of all states."...
>
> My Government submits that the Gulf of Panama does not qualify as a historic bay under international law. This body of water has never enjoyed the character of a historic bay, whether by immemorial claim or by treatment as such by the community of nations. The Gulf of Panama was not recognized as a historic bay at the time of the separation of Panama from Colombia, and nothing that has occurred subsequently has been of a character to give the Gulf of Panama the character of a historic bay.…

U.S.S.R. - Peter the Great Bay[28]:

The Soviet Union first claimed Peter the Great Bay as an historic bay by a 1957 Decree (see Map 5). The United States protested the claim that same year, as did Japan, the United Kingdom, France, Canada, Sweden, the Netherlands, and the Federal Republic of Germany.[29] The 106-mile closing line is, at one point, more than 20 miles from any land territory, and 47 miles seaward from Vladivostok, an important Soviet naval base.

Following an incident involved the USS Lockwood on May 3, 1982, the United States renewed its protest of the Soviet Union's claim that Peter the Great Bay was an historic bay. The U.S. note read, in part:[30]

> ...refers to an incident of May 3, 1982, when a warship of the United States of America was approached by naval units of the Union of Soviet Socialist Republics while navigating on the high seas in the vicinity of Peter the Great Bay, and was ordered to leave what the Soviet naval units referred to as waters of the Soviet Union.
>
> In light of this incident, the Government of the United States of America wishes to state again its objection to the claim... that the waters of Peter the Great Bay landward of a line drawn between the mouth of the river Tyumen-Ula and the Povorotny promontory are internal waters of the Soviet Union. As the Government of the United States of America informed the Government of the Union of Soviet Socialist Republics in its Diplomatic Note of August 12, 1957, and reiterated in its note of March 6, 1958, there is no basis in international law for the unilateral claim to all the waters of Peter the Great Bay landward of the aforementioned line as

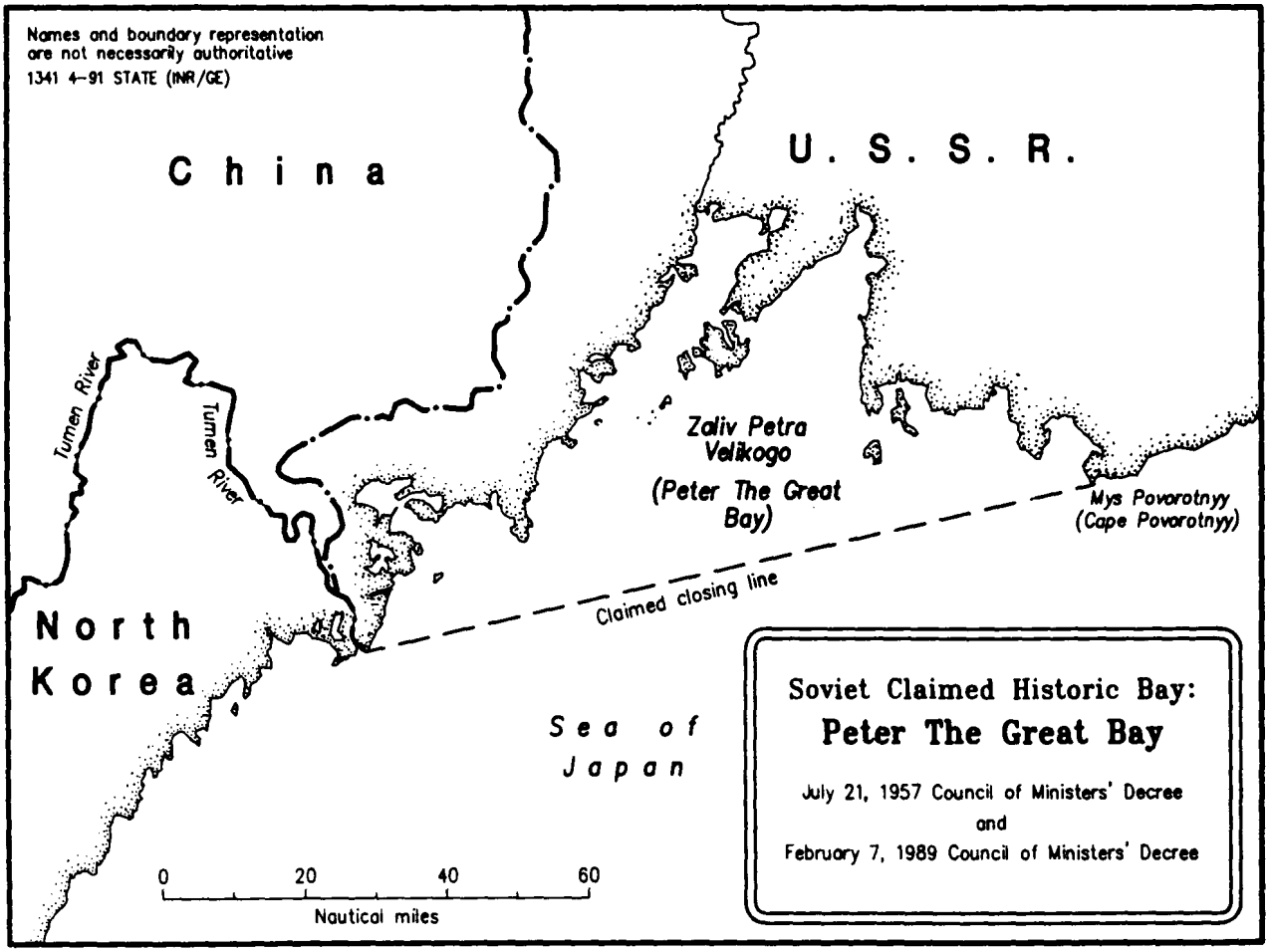
[28] In December 1991, the Union of Soviet Socialist Republics broke apart. On January 27, 1992, the permanent Representative of the Russian Federation to the United Nations presented the Secretary General of the U.N., a note which stated, in part, "The Russian Federation continues to exercise its rights and honour its commitments deriving from international treaties concluded by the Union of Soviet Socialist Republics." To our knowledge, the Russian Republic has not made an official statement regarding former USSR maritime claims.

[29] For more details on the Soviet historic water claim, see William E. Butler, The Soviet Union and the Law of the Sea, p.110, The Johns Hopkins Press, Baltimore, 1971.

[30] Diplomatic Note No. 86/82 dated August 2, 1982.

internal waters of the Soviet Union. It continues to be the view of the Government of the United States of America that the claim that this large body of water is comprised of internal waters cannot be geographically or historically justified in international law.

Map 5



U.S.S.R - Northeast Passage:

The United States conducted oceanographic surveys of the Arctic north of the Soviet Union in the summers of 1963 and 1964. During 1964, the USS Burton Island collected data in the East Siberian Sea. On July 21, 1964, the Soviet Union presented an aide-memoire to the United States regarding this survey in which it was claimed "the Dmitry, Laptev and Sannikov Straits, which unite the Laptev and Eastern-Siberian Seas...belong historically to the Soviet Union."[31]

[31] Aide-memoire from the soviet Ministry of Foreign Affairs to the American Embassy in Moscow, July 12, 1964.

In response, the United States stated,[32]

> So far as the Dmitry, Laptev and Sannikov Straits are concerned, the United States is not aware of any basis for a claim to these waters on historic grounds even assuming that the doctrine of historic waters in international law can be applied to international straits.

Vietnam - Gulf of Tonkin:

In addition to claiming part of the Gulf of Thailand as historic waters (see Cambodia and Vietnam above), Vietnam in 1982 also claimed a part of the Gulf of Tonkin as its historic waters. China also borders this Gulf. In December of that year, the United States lodged its protest of this claim to the Vietnam Mission to the United Nations. France and Thailand also protested the claim.

In analyzing Vietnam's claim the Geographer's Office stated, in part,[33]

> The occurrence of claims to historic bays that are shared by more than one state is even less common than the relatively small number of single states claiming historic bays.
>
> The general norms for the concept of an historic bay ... and the few case studies of bays bordered by more than one state suggest that, at a minimum, the states bordering the bay must all agree that the bay is an "historic bay." The Vietnamese claim to historic waters is questionable because China, which also borders the Gulf of Tonkin, does not claim the gulf as historic waters and disputes the Vietnamese claim to the meridional boundary within the Gulf.

BASELINES

A state's territorial sea and most other maritime zones are measured from baselines. The current rules for delimiting maritime baselines are contained in Articles 5 through 14 of the LOS Convention. They distinguish between normal baselines, which follow the low-water mark along the coast, and straight baselines, which can be employed in specified geographical situations.[34]

Normal baselines

Unless other special rules apply, the baseline from which the territorial sea is to be measured is the normal baseline, i.e., the low-water line along the coast as marked on a state's official large-scale charts. United States' policy is that its baseline is the normal baseline. In 1984 the U.S. replied to a Canadian government request for a list of coordinates of the basepoints from which the U.S. territorial sea and the exclusive economic zone are measure by stating that "no such list exists." The United States stated,[35]

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[32] United States Aide-memoire to the Soviet union dated June 22, 1965.

[33] Limits in the Seas No. 99, "Straight Baselines: Vietnam," September 10, 1983. Vietnam's November 12, 1982 Declaration can be found in UN Doc. A/37/682-S/15505, November 30, 1982.

[34] The baseline provisions are examined in UN Office for Ocean Affairs and the Law of the Sea, The Law of the Sea: Baselines, 1989.

[35] United States Aide-Memoire to Canadian government, March 19, 1984 (Department of State file P84-0012-1925).

> The United States measure the breadth of its maritime zones from baselines drawn in accordance with the 1958 Geneva Convention on the Territorial Sea and [the] Contiguous Zone. As provided in Article 3 of the Convention, the normal baseline is the low water line along the coast. The low water line is marked on large-scale charts issued by the National Ocean Service of the Department of Commerce. Bay closing lines are also used as baselines in accordance with Article 7 of the Convention. These too are marked on the large-scale charts wherever they affect the limit of the territorial sea.

Harbor Works

The outermost permanent harbor works which form an integral part of the harbor system are regarded as forming part of the coast for baseline purposes. Harbor works are structures, such as jetties, breakwaters, and groins, erected along the coast, usually near inlets or rivers for protective purposes or for enclosing sea areas adjacent to the coast to provide anchorage and shelter.[36] The U.S. Supreme Court has held that "dredged channels leading to ports and harbors" are not "harbor works."[37]

Offshore installations and artificial islands are not permanent harbor works and cannot be considered a part of the baseline.[38]

Reefs

The low-water line of a reef may be used as the baseline for islands situated on atolls or having fringing reefs. The reefs must be depicted with an appropriate symbol on charts official recognized by the coastal State (LOS Convention, Article 6). While the waters inside the lagoon of an atoll are internal waters, the LOS Convention does not address the matter of how to draw a closing line across the atoll entrance.

Straight Baselines

It has been correctly noted that, while in some instances it would be impractical to use the low-water line, "the effect of drawing straight baselines, even strictly in accordance with the rules, is often to enclose considerable bodies of sea as internal waters."[39] Consequently, international law permits states--in limited geographical circumstances--to measure the territorial sea and other national maritime zones from straight baselines drawn between defined points of the coast. The specific geographical circumstances, under which a state may employ straight baselines, are described in Article 7(1) of the LOS Convention and Article 4(1) of the 1958 Territorial Sea and Contiguous Zone Convention:

> In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands

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[36] Territorial Sea and Contiguous Zone Convention, Article 8; LOS Convention, Article 11.
[37] United States v. Louisiana, 394 U.S. 11, 36-38.
[38] LOS Convention, Article 11.
[39] Churchill and Lowe, The Law of the Sea, p. 33 (2nd ed., 1988).

> along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

If paragraph 1 above applies, then there are a few other examples of where straight baselines, or straight lines, are permitted. Where the coastline is highly unstable due to natural conditions, e.g., deltas, straight baselines may be established connecting appropriate points on the low-water line. These straight baselines remain effective, despite subsequent regression or accretion of the coastline, until changed by the coastal state (LOS Convention, Article 7(2)).

The straight baselines must not depart from the general direction of the coast, and water areas within the baselines "must be sufficiently closely linked to the land domain to be subject to the regime of internal waters."[40]

Straight baselines cannot be drawn to low-tide elevations unless a lighthouse or similar installation which is permanently above sea level, has been erected thereon, or unless the drawing of straight baselines to such a feature has received general international recognition (LOS Convention Article 7(4)).

The U.S. Supreme Court has held that straight baselines could be applied in the United States only with the federal government's approval. In United States v. California, the Court said that the 1958 convention on the Territorial Sea and the Contiguous Zone would permit the United States to use such baselines if it chose but that,[41]

> California may not use such baselines to extend our international boundaries beyond their traditional international limits against the expressed opposition of the United States.... [A]n extension of state sovereignty to an international area by claiming it as inland water would necessarily also extend national sovereignty, and unless the Federal Government's responsibility for questions of external sovereignty is hollow, it must have the power to prevent States from so enlarging themselves. We conclude that the choice under the Convention to use the straight-base-line method for determining inland waters claimed against other nations is one that rests with the Federal Government, and not with the individual States.

If a river flows directly into the sea, the baseline is a straight line across the mouth of the river between points on the low-water line of its banks (LOS Convention Article 9). No maximum limit is placed on this closing line, nor are specific criteria given on where the closing points should be placed.

United States policy is not to use straight baselines.

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[40] LOS Convention Article 7(3).

[41] United States v. California, 381 U.S. 139, 167-169 (1965). See also the Louisiana Boundary Case, 394 U.S. 11, 36-38 (1969) and, the Alabama and Mississippi Boundary Case, 470 U.S. 93, 99 (1985).

Excessive straight baseline claims

While no detailed internationally accepted standards currently exist that define what is meant by the terms in Article 7, it appears that only certain countries have coastlines that qualify for straight baselines. Nevertheless, the state practice of straight baseline delimitation has, in many instances, distorted the rules for drawing straight baselines. The effect of an illegal straight baseline is a claim that detracts from the international community's rights to use the oceans. One result has been that these straight baseline systems have purported to create large areas of internal waters which legally remain either territorial sea or areas in which the freedoms of navigation and overflight may be exercised. Burma, for example, by drawing a 222-mile straight baseline across the Gulf of Martaban has claimed about 14,300 sq. nm (49,000 sq. kilometers-an area similar in size to Denmark) as internal waters which, absent the closing line, would be territorial sea or high seas (see map 6).

Similarly, Colombia has claimed a 130-mile straight baseline in an area along its Caribbean coast that is neither deeply indented nor are there fringing islands. By establishing this particular straight baseline Colombia has sought to enclose as internal waters about 2,100 sq.nm of waters which previously had been subject to the regime of innocent passage (1,500 sq.nm) or areas in which the freedom of navigation and overflight may be exercised (600 sq.nm).[42]

More than 60 States have delimited straight baselines along portions of their coasts, and approximately 10 other States have enacted enabling legislation but have yet to publish the coordinates or charts of the straight baselines. Table 2 gives information on those states claiming straight baselines and on any action taken by the United States against those claims not following one or more of the rules for the drawing of straight baselines. Since the U.S. Freedom of Navigation Program is on-going, many of the claims listed in Table 2 are, or will be, under review with possible diplomatic protests and/or operational assertions of right to follow.

There are many ways in which straight baselines have been drawn inconsistent with the provisions of the LOS Convention. The majority of baselines protested by the United States are those which do not meet the criteria set forth in the LOS Convention's Article 7(1); that is, in the vicinity where the baseline is drawn, the coastline is either not "deeply indented and cut into", or it does not have a "fringe of islands along the coast". A state must first meet at least one of these two geographical conditions before applying the straight baseline provisions in the particular locality.

[42] For additional analysis of the Colombian straight baseline claim see Limits in the Seas No. 103, "Straight Baselines: Colombia," April 30, 1985.

Map 6

BURMA: Straight Baselines Claim

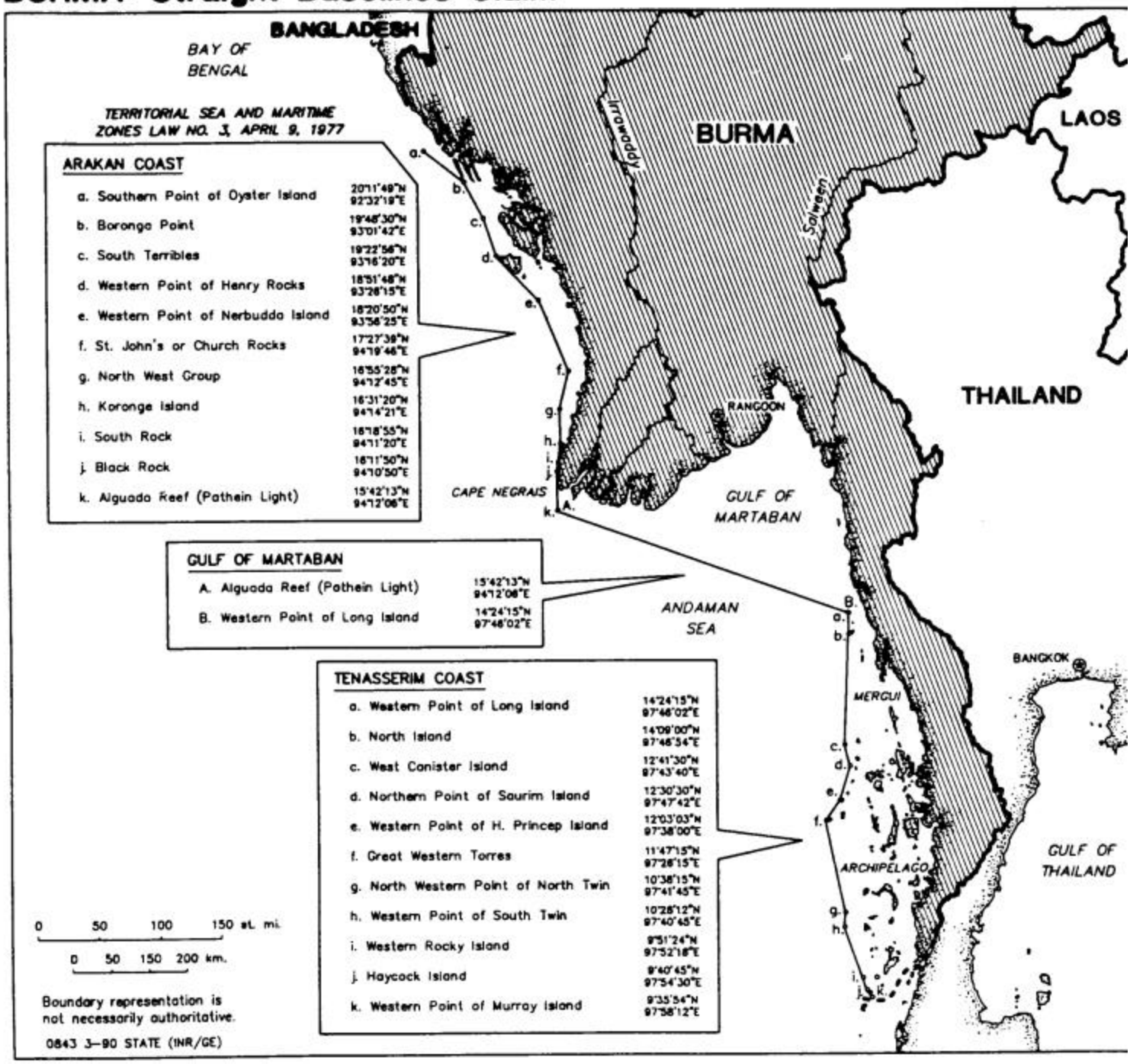


TABLE 2
CLAIMS MADE TO STRAIGHT BASELINES*

State	Law & Date of Claim	U.S. Protest	U.S. Assertion of Right
Albania	Decree No. 4650, April 15, 1970	1989	
	Decree No. 5384, Feb. 20, 1976		
Algeria	Decree No. 84-181, Aug. 4, 1984		
Angola	Portugese Decree No. 47,771, June 27, 1967		
Argentina	Law No. 17,094, Jan. 19, 1967	1967	
	Law No. 23,968, Sep. 13, 1991		
Australia	Proclamation, Feb. 9, 1983		
Barbados	Act No. 26, 1976 [enabling legislation]		
Brazil	Decree Law No. 1098, March 27, 1970 [enabling legislation]		
Bulgaria	Decree No. 514, Oct. 10, 1951	1952+	
Burma	Decree, Nov. 15, 1968	1982	yes
Cambodia	Council of State Decree, July 31, 1982		yes
Cameroon	Decree 62-DF-216, June 25, 1962	1963	
Canada	Order-in-Council P.C. 1967-2025, Oct. 26, 1967 [Labrador & Newfoundland]	1967	
	Order-in-Council P.C. 1969-1109, May 29, 1969 [Nova Scotia, Vancouver & Queen Charlotte Island]		
	Order-in-Council P.C. 1985-2739, Sept. 10, 1985 [Artic]		
Chile	Decree No. 416, July 14, 1977		
China	Declaration, Sept. 4, 1958 [no coordinates published]		
Colombia	Decree No. 1436, June 13, 1984	1988	yes
Costa Rica	Law No. 18581-RE, Nov. 21, 1988	1989	
Cote D'Ivoire	Law No. 77-926, Nov. 17, 1977 [enabling legislation]		
Cuba	Decree Law No. 1, Feb. 26, 1977	1983+	yes
Denmark	Royal Ordinance No. 437, Dec. 21, 1966		
	Royal Ordinance No. 189, May 1, 1978		
Denmark (Faroe I.)	Decree No. 156, April 24, 1963	1991	
	Decree No. 128, April 1, 1976		
	Decree No. 598, Jan. 1, 1977		
Denmark (Greenland)	Executive Order No. 629, Jan. 1, 1977		

	Executive Order No. 176, May 14, 1980		
Djibouti	Decree No. 85-048, May 5, 1985	1989	
Dominica	Act. No. 26, Aug. 25, 1981 [enabling legislation]		
Dominican Republic	Law No. 186, Sept. 6, 1967		yes
Ecuador	Decree Law No. 1542, Nov. 10, 1966	1986	yes
	Decree No. 959-A, July 13, 1971		
Egypt	Decree No. 27, Jan. 9, 1990	1991	
Ethiopia	Proclamation No. 126, Sept. 25, 1952		yes
Finland	Decree No. 464, Aug. 18, 1956		
France	Decree, Oct. 19, 1967		
French Departments and Dependencies:			
Fr. Guiana	Decree, June 29, 1971		
Mayotte	Decree No. 77-1067, Sept. 12, 1972		
St. Pierre & Miquelon	Decree No. 77-1068, Sept. 12, 1972		
Fr. Southern & Antarctic Lands	Decree No. 78-112, Jan. 11, 1978		
Germany	Notice to Mariners No. 2, Jan. 1969 [former GDR]		
Guinea	Decree No. 224/PRG/64, June 6, 1994	1964	yes
Guinea-Bissau	Decree Law. No. 47,771, June 27, 1967		
	Decision No. 14/74, Dec. 31, 1974		
	Law No. 3/78, May 19, 1978		
	Act No. 2/85, May 17, 1985		
Haiti	Decree, April 6, 1972	1973	yes
Iceland	Regulations, March 19, 1952		
	Regulations, March 1961		
	Regulations, Sept. 9, 1972		
	Law No. 1, June 1, 1979		
Iran	Act, April 12, 1959		
	Act, July 1973		
Ireland	Statutory Instrument No. 173, Jan. 1, 1960		
Italy	Decree No. 816, Feb. 9, 1978	1986+	
Japan	Law No. 20, July 1, 1977 [enabling legislation]		
Kenya	Territorial Waters Act, May 16, 1972		
Korea, South	Decree No. 9162, Sept. 20, 1978		
Madagascar	Decree No. 63-131, Feb. 27, 1963		
Mauritania	Law 67-023, Jan. 21, 1967	1989	yes
Mauritius	Territorial Seas Act, April 16, 1970		
Mexico	Decree, Aug. 28, 1968	1969	
	Decree, Jan. 8, 1986		

Morocco	Decree, July 21, 1975		
Mozambique	Decree Law 2130, Aug. 22, 1966		
Netherlands	Territorial Sea Act, June 1, 1985		
Norway	Royal Decree, July 12, 1935		
	Royal Decree, July 18, 1952		
Norwegian Dependencies:			
Jan Mayen	Royal Decree, June 30, 1955		
Svalbard	Royal Decree, Sept. 25, 1970		
Oman	Decree No. 38/82, June 1, 1982	1991	
Saudi Arabia	Decree No. 33, Feb. 16, 1958		
Senegal	Decree 72-765, July 5, 1975	1989	
Somalia	Law No. 37, Sept. 10, 1972 [enabling legislation]		
Soviet Union	Decree, Feb. 7, 1984	1984+	yes
	Decree, Jan. 15, 1985	1885+	
Spain	Decree No. 627/1976, March 5, 1977		
	Decree No. 2510/1977, Aug. 5, 1977		
Sudan	Act No. 106, Dec. 31, 1970 [enabling legislation]	1989	
Sweden	Decree No. 375, July 1, 1966		
Syria	Decree No. 304, Dec. 28, 1963		
Tanzania	Notice No. 209, Aug. 1973		
Thailand	Announcement, June 12, 1970		
Tunisia	Decree No. 73-527, Nov. 3, 1973		
Turkey	Law No. 476, May 15, 1964		
United Kingdom	Order-in-Council, Sept. 25, 1964		
UK Dependencies:			
Turks & Caicos	Statutory Instrument 1989 No. 1996		
Falkland Isl.	Statutory Instrument 1989 No. 1993		
So. Georgia I.	Statutory Instrument 1989 No. 1995		
Venezuela	Decree, July 10, 1968	1989	
Vietnam	Statement, Nov. 12, 1982	1982+	yes
Yemen	Act No. 45, Jan. 15, 1978 [enabling legislation]		
Yugoslavia	Law No. 876, Dec. 8, 1948		

+ Multiple protests

The following are a few examples of claims that the United States has protested.

Canada: On three occasions Canada has claimed straight baselines for portions of its coast: in 1967 for Labrador and Newfoundland, in 1969 for Nova Scotia, Vancouver and Queen Charlotte islands, and in 1985 for the Artic islands. The U.S. has protected each of these claims. An excerpt of the note verbale in 1967[43] states,

> ...As the Government of Canada is aware, the United States Government considers the action of Canada to be without legal justification. It is the view of the United States that the announced lines are, in important and substantial respects, contrary to established principles of international Law of the Sea. The United States does not recognize the validity of the purported lines and reserves all rights of the United States and its nationals in the waters in question.

The United States similarly protested the 1969 assertion.[44]

In September 1985 Canada proclaimed it would establish straight baselines around all of its Arctic islands, effective January 1, 1986 (see map 7). The United States did not agree with Canada that these waters were now to be considered internal, particularly since international straits were involved. The U.S. position with regard to the Canadian claim was addressed in a February 26, 1986, letter from James W. Dyer, Acting Assistant Secretary of State for Legislative and Intergovernmental Affairs, to Senator Charles Mathias, Jr. (R. Maryland) which stated, in part,[45]

> On September 10, 1985, the Government of Canada claimed all the waters among its Arctic islands as internal waters, and drew straight baselines around its Arctic islands to establish its claim. The United States position is that there is no basis in international law to support the Canadian claim. The United States cannot accept the Canadian claim because to do so would constitute acceptance of full Canadian control of the Northwest Passage and would terminate U.S. navigation rights through the Passage under international law.

The Member States of the European Community (EC) also commented on Canada's Arctic straight baseline system in part as follows:[46]

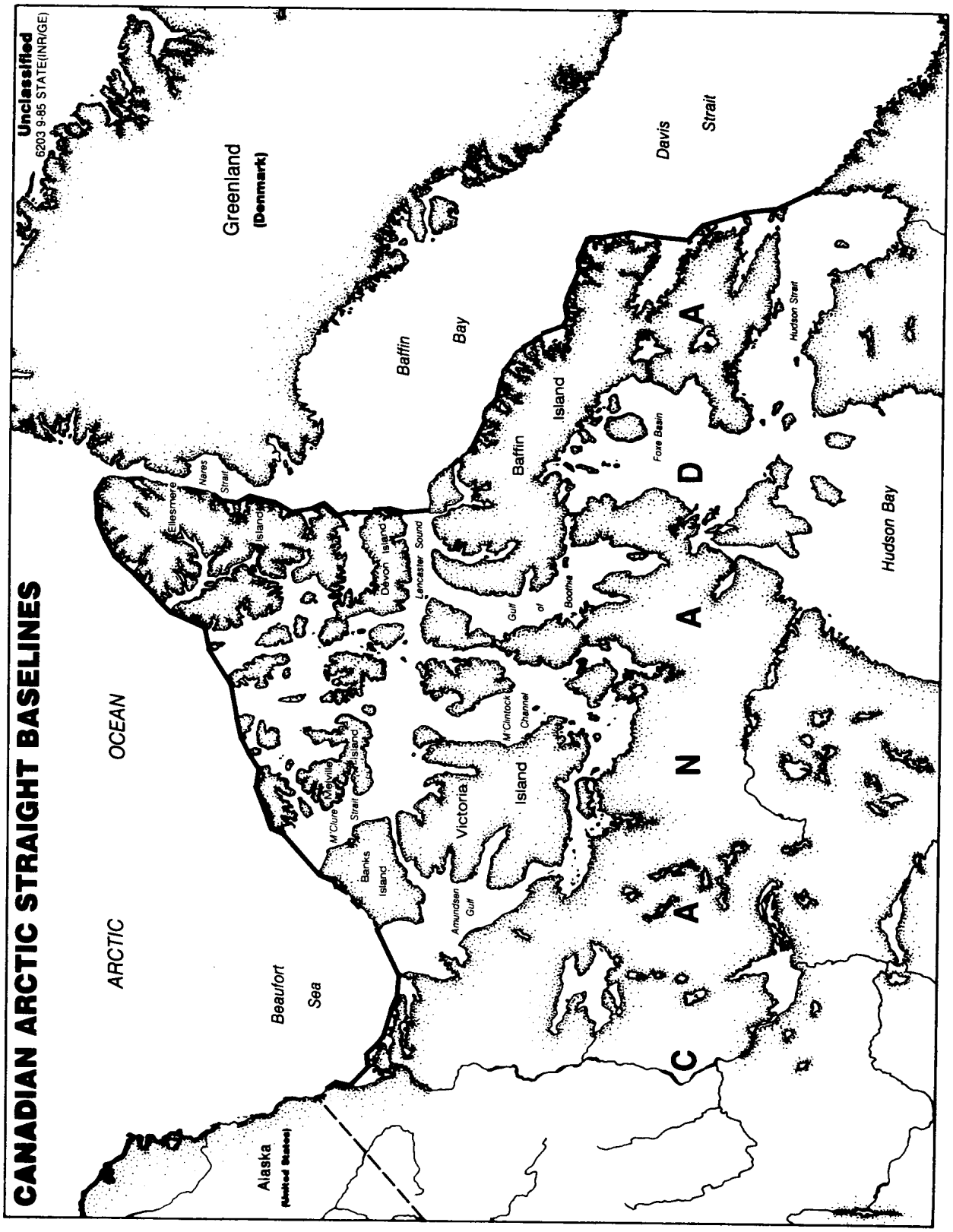
> The validity of the baselines with regard to other states depends upon the relevant principles of international law applicable in this case, including the principle that the drawing of baselines must not depart to any appreciable extent from the general direction of the coast. The Member States acknowledge that elements other than purely geographical ones may be relevant for purposes of drawing baselines in

[43] Note Verbale date November 1, 1967; reprinted in Annex 4 to volume I of the Documentary Annexes to the United States Reply in the Gulf of Maine Case before the ICJ, 1983.
[44] Ibid.
[45] State Department File No. P86 0019-8641.
[46] British High Commission Note No. 90/86 of July 9, 1986.

particular circumstances but are not satisfied that the present baselines are justified in general. Moreover, the Member States cannot recognize the validity of a historic title as justification for the baselines drawn in accordance with the order.

The Member States of the EC cannot therefore in general acknowledge the legality of these baselines and accordingly reserve the exercise of their rights in the waters concerned according to international law.

Map 7


CANADIAN ARCTIC STRAIGHT BASELINES
Unclassified
6203 9-85 STATE(INR/GE)
ARCTIC OCEAN
Beaufort Sea
Alaska
(United States)
Greenland
(Denmark)
Ellesmere Island
Nares Strait
Baffin Bay
Davis Strait
Hudson Strait
Hudson Bay
Foxe Basin
Baffin Island
Lancaster Sound
Devon Island
Gulf of Boothia
M'Clure Strait
Melville Island
Banks Island
Amundsen Gulf
Victoria Island
M'Clintock Channel
CANADA

Costa Rica: The United States responded to the 1988 Costa Rican straight baseline claim by state, in part,[47]

> The Government of the United States wishes to recall to the Government of Costa Rica that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, unless exceptional circumstances exist, baselines are to conform to the low-water line along the coast as marked on a state's official large-scale charts. Straight baselines may only be employed in localities where the coastline is deeply indented and cut into, or where there is a fringe of islands along the immediate vicinity of the coast. Additionally, baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.
>
> While the Pacific coastline of Costa Rica contains two embayments, it is neither deeply indented and cut into, nor fringed with many islands, as those standards are employed and understood in international law.

Portugal: In 1985, Portugal claimed a system of straight baselines along the mainland coast and around the Azores. The United States, in a 1986 diplomatic note, protested the claim. An excerpt of the note follows:[48]

> The United States is unable to accept as valid the establishment by the Government of Portugal of many of the closing lines and straight baselines promulgated in the decree. It is the view of the United States that the lines in question do not comply with international law which in this case is reflected in the 1982 United Nations Convention on the Law of the Sea. With regard to the mainland, those segments which connect Ponta Carreiros with Barra de Aveiro, Cabo da Roca with Cabo Raso, Cabo Raso with Cabo Espichel, Cabo Espichel with Cabo Sines, Cabo Sines with Cabo de Sao Vicente and Ponta de Sagres with Cabo de Santa Maria, do not enclose juridical bays or lie in localities which meet the legal requirement that the coastline is deeply indented and cut into…
>
> Certain of the baselines around the Maderia and the Azores Islands groupings are objectionable for the same reasons, i.e., they do not lie in localities where the coastlines are deeply indented and cut into nor do they connect a fringe of islands along a coast in its immediate vicinity.

In addition to not meeting the essential standards cited in paragraph one of Article 7, state practice on straight baselines also includes other infractions of international law. For example, several mainland states have drawn straight baselines around dependent islands

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[47] Diplomatic Note dated December 18, 1989; reprinted in Limits in the Seas No. 111, "Straight Baseline Claim," August 17, 1990.

[48] Diplomatic note transmitted by the American Embassy at Lisbon, based on instructions found in 1986 State telegram 266998.

which basically represent archipelagic baselines. According to Part IV of the LOS Convention archipelagic baselines may be drawn only by an archipelagic state which is defined in Article 46(a) as a State "constituted wholly by one or more archipelagos and may include other islands." The United States has protested claims made by Ecuador and Portugal for this reason.

In 1984 the Federal Republic of Germany claimed a closure line, from which to measure its territorial sea, out to a roadstead. This action created a box in the Helgolander Bucht which, at one point, extends the territorial sea to 16 miles (see map 8). The U.S. protest stated, in part,[49]

> ...Equally illegal and without foundation is the use of closure lines out to a roadstead situated wholly outside a properly delimited territorial sea. While roadsteads normally used for the loading, unloading, and anchoring of ships possess the status of territorial sea, the waters between an outlying roadstead and the general territorial sea are not territorial in nature, and the high seas freedoms applicable to those intervening waters cannot be prejudiced by the coastal state....

TERRITORIAL SEA

International consensus, as reflected in Article 3 of the LOS Convention, is that 12 miles is the maximum permissible breadth of the territorial sea. In 1988 the United States extended its territorial sea to 12 miles.[50] President Regan's Proclamation stated, in part,

> The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extend to the airspace over the territorial sea, as well as to its bed and subsoil.
>
> Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.

By large measure, the state practice of territorial sea claims has become relatively stable and in line with the customary international law as reflected in the LOS Convention. There are some exceptions.

There are some interesting comparisons of current territorial sea claims to those made in 1958, the time of the first LOS Conference (Table 3). In 1958 more than half the coastal states (45) claimed a territorial sea of 3 miles; four others, the Nordic states, claimed 4 miles. At that time 15 coastal states asserted territorial seas between 5 and 10 miles, and

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[49] Diplomatic note dated March 15, 1985, presented to the Embassy of the Federal Republic of Germany in Washington.

[50] Proclamation No. 5928, December 27, 1988, Federal Register, Vol. 54, No. 5, Jan. 9, 1989, p. 777.

9 others had 12 mile limits. Only 2 states, Ecuador and Peru, claimed 200-mile territorial seas. By February 1, 1992 111 (75%) of the coastal states claim 12-mile limits; 13 states claim lesser breadths while 18 states have claims exceeding the 12-mile limit, with 12 claims of 200 miles.[51]

[51] As of February 1992 information was not available on the maritime claims of Estonia, Georgia, Latvia, Lithuania, and Ukraine.

Map 8

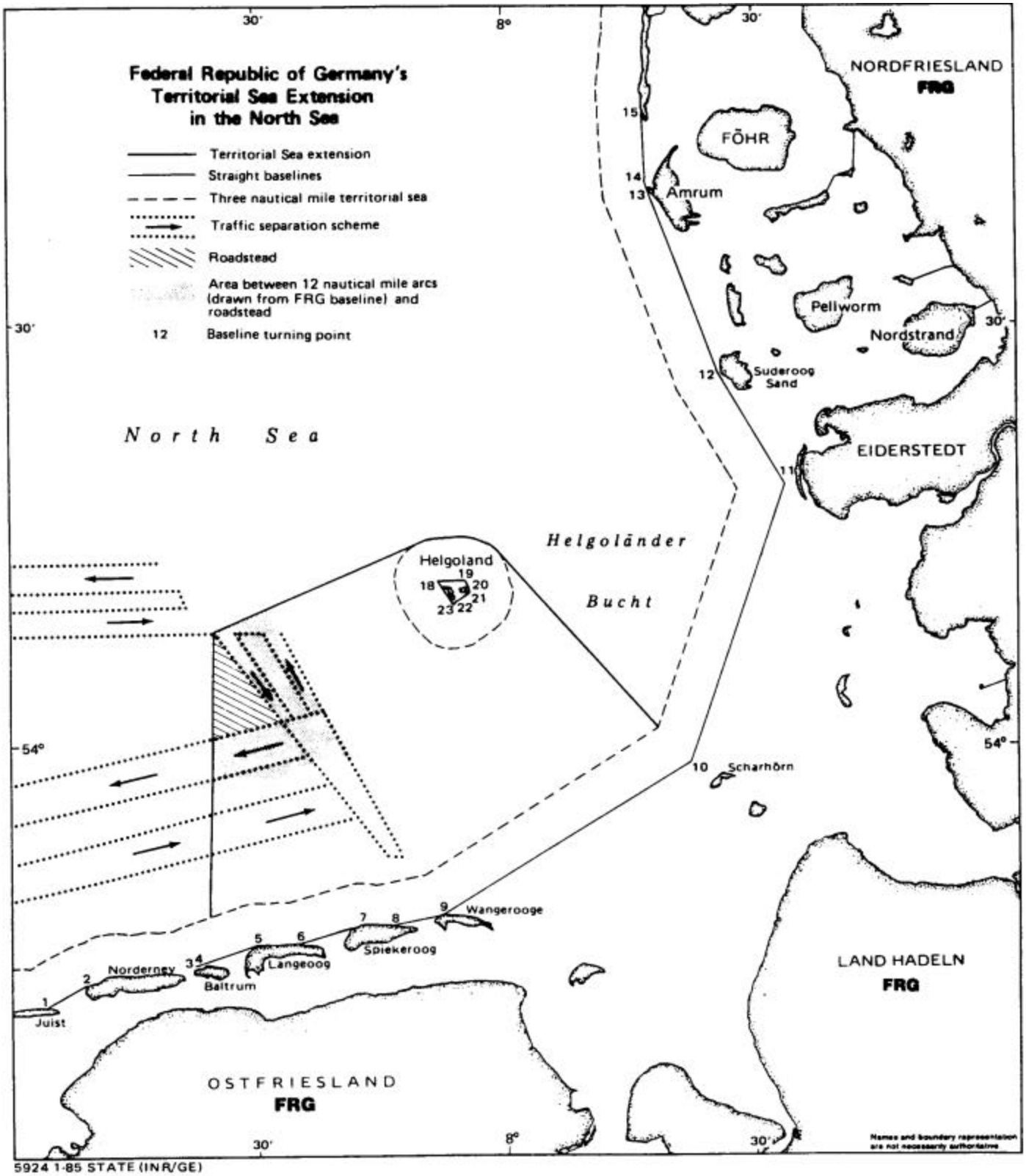

Federal Republic of Germany's
Territorial Sea Extension
in the North Sea
Territorial Sea extension
Straight baselines
Three nautical mile territorial sea
Traffic separation scheme
Roadstead
Area between 12 nautical mile arcs (drawn from FRG baseline) and roadstead
12 Baseline turning point
North Sea
Helgoländer
Bucht
Helgoland
NORDFRIESLAND
FRG
FÖHR
Amrum
Pellworm
Nordstrand
Suderoog Sand
EIDERSTEDT
Scharhörn
Wangerooge
Spiekeroog
Langeoog
Baltrum
Norderney
Juist
LAND HADELN
FRG
OSTFRIESLAND
FRG
30°
8°
54°
5924 1-85 STATE (INR/GE)

Table 3

TERRITORIAL SEA CLAIMS
1958 & 1992

Breadth (nautical miles)	Number of States Jan. 1, 1958	Feb. 1, 1992
3	45	8
4	4	2
5	1	-
6	12	3
9	1	-
10	1	-
12	9	111
20	-	1
30	-	2
35	-	1
50	-	1
200	2	12
Rectangle	-	1
No legislation	5	-

The United States either has protested or asserted its navigation rights against all the claims that exceed the 12-mile limit (Table 4).

Table 4

TERRITORIAL SEA CLAIMS GREATER THAN 12 MILES

State	Breadth: Law, Date of Claim	U.S. Protest	U.S. Assertion Of Right
Angola	20; Decree No. 159/75, Nov. 6, 1975		Yes
Benin	200; Decree No. 76-92, April 2, 1976	1984[+]	Yes
Brazil	200; Decree Law No. 1098, March 27, 1970	1970	Yes
Cameroon	50; Law No. 74/16, Dec. 5, 1974	1986**Error! Bookmark not defined.**	Yes
Congo	200; Ordinance No. 049/77, Dec. 20, 1977	1987	Yes
Ecuador	200; Decree Law No. 1542, Nov. 11, 1966	1967**Error! Bookmark not defined.**	Yes
El Salvador	200; Constitution, Sept. 7, 1950	1950	Yes
Germany	16; Federal Gazette, March 16, 1985	1985	
Liberia	200; Act No. May 5, 1977	1977	Yes
Nicaragua	200; Act No. 205, Dec. 19, 1979	1982	Yes
Nigeria	30; Decree No. 38, Aug. 26, 1971	1984**Error! Bookmark not defined.**	Yes
Panama	200; Law No. 31, Feb. 2, 1967	1967**Error! Bookmark not defined.**	Yes
Peru	200; Supreme Decree, Aug. 1, 1947	1948**Error! Bookmark not defined.**	Yes
Philippines	Rectangle; Act. No. 3046, June 17, 1961	1961**Error! Bookmark not defined.**	Yes

[+] Claim protested more than once.

Sierra Leone	200; Interpretation Act, April 19, 1971	1973	Yes
Somalia	200; Law No. 37, Sept. 10, 1972	1982**Error! Bookmark not defined.**	Yes
Syria	35; Law No. 37, Aug. 16, 1981	1981**Error! Bookmark not defined.**	Yes
Togo	30; Ordinance No. 24, Aug. 16, 1977	1984	
Uruguay	200; Decree 604/969, Dec. 3, 1969 [navigation and overflight permitted beyond 12 miles]	1970	

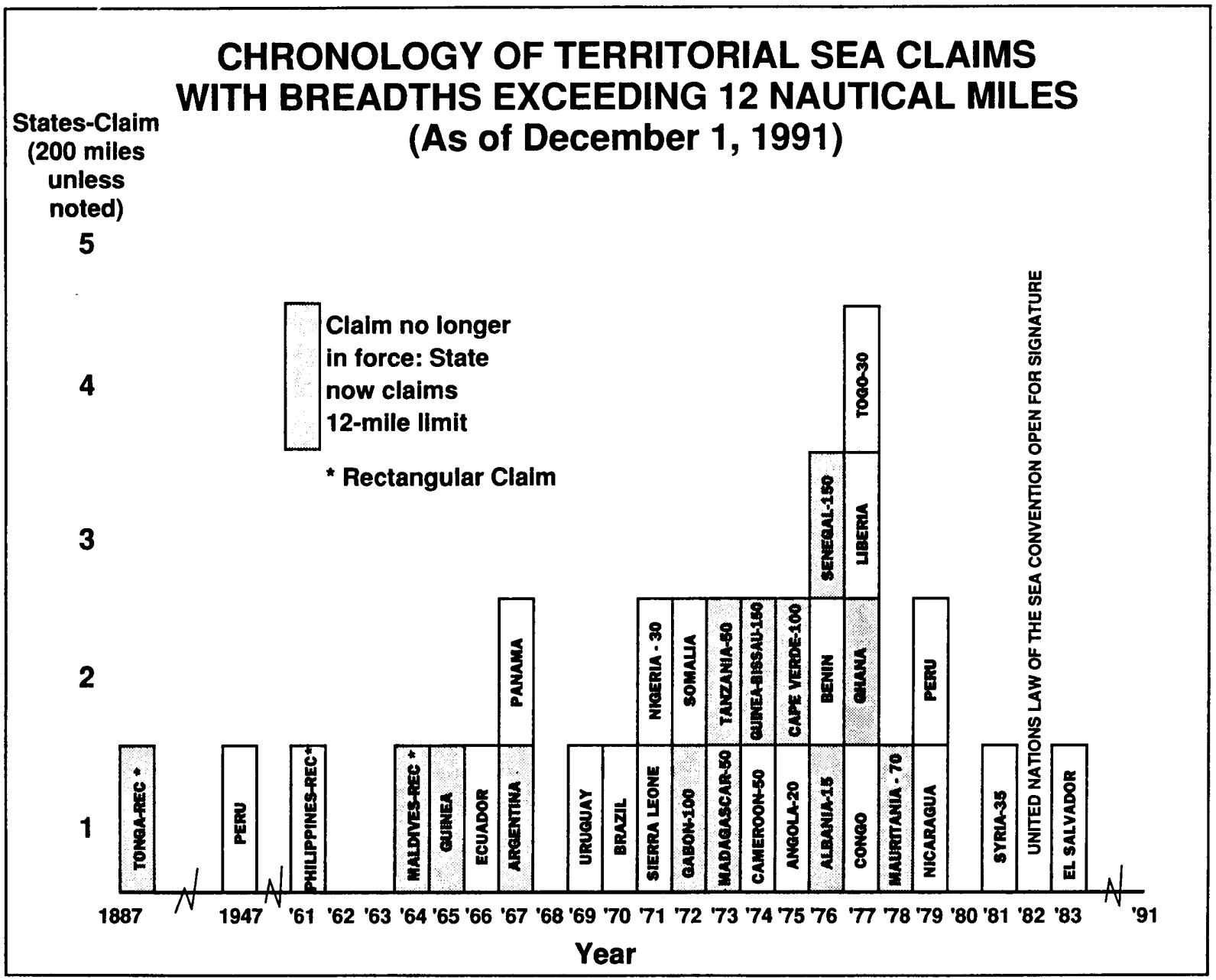
In many situations protest notes have been transmitted on several occasions (indicated by a + in the table). Navigation assertions of right, either surface transits or overflights, are conducted in the course of normal operations.

One negative note in state practice has been the several occasions since 1974, as the 12-mile territorial sea limit was gaining international consensus by being placed in the LOS negotiating text, when states increased their territorial seas beyond the acceptable limit (Graph 1). Sixteen claims have been made, since 1974, creating a territorial sea limit in excess of 12 miles. Even after the LOS Conference had concluded and the LOS Convention was open for signature, El Salvador re-enacted a 200-mile territorial sea claim. On the positive side, there has been a trend of states that have "rolled-back" their excessive claims to 12 miles. Of the 16 states noted above, six have since enacted laws bringing their claims back to 12 miles. And, Argentina, which in 1967 claimed a 200-mile territorial sea, in 1991 rolled back its claims to 12 miles (Table 5).

Table 5
TERRITORIAL SEA CLAIMS THAT HAVE BEEN "ROLLED BACK" TO 12 MILES

	Excessive Claim		Year Claim Rolled
State	Year	Breadth	Back to 12 Miles
Albania	1976	15	1990
Argentina	1967	200	1991
Cape Verde	1975	200	1977
Gabon	1970	25	
	1972	30	
	1972	100	1984
Ghana	1973	30	
	1977	200	1986
Guinea-Bissau	1974	150	1978
Haiti	1977	100	1977
Madagascar	1973	50	1985
Maldives	1964	rectangle	1976
Mauritania	1972	30	
	1977	70	1988
Senegal	1976	200	1985
Tanzania	1973	50	1989
Tonga	1889	rectangle	1972

Graph 1


CHRONOLOGY OF TERRITORIAL SEA CLAIMS
WITH BREADTHS EXCEEDING 12 NAUTICAL MILES
(As of December 1, 1991)
States-Claim (200 miles unless noted)
5
4
3
2
1
Claim no longer in force: State now claims 12-mile limit
* Rectangular Claim
TONGA-REC *
PERU
PHILIPPINES-REC*
MALDIVES-REC *
GUINEA
ECUADOR
ARGENTINA
PANAMA
URUGUAY
BRAZIL
SIERRA LEONE
NIGERIA - 30
GABON-100
SOMALIA
MADAGASCAR-50
TANZANIA-50
CAMEROON-50
GUINEA-BISSAU-150
ANGOLA-20
CAPE VERDE-100
ALBANIA-15
BENIN
CONGO
GHANA
MAURITANIA - 70
SENEGAL-150
LIBERIA
TOGO-30
NICARAGUA
PERU
SYRIA-35
UNITED NATIONS LAW OF THE SEA CONVENTION OPEN FOR SIGNATURE
EL SALVADOR
1887
1947
'61 '62 '63 '64 '65 '66 '67 '68 '69 '70 '71 '72 '73 '74 '75 '76 '77 '78 '79 '80 '81 '82 '83
'91
Year

CONTIGUOUS ZONE

The contiguous zone is an area seaward of the territorial sea in which the coastal State may exercise the control necessary to prevent or punish infringement of its customs, fiscal, immigration, and sanitary laws and regulations that occur with its territory or territorial sea (LOS Convention, Article 33). The contiguous zone is comprised of international waters where ships and aircraft, including warships and military aircraft, of all States enjoy the high seas freedoms of navigation and overflight.

The maximum permissable breadth of the contiguous zone is now 24 miles, as measured from the baseline from which the territorial sea is determined (LOS Convention, Article 33(2)). The United States claims a contiguous zone of 12 miles, but will respect foreign contiguous zone claims to 24 miles consistent with the provisions of the LOS Convention.[52]

There are relatively few instances of claims to a contiguous zone that exceed the rights permitted under international law. The following are examples of U.S. protests against such claims:

Haiti: The United States protested Haiti's attempt to expand the competence of its contiguous zone to include protection of national security interests. Thus, in 1989 the U.S. protested Haiti's Decree No. 38 of July 12, 1977, stating, in part:[53]

> ...customary international law, as reflected in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, to which Haiti and the United States are party, and in the 1982 United Nations Convention on the Law of the Sea, does not recognize the right of coastal states to assert powers or rights for security purposes in peacetime that would restrict the exercise of the high seas freedoms of navigation and overflight beyond the territorial sea.

The United States has protested similar claims made by the following countries:

Bangladesh	Syria
Burma	Venezuela
Sri Lanka	Yemen Arab Republic
Sudan	Peoples Dem. Republic of Yemen

Namibia: In a 1990 diplomatic note to Namibia the U.S. expressed its concern over Namibia's claim to establish control within the full extent of its 200-mile exclusive economic zone to prevent infringement of its fiscal, customs, immigration, and health laws. The

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[52] The United States claim appears in Department of State Public Notice 358, 37 Federal Register 11, 906, June 15, 1972. The 12-mile limit is now also the outer limit of the U.S. territorial sea for international purposes; for U.S. domestic law purposes the U.S. territorial sea remains at 3 miles.

[53] Diplomatic note of August 1, 1989 from the U.S. Embassy at Port au Prince. Haiti's Decree may be round in Robert W. Smith, Exclusive Economic Zone Claims (Martinus Nijhoff, Dordrecht, 1986), p. 202.

protest note read, in part, [54]

> As recognized in customary international law and as reflected in articles 33 and 56 of the 1982 United Nations Convention on the Law of the Sea, the right of a coastal state to prevent infringement of its fiscal, customs, immigration, and health laws within its territory or territorial sea does not extend beyond 24 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Vietnam: In a decree of March 17, 1980, Vietnam claimed that military vessels must have its permission and must also give notice before entering Vietnam's contiguous zone. The United States protested these claims in 1982 stating,[55]

> The Government of the United States of America also wishes to refer to specific provisions of the Decree of March 17, 1980 which assert jurisdiction in a manner which is contrary to international law with respect to the activities of foreign vessels operating in the territorial sea or the contiguous zone of the Socialist Republic of Vietnam, including, inter alia: a claim that submarines in the contiguous zone must navigate on the surface and show their flag; a claim that aircraft may not be launched from or taken aboard ships operating in the contiguous zone; and, a claim that, before entering the contiguous zone or the territorial sea, ships equipped with weapons must take prescribed steps to render such weapons less readily available for use...[I]nternational law limits the jurisdiction which a coastal state may exercise in maritime areas. It is the view of the government of the United States of America that the aforementioned claims made in the decree of March 17, 1980 exceed such limits.

EXCLUSIVE ECONOMIC ZONE

The EEZ concept gained general acceptance early in the UNCLOS III negotiations. A balance between coastal state interests, particularly developing states, and the interests of maritime, land-locked, and geographically disadvantaged states was required, however, before final acceptance of an EEZ text could be achieved. The underlying purpose for creating this new maritime regime was to give coastal states increased rights over the resources off their coasts while curtailing the trend of national claims to broader territorial seas and preserving as many high seas freedoms as possible.

The EEZ and the LOS Provisions

At UNCLOS III a fundamental issue was the legal status of EEZ waters. Intense debates arose regarding the legal nature of coastal state rights in the EEZ and their relationship to rights of other states in the zone. The consensus developed that non-resource-related high

[54] Diplomatic Note No. 196, December 24, 1990 from the American Embassy at Windhoek. Germany also protested this claim in October of 1990.

[55] Aide memoire of August 24, 1982 from the U.S. Mission to the United Nations in New York to Vietnam's mission. Vietnam's decree may be found in FBIS Asia and Pacific, March 19, 1980, pp. K2-K8

seas freedoms, including the freedoms of navigation and overflight and the freedoms to lay pipelines and submarine cables, would be preserved in the EEZ. Yet, even the exercise of these freedoms must be balanced against the exercise of EEZ rights by the coastal state. Article 58, for example, recognizes the enjoyment of high seas freedoms by all states, "subject to the relevant provisions of this Convention...," and with "due regard to the rights and duties of the coastal State...."

The LOS Convention strikes a balance between the rights and duties of coastal states on the one hand, and of all other states on the other. Part V, Articles 53 through 75, of the LOS Convention, pertains to the EEZ. Article 56 addresses the rights, jurisdiction, and duties of the coastal state in the EEZ. Paragraph 1 of this article distinguishes sovereign rights from jurisdiction:

1. In the exclusive zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;
(ii) marine scientific research;
(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.

Article 57 defines the breadth of the EEZ to be no more than 200 miles from the baseline from which the territorial sea is measured.

Article 58 pertains to the rights and duties of other States in the EEZ. Whereas Article 56(2) states that coastal States "shall have due regard to the rights and duties of other States..." in the EEZ, Article 58(3) places similar requirements on other States:

In exercising their rights and performing their duties under this Convention in the exclusive economic zone, State shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Although it is not specific, Article 59 provides a basis for resolving disputes over rights and duties not addressed in the Convention. The conflict "should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective

importance of the interests involved to the parties as well as the international community as a whole."

Article 60 sets out the provisions for the coastal State to construct and to authorize and regulate the construction, operation, and use of artificial islands, installations, and structures in its EEZ.

Of the remaining 15 articles on the EEZ, 13 specifically relate to living resource jurisdiction in the zone. Of particular importance to foreign fishermen is Article 73 on the enforcement of laws and regulations by the coastal State. Paragraph 3 provides that coastal State penalties for violation of fisheries legislation in the EEZ "may not include imprisonment in the absence of agreements to the contrary by the States concerned."

The EEZ and State Practice

The exclusive economic zone has gained recognition as customary international law. A Chamber of the International Court of Justice expressed its opinion on the subject:[56]

> Turning lastly to the proceedings of the Third United Nations Conference on the Law of the Sea and the final result of that Conference, the Chamber notes in the first place that the Convention adopted at the end of the Conference has not yet come into force and that a number of States do not appear inclined to ratify it. This, however, in no way detracts from the consensus reached on large portions of the instrument and, above all, cannot invalidate the observation that certain provisions of the Convention, concerning the continental shelf and the exclusive economic zone...were adopted without any objections. The United States, in particular, in 1983…proclaimed an economic zone on the basis of Part V of the 1982 Convention. This proclamation was accompanied by a statement by the president to the effect that in that respect the Convention generally confirmed existing rules of international law. Canada, which has not at present made a similar proclamation, has for its part also recognized the legal significance of the nature and purpose of the new 200-mile regime...In the Chamber's opinion, these provisions, even if in some respects they bear the mark of the compromise surrounding their adoption, may nevertheless be regarded as consonant at present with general international law on the question.

The general consensus reached on the exclusive economic zone (EEZ) at the Law of the Sea conference as been supported by state practice since the mid-1970s. Thus, the concept of the EEZ, including its maximum breadth of 200 miles and the basic rules governing the zone, has been effectively established as customary international law. These rules are binding, therefore, on states even before the LOS Convention comes into force.

As of February 1, 1992, 83 States claim an EEZ. The United States, by Presidential

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[56] Case Concerning Delimitation of the Maritime Boundary of the Gulf of Maine (Canada/United States), 1984 I.C.J. Report, 294, para. 94.

Proclamation, claimed an EEZ in 1983 (See Annex I for the text of this Proclamation).[57]

Several states have enacted laws claiming rights that potentially could exceed those authorized in the LOS Convention. Barbados, for example, claimed the right to extend the application of any of its laws to its EEZ. The United States protested this claim by stating, in part,[58]

> Of particular concern...is the provision of the Marine Boundaries and Jurisdiction Act, 1978 which purports to grant authority to the Governor-General of Barbados to extend the application of any law of Barbados to the claimed exclusive economic zone of Barbados. It is the view of the Government of the United States that claims made by the Marine Boundaries and Jurisdiction Act, 1978, including the claim of unlimited authority to extend the law of Barbados over maritime areas, are without foundation in international law.

Burma has also claimed broad authority in the EEZ. In Article 18(b) of its 1977 Territorial Sea and Maritime Zones Law Burma claimed the

> ...exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, offshore terminals installations and other structures and devices necessary for the exploration of its natural resources, both living and non-living, or for the convenience of shipping or for any other purpose. (Emphasis added).

The United States protested this claim in 1982, as well as similar claims made by the following countries (the year of the U.S. protest is in parenthesis):

Grenada	(1982)	Mauritius	(1982)
Guyana	(1982)	Pakistan	(1982)
India	(1983)	Seychelles	(1982).

Although Article 73 (1) of the LOS Convention expressly prohibits the coastal State from imprisoning violators of national fishery regulations, unless agreed to between the concerned states, the following countries have included imprisonment provisions, or potential for imprisonment penalties, in their EEZ laws:

Antigua and Barbuda	Guinea-Bissau
Bangladesh	Guyana
Barbados	India
Burma	Maldives
Cape Verde	Mauritius
Grenada	Niue

[57] Presidential Proclamation 5030, March 10, 1983, 48 Federal Register 10601. Effective January 1, 1992, the United States began exercising jurisdiction over highly migratory species of tuna within its EEZ.
[58] Diplomatic Note No. 152, June 14, 1982 from the American Embassy at Bridgetown.

Nigeria	Seychelles
Pakistan	Suriname
Philippines	Vanuatu
Portugal	Yemen

CONTINENTAL SHELF

The first wave of post-World World II national claims to expanded ocean areas began with President Truman's 1945 Proclamation on the Continental Shelf,[59] by which the United States asserted exclusive sovereign rights over the resources of the continental shelf off its coasts. The Truman Proclamation specifically stated that waters above the shelf were to remain high seas and that freedom of navigation and overflight were not to be affected.

The definition of the continental shelf established at UNCLOS I in 1958 was vague and flexible. Article 1(a) of the Convention on the Continental Shelf states that the continental shelf refers:

> ...to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

At UNCLOS III the 1958 definition was discarded and an attempt was made to develop a logical and satisfactory definition of the continental margin that included not only the continental shelf but also the continental slope and rise. Article 76(1) of the LOS Convention defines the continental shelf:

> The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Regardless of the seafloor features, a State may claim, at a minimum, a 200-mile continental shelf. Under other LOS Convention provisions a state has the right to claim a 200-mile EEZ which includes jurisdictional rights over the living and nonliving resources of the seafloor and seabed. Thus, for those states whose physical continental margin does not extend farther than 200 miles from the baseline, the concept of the continental shelf is of less importance than before.

Paragraphs 3-7 of Article 76, which provide a rather complex formula for defining the

[59] U.S. Department of State, "Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf," Proclamation No. 2667; reprinted in XIII Bulletin, Department of State, No. 327, September 30, 1945.

"continental shelf", apply only to states that have physical continental margins extending more than 200 miles from the coast. A few items in these paragraphs are worth noting:

- the margin does not include the deep ocean floor with its ocean ridges (paragraph 3);

- if the continental margin extends beyond 200 miles, the outer limit shall be measured by one of two methods described in paragraph 4;

--subparagraph (a) (i) margin definition is based on the determination of thickness of sediments. The margin can extend to that point where the thickness of sediments "is at least 1 percent of the shortest distance from such point to the foot of the continental slope." Thus, if at a given point beyond 200 miles from the baseline the sediment thickness is 3 kilometers, then that point could be as much as 300 kilometers seaward of the foot of continental slope, subject to the provisions in paragraph 5;

--subparagraph (a) (ii) defines the continental margin using a limit not more than 60 miles from the foot of the continental slope;

- paragraph 5 limits any continental shelf definition at either 350 miles from the territorial sea baseline or 100 miles form the 2,500 meter isobath, whichever is farther seaward. It is important to recognize that for paragraph 5 to be relevant, the requirements set forth in paragraph 4 must first be met; and

- on submarine ridges the outer limit shall not exceed 350 miles from the territorial sea baselines, but this provision does not apply "to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs" (paragraph 6).

Although the United States has not yet determined the outer limit of its continental margin, it has recognized the definition in Article 76 as reflecting customary international law. On November 17, 1987 the Interagency Group on the Law of the Sea and Ocean Policy established the policy of the United States on delimiting the outer limit of the United States continental shelf. The Interagency Group decided "that the delimitation provisions of Article 76 of the 1982 United Nations Convention on the Law of the Sea reflect customary international law and that the United States will use these rules when delimiting its continental shelf and in evaluating the continental shelf claims of other countries."[60]

Since the mid-1970s, several countries have made general claims to the continental shelf that the United States believes exceed the provisions of the LOS Convention. For example, the United States protested Pakistan's 1976 law stating, in part that the law purported:[61]

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60 Memorandum from Assistant Secretary John D. Negroponte to Deputy Legal Adviser Elizabeth Verville, November 17, 1987.

61 Diplomatic Note No. 694 dated June 8, 1982, from the American Embassy at Islamabad, Pakistan. Pakistan's Territorial Waters and Maritime Zones Act, 1976, may be found in Robert W. Smith, Exclusive

> to assert jurisdiction over the continental shelf...in a manner which is contrary to international law, including inter alia: a claim of authority to designate areas of the continental shelf...and to restrict navigation and certain other activities therein, and, a claim of authority to extend any law over, and to prescribe and enforce any regulation necessary to control the conduct of any person in,...the continental shelf...of Pakistan. The Government of the United States wishes to remind the Government of Pakistan that international law limits the jurisdiction which a coastal state may exercise in maritime areas.…

Similar protests were lodged with Guyana, India, Mauritius, and the Seychelles.[62]

At least two countries (Ecuador and Chile) have made specific continental shelf claims involving limits beyond 200 miles. In a 1985 Presidental Proclamation Ecuador claimed the underseas Carnegie range (Cordillera de Carnegie) as its continental shelf. This claim created a "bridge" between the 200-mile limits drawn from Ecuador's mainland and from the Galapagos Islands. A 100-mile continental shelf was claimed on either side of the 2,500-meter depth isobath along this "bridge". Ecuador applied Article 76(5) of the LOS Convention which sets these maximum limits, but did so without first satisfying the physical criteria set forth in Article 76(4). (It is unlikely that Ecuador could satisfy the sedimentary rock thickness test since this cordillera is an oceanic ridge.) The United States protested this claim in February 1986. (Germany and France have also protested Ecuador's assertion). The United States went into a fair amount of detail in its protest of this claim:[63]

> ...refers to a Proclamation of 19 September [1985] by President Febres Cordero on the continental shelf of Ecuador that states, inter alia, that "...in addition to the continental and island shelves in Ecuador's 200 mile territorial sea, the seabed and subsoil between its continental territorial sea and the territorial sea around the archipelago De Colon [Galapagos Islands] for a distance of 100 miles from the isobath at a depth of 2,500 meters also form part of Ecuador's continental shelf."
>
> Customary international law on delimitation of the continental shelf as reflected in Article 76 of the Law of the Sea Convention provides that the continental shelf of a coastal State extends throughout the natural prolongation of its land territory to the edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. Article 76(4) further provides that when the outer edge of the continental margin does extend beyond the aforementioned 200

Economic Zone Claims (Martinus Nijhoff, 1986), p. 357.

[62] In July 1982 the U.S. protested Guyana's Maritime Boundaries Act, 1977, Mauritius' Maritime Zones Act, 1977, and Seychelles' Maritime Zones Act, 1977; in May 1983 the U.S. protested India's Maritime Zones Act, 1976.

[63] It should be noted that Ecuador refers to its 200-mile territorial sea in this claim. The United States protested this claim in 1967 after it was first made in 1966, and again in 1986.

> nautical mile distance the outer limit of the continental shelf either: (a) coincides with fixed points at each of which the thickness of sedimentary rocks is at least 1 percent of the shortest distance from such point to the foot of the continental slope; or (b) coincides with fixed points not more than 60 nautical miles from the foot of the continental slope.
>
> In its 19 September proclamation Ecuador has apparently relied on Article 76(5) which provides: "the fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4(a) (i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 meter isobath, which is a line connecting the depth of 2,500 meters."
>
> Article 76(5) may, however, only be invoked if either of the conditions precedent in Article 76(4) cited above are fulfilled. We believe these conditions cannot be invoked in support of the Ecuadorian position. Therefore, it is the view of the United States that that part of Ecuador's continental shelf claim falling beyond the 200 mile exclusive economic zone off the coasts of the Galapagos Islands and mainland Ecuador are without legal foundation....

Chile has also made a claim to the continental shelf that exceeds the provisions of the LOS Convention. In 1985 Chile claimed a continental shelf of 350 miles around its Pacific Ocean territories of Easter Island and Sala Y Gomez Island.[64] Chile, however, failed to prove, under Article 76(4), that the continental shelf extends to 200 miles, much less to 350 miles. The United States protested this claim in May 1986, as have France and the Federal Republic of Germany.

ARCHIPELAGOES

The archipelago concept was established in international law in part IV (Articles 46-54) of the 1982 LOS Convention. By definition, an archipelagic state is a state "constituted wholly by one or more archipelagos and may include other islands" (Article 46). This article defines an 'archipelago' as a

> group of islands, including parts of islands, inter-connecting waters and other natural features which are so closely inter-related that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Thus, an archipelagic state must consist wholly of islands. A continental state that has offshore groups of islands may not claim archipelagic status for these islands. Nevertheless, several continental states, including Denmark, Ecuador, Portugal, and Spain,

[64] Chile's claim may be found in the UN Office for Ocean Affairs and the Law of the Sea, The Law of the Sea: National Legislation on the Continental Shelf (UN Sales No. E.89.V.5, 1989), p. 62.

have established straight baselines around their islands in a manner simulating an archipelago. The United States has protested these claims.

To define the archipelago, a state may draw archipelagic baselines meeting certain requirements specified in Article 47. For example, the length of the baselines may not exceed 100 miles, except that up to 3 percent of the total number of baselines may be drawn to a maximum length of 125 miles (paragraph 2). The baselines are to be drawn in such a manner that the area of water to area of land ratio enclosed by the baselines must be between 1:1 and 9:1 (paragraph 1).

A state claiming itself an archipelagic state must give publicity to charts or lists of geographical coordinates that define the archipelago and to deposit such charts or lists with the United Nations (paragraph 9).

Subject to the provisions of Part IV of the LOS Convention an archipelagic state has sovereignty over the waters, airspace, seabed and subsoil enclosed by the archipelagic baselines (Article 49). Within the archipelago, the state may claim internal waters, in accordance with articles 9 (mouths of rivers), 10 (bays), and 11 (ports).

As of February 1992, the following states have claimed archipelagic status--those with an asterix (*) have not specified archipelagic baselines:

Antigua and Barbuda	Kiribati*	Sao Tome & Principe
Cape Verde	Marshall Islands*	Solomon Islands
Comoros*	Papua New Guinea	Trinidad and Tobago
Fiji	Philippines	Vanuatu
Indonesia	Saint Vincent and the Grenadines*	

A few cases should be noted in which the United States has responded to a particular archipelagic claim.

Cape Verde: Cape Verde claimed archipelagic baselines in 1977.[65] The law creates 14 basepoints which, when connected, comprise the archipelagic baseline system. Two baseline segments exceed the permissible maximum 125 mile length. The water area enclosed by the archipelagic baselines is 50,546 sq. kilometers; the Cape Verde land area is 4,031 sq. kilometers. The resulting water:land area ratio is 12.54:1, which exceeds the maximum allowable 9:1 ratio. Because of these technical flaws in the law, the United States protested Cape Verde's claim in 1980. Both elements can be corrected with some modification to the baselines.

Philippines: In 1961 the Philippines claimed the waters within the limits set out in Article III

[65] An unofficial translation of Cape Verde's Decree Law No. 126/77 may be found in United Nations, The Law of the Sea, Baselines: National Legislation with Illustrative Maps, 1989, p. 99.

of the Treaty of Paris between the United States and Spain of December 10, 1898, as part of the Philippine territory. It also claimed straight baselines connecting the outer points of the outer islands. The United States protested this claim in May 1961.

On May 8, 1984, the Philippines deposited with its instrument of ratification of the LOS Convention a declaration reaffirming certain understandings regarding the Convention made at the time of its signing. It read, in part:[66]

> 1. By signing the Convention by the Government of the Republic of the Philippines shall not in any manner impair or prejudice the sovereign rights of the Republic of the Philippines under and arising from the Constitution of the Philippines.
>
> 2. Such signing shall not in any manner affect the sovereign rights of the Republic of the Philippines as successor of the United States of America, under and arising out of the Treaty of Paris between Spain and the United States of America of December 10, 1898, and the Treaty of Washington between the United States of America and Great Britain of January 2, 1930;...
>
> 5. The Convention shall not be construed as amending in any manner any pertinent laws and Presidential Decrees of Proclamations of the Republic of the Philippines; the Government of the Republic of the Philippines maintains and reserves the right and authority to make any amendments to such laws, decrees or proclamations pursuant to the provisions of the Philippines Constitution;...
>
> 7. The concept of archipelagic waters is similar to the concept of international waters under the Constitution of the Philippines and removes straits connecting these waters with the economic zone or high seas from the rights of foreign vessels to transit passage for international navigation.

In January 1986 the United States protested this declaration. Several other states also protested the Philippine declaration, including Australia, Bulgaria, Czechoslovakia, Ukraine, and the USSR.[67]

With regard to statements one and five of the Philippine declaration the United States stated that,

> ...with respect to other States and the nationals of such other States, the rights and duties of states are defined by international law, both customary and conventional. The

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[66] The Philippines statement on signature of the LOS Convention may be found in United Nations Special Representative on the Law of the Sea, Status of the United Nations Convention on the Law of the Sea, UN Sales No. E.85, V.5, at 22 (1985).

[67] See Office of the Special Representative of the Secretary-General for the Law of the Sea, The Law of the Sea: Status of the United Nations Convention on the Law of the Sea, UN Sales No. E.85.V.5 (1985- hereinafter referred to as UN, Status of LOS Convention).

> rights of states under international law, both customary and conventional. The rights of states under international law cannot be enlarged by their domestic legislation, absent acceptance of such enlargement by affected states. In this regard, the Government of the United States notes that the Constitution of the Philippines declares, 'The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines.' The Government of the United States further notes that customary international law, as reflected in the 1982 Law of the Sea convention, does to apply to such waters the regime of internal waters. Therefore, the Government of the United States renews it protests, made in 1961 and 1969, of the claim by the Government of the Republic of the Philippines that such waters constitute internal waters, and the Government of the United States reserves its rights and those of its nationals in this regard.

With regard to the Philippines' second point, the U.S. protest stated that the United States

> ...does not share its view concerning the proper interpretation of the provisions of those treaties, as they relate to the rights of the Philippines in the waters surrounding the Philippine Islands. The Government of the United States continues to be of the opinion that neither those treaties, nor subsequent practice, has conferred upon the United States, nor upon the Philippines as successor to the United States, greater rights in the waters surrounding the Philippine Islands than are otherwise recognized in customary international law.

With regard to the Philippine's point number seven, the United States stated that it

> ...wishes to observe that, as generally understood in international law, including that reflected in the 1982 Law of the Sea Convention, the concept of internal waters differs significantly from the concept of archipelagic waters. Archipelagic waters are only those enclosed by properly drawn archipelagic baselines and are subject to the regimes of innocent passage and archipelagic sea lanes passage. The Government of the United States further wishes to point out that straits linking the high seas or exclusive economic zone with archipelagic waters, as well as straits within archipelagic waters, are, if part of normal passage routes used for international navigation or overflight through or over archipelagic waters, subject to the regime of archipelagic sea lanes passage.

NAVIGATION AND OVERFLIGHT RIGHTS

Right of Innocent Passage

One of the fundamental tenets in the international law of the sea is the right enjoyed by all ships of every state to innocent passage through another state's territorial sea. The LOS Convention provides definitions for the meaning of "passage" (Article 18) and of "innocent passage" (Article 19), and lists those activities considered to be non-innocent and

"prejudicial to the peace, good order or security of the coastal State" (Article 19 (2)a-1).

The United States reaffirmed its position on innocent passage in the 1988 Presidential Proclamation No. 5928 (by which the U.S. territorial sea was extended to 12 miles) which states, in part,[68]

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the United States, the ships of all countries enjoy the right of innocent passage...

> Since 1986 government officials from the United States and the Soviet Union have met periodically to discuss certain international legal aspects of traditional uses of the oceans and, in particular, navigation. In 1989 the two countries issued a joint statement adopting a uniform interpretation of the rules of international law governing innocent passage through the territorial sea which all governments were urged to accept (see Annex III for the full text).

The highlights of this joint statement include the following:

> - The LOS Convention is cited as containing the relevant rules of international law governing innocent passage of ships in the territorial sea.
>
> - All ships, including warships, regardless of cargo, armament, or means of propulsion, enjoy the right of innocent passage, for which neither notification nor authorization is required.
>
> - The list set out in Article 19(2) is an exhaustive list of activities that would render passage not innocent. A ship not engaging in any of these listed activities is in innocent passage.
>
> - A coastal state that questions whether a ship is in innocent passage must give that ship an opportunity to clarify its intentions, or to correct its conduct.
>
> - Ships exercising the right of innocent passage must abide by all laws and regulations of the coastal state adopted in conformity with international law, as reflected in Articles 21, 22, 23, and 25 of the LOS Convention.
>
> - If a warship acts in a manner contrary to innocent passage, and does not correct is action upon the coastal state's request, the coastal state may require it to leave the territorial sea, in accordance with Article 30. In such cases the warship shall do so immediately.

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[68] Presidential Proclamation 5928, December 27, 1988, Federal Register, vol. 54, no. 5, January 9, 1989, at 777.

- Without prejudice to the exercise of rights of coastal and flag states, all differences regarding a particular case of innocent passage shall be resolved between the coastal state and the flag state through diplomatic channels or other agreed means.

Permissible Restrictions on Innocent Passage

For purposes such as resource conservation, environmental protection, and navigational safety, a coastal state may establish certain restrictions upon the exercise of innocent passage of foreign vessels. Such restrictions must be reasonable and necessary and not have the practical effect of denying or impairing the right of innocent passage. The restrictions must not discriminate in form or in fact against the ships of any state or those carrying cargoes to, from, or on behalf of any state. According to Article 21 of the LOS Convention, the coastal state may, where navigational safety dictates, require foreign ships exercising the right of innocent passage to utilize designated sea lanes and traffic separation schemes.

Tankers, nuclear powered vessels, and ships carrying dangerous noxious substances may be required, for safety reasons, to utilize designated sea lanes (Article 22(2)).

Article 21 of the LOS Convention empowers a coastal state to adopt, with due publicity, laws and regulations relating to innocent passage through the territorial sea in respect of all or any of the following eight subject areas (which do not include security):

1. The safety of navigation and the regulation of marine traffic (including traffic separation schemes).

2. The protection of navigation aids and facilities and other facilities or installations.

3. The protection of cables and pipelines.

4. The conservation of living resources of the sea.

5. The prevention of infringement of the fisheries regulations of the coastal state.

6. The preservation of the environment of the coastal state and the prevention, reduction and control of pollution thereof.

7. Marine scientific research and hydrographic surveys.

8. The prevention of infringement of the customs, fiscal, immigration or sanitary or regulations of the coastal state.

This list is exhaustive and inclusive.

Temporary Suspension of Innocent Passage

A coastal state may suspend innocent passage temporarily in specified areas of its territorial sea, when it is essential for the protection of its security. Such a suspension must be preceded by a published notice to the international community and may not discriminate in form or in fact among foreign ships (Article 25(3)). In the U.S., authorization to suspend innocent passage in the territorial sea during a national emergency is given to the President in 50 U.S.C., sec. 191.[69]

International law does not define how large an area in the territorial sea may be temporarily closed off to innocent passage. Since the maximum permissible breadth for the territorial sea is 12 miles, any suspension of passage seaward of this limit certainly would be contrary to international law. "Protection of its security" is not explicitly defined beyond the example of "weapons exercises" added to the LOS Convention. The length of "temporarily" is not specified, but clearly is not to be factually permanent. The prohibition against "discrimination in form or fact among foreign ships" clearly refers to discrimination among flag states and, in the view of the United States, includes direct and indirect discrimination on the basis of cargo or propulsion. This position is strengthened by the provisions in the LOS Convention explicitly dealing with nuclear-powered and nuclear-capable ships (Articles 22(2) and 23).

In response to a 1986 Sri Lanka Notice to Mariners which purported to require that, with certain exceptions, all vessels must obtain permission before entering Sri Lanka's territorial sea, the United States protested in a note which read, in part:[70]

> The Government of the United States acknowledges the efforts of the Government of Sri Lanka to interdict maritime activities of armed anti-government groups. The United States Government recognizes the right of the Government of Sri Lanka under customary international law as reflected in article 25 of the 1982 Convention on the Law of the Sea to prevent passage which is not innocent and to suspend temporarily, in specified areas of its territorial sea, innocent passage of foreign ships if such suspension is essential to its security. However, the Notice to Mariners is not in accordance with the right of innocent passage because the suspension of innocent passage is overly broad and because the duration of the suspension is not indicated as being temporary.

Sri Lanka replied to this note assuring the United States that the suspension was done "as a measure essential for the protection of Sir Lanka's security" and that it was "a temporary measure". The note also stated that the Notice to mariners "ensures that the right of innocent passage in routes used for international maritime traffic are not interfered with."[71]

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[69] See also 33 C.F.R. part 127. "Security" includes suspending innocent passage for weapons testing and exercises.

[70] Diplomatic Note No. 137, September 12, 1986 from the American Embassy at Colombo.

[71] For other instances in which states have sought to suspend innocent passage, see 4 Whiteman, Digest of international Law 379-86 (1965).

Excessive Restrictions on Innocent Passage

A concern of many maritime states pertains to requirements placed by coastal states on certain types of ships either prior to entering the territorial sea or on the transit itself. The following analysis highlights the types of restrictions the United States finds excessive under international law.

Time Limits for passage and prohibited zones

In 1985 Libya announced unique regulations which, inter alia, permitted innocent passage through its territorial sea by commercial ships in daylight hours only, provided prior information (at least 12 hours in advance of the proposed transit) is given to Libyan authorities. All ships were to remain out of certain prohibited zones located in the territorial sea (map 4, page 12).

The United States protested these claims in a note verbale to the Secretary-General of the United Nations and noted that the regulations,[72]

> ...do not appear to be limited in their application to vessels intending to call to Libyan ports, but rather that they address themselves to vessels exercising the internationally recognized right of innocent passage. With regard to the said regulations 6 and 7, the Government of the United States makes the following observations: first, the right of innocent passage is one that under long-standing principles of international law
>
> may be exercised by all vessels, whether or not engaged in commercial service; second, international law does not permit a coastal state to limit innocent passage of vessels through its territorial sea to certain periods of time, such as daylight hours only; third, under long-standing principles of international law, the coastal State may not claim to condition the right of innocent passage upon prior notification to it.
>
> The United States further notes that regulation 10 of the said Notice to Mariners requires that vessels strictly comply with directives pertaining to the so-called prohibited zones specified in that regulation. In this regard, the United States observes that zones A, B, and D [in the vicinity of Tripoli] are all areas within the territorial sea of Libya and therefore subject to innocent passage by vessels of all States. International law does not permit a coastal State to subject an area of its territorial sea to a permanent prohibition of navigation....

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[72] USUN note dated July 10, 1985 circulated to the permanent missions to the UN by UN Doc. NV/85/11, 10 July 1985; reproduced in UN Law of the Sea Bulletin No. 6, October 1985, p.40.

In 1981 Finland prohibited innocent passage through fortified areas or other declared areas of the Finnish territorial sea to be of military importance, and prohibited the arrival of vessels in such areas except between sunrise and sunset.[73]

The U.S. protest note stated, in part:[74]

> ...the right of innocent passage through the territorial sea extends to the whole of the territorial sea except as it may be suspended temporarily when such suspension is essential for the protection of security of the coastal state and is duly published. This limited right to suspend innocent passage is recognized in customary international law as reflected in Article 25 of the 1982 United Nations Convention on the Law of the Sea, as well as in the second paragraph of Article 9 of aforesaid Finnish Decree.

Passage Limited to Sea Lanes

In the same 1981 decree Finland claimed (1) that compulsory pilotage of warships was required when navigating Finnish territorial sea, and (2) public sea lanes as specially regulated were to be used. The U.S. protested both these requirements. The specific articles in Finland's decree do not specify the criteria to be used in specially regulating public sea lanes. The following talking point was provided to the U.S. Embassy for use in presenting the U.S. protest of this requirement:[75]

> Customary international law, as reflected in Article 22 of the Law of the Sea Convention, permits a coastal state to establish sea lanes in its territorial sea where needed for the safety of navigation, after taking into account the recommendations of the competent international organization [i.e., the International Maritime Organization]; any channels customarily used for international navigation; the special characteristics of particular ships and channels; and the density of traffic.

The Soviet Union in a 1982 law claimed that,[76]

> Foreign warships and underwater vehicles shall enjoy the right of innocent passage through the territorial waters (territorial sea) of the USSR in accordance with the procedure to be established by the Council of Ministers of the USSR.

Then, in 1983, the Soviet government published rules for warship navigation in the Soviet territorial sea.[77] In these rules the Soviet Union provided for the innocent passage of

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[73] Decree No. 656/80 of January 1, 1981 amending Decree no. 185 of April 18, 1963.
[74] Note Verbale No. 92 of June 6, 1989.

[75] State telegram 174994, June 2, 1989.
[76] Law of the Union of Soviet Socialist Republics on the State Frontier of the USSR, November 24, 1982. Found in United Nations, The Law of the Sea: Current Developments in State Practice, pp. 99-100 (1987).
[77] Rules for Navigation and Sojourn of Foreign Warships in the Territorial and Internal Waters and Ports of the USSR; ratified by the Council of Ministers Decree No. 384 of April 25, 1983. Found in 24 International legal Materials 1717 (1985).

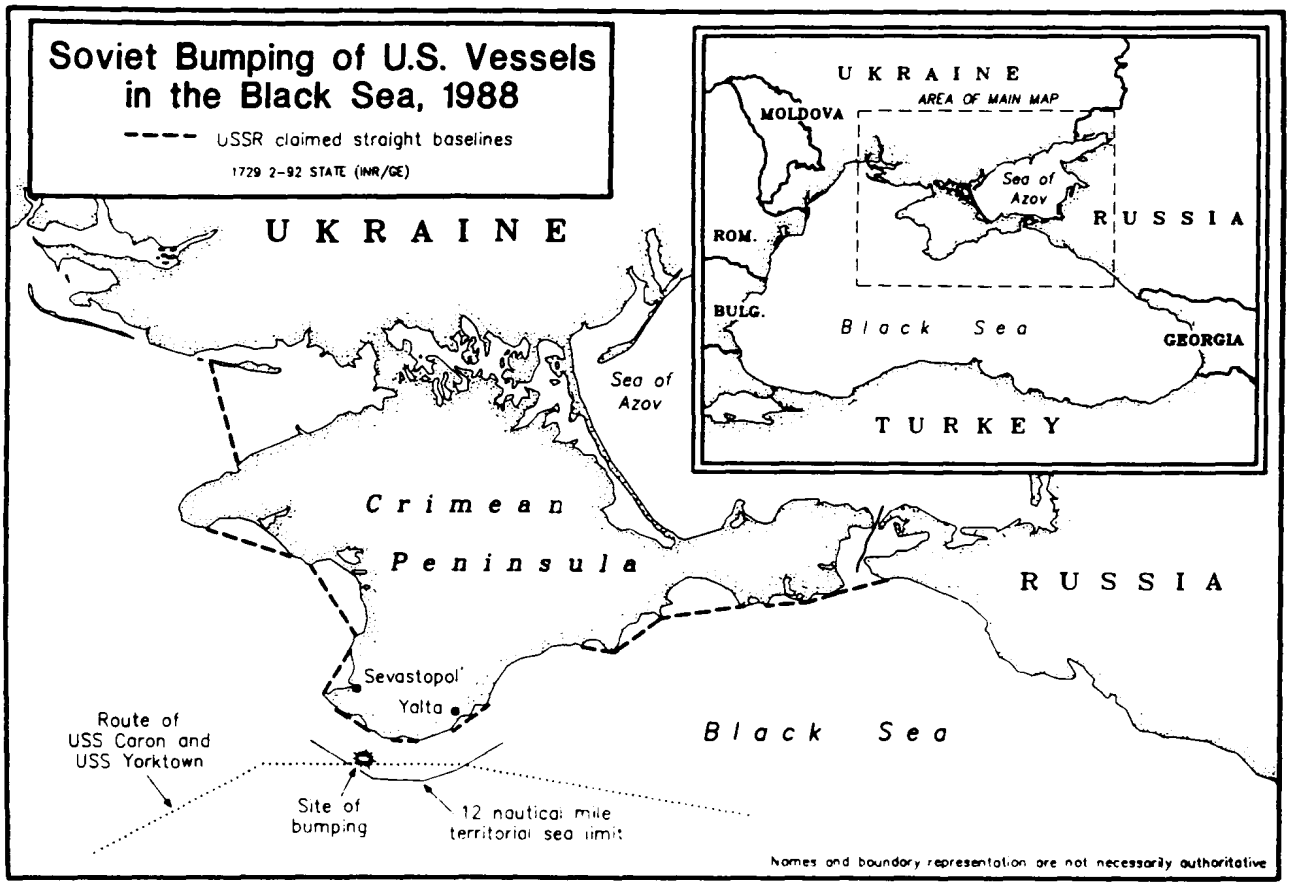
foreign warships only in limited areas of the Soviet territorial sea in the Baltic, the Sea of Okhotsk, and in the Sea of Japan.

In March 1986, two U.S. warships, the USS CARON and USS YORKTOWN, exercised the right of innocent passage through the Soviet territorial sea in the Black Sea. The incident created an exchange of protest notes by both sides. The Soviet Union accused the United States of violating Soviet borders. The United States rejected the Soviet assertions by stating, in part,

> The transit of the USS Yorktown and USS Caron through the claimed Soviet territorial sea on March 13, 1986 was a proper exercise of the right of innocent passage, which international law, both customary and conventional, has long accorded ships of all states. The exercise of the right of innocent passage is in no way a violation of a country's territorial sea nor is it "provocative"; it is, rather an essential part of the international law regime of the territorial sea. The right of ships of all states to engage in innocent passage without prior notification to, or permission of, coastal state is firmly grounded in international law...The right of innocent passage may be exercised by all types of vessels, whether they are traversing the territorial sea in connection with a call at a port or traversing the territorial sea without making such a call....

Two years later the same two U.S. warships were again involved in an incident in the Black Sea. On February 12, 1988 two Soviet vessels "bumped" the two U.S. Navy ships in the Soviet territorial sea (map 9).

Map 9



In an unpublished article offered to major newspapers, the United States stated, in part,[78]

> Our disagreement with the USSR involves Soviet efforts to limit, indeed virtually to abrogate, the right of innocent passage for warships through the Soviet territorial sea. According to Soviet legislation, foreign warships may exercise innocent passage in only five specified locations out of the thousands of miles of Soviet coastline. The Soviets made no provisions for innocent passage in the Black Sea.

The issue of innocent passage of warships was resolved between the United States and the Soviet Union by the issuance of the Joint Statement with attached Uniform Interpretation of the Rules of Innocent Passage signed by Secretary Baker and Foreign Minister Schevardnadze on September 23, 1989 (see earlier description, p. 48, and Annex III). This understanding clearly reflects the right of warships to conduct innocent passage through the territorial sea.

Prior Notice or Permission for Warship Innocent Passage

[78] Memorandum of Mary V. Mochary, Principal Deputy Legal Adviser, U.S. Department of State to the Assistant Secretary for Public Affairs, April 26, 1988.

The innocent passage of warships through the territorial sea has been a much debated issue in the international community. This issue received much attention during the general debates in the closing days of UNCLOS III. Gabon, for example, introduced a formal amendment to Article 21 that would have given the coastal state the right to require prior authorization and notification of warships for passage through the territorial sea.[79] States which made statements in favor of restricting the innocent passage of warships included Albania, Benin, China, Iran, Malta, North Korea, and Pakistan. States speaking in favor of the right of innocent passage without prior notification or authorization included the United States, France, Thailand, the Federal Republic of Germany, and the United Kingdom. Following the debate the amendment was withdrawn.

During this debate the United States made the following comment:[80]

> Some speakers spoke to the right of innocent passage in the territorial sea and asserted that a coastal State may require prior notification or authorization before warships or other government ships on non-commercial service may enter the territorial sea. Such assertions are contrary to the clear import of the Convention's provisions on innocent passage. Those provisions, which reflect long-standing international law, are clear in denying coastal State competence to impose such restrictions. During the eleventh session of the Conference formal amendments which would have afforded such competence were withdrawn. The withdrawal was accompanied by a statement read from the Chair, and that statement clearly placed coastal State security interests within the context of articles 19 and 25. Neither of those articles permits the imposition of notification or authorization requirements on foreign ships exercising the right of innocent passage.

About a month before the final day of the UNCLOS III Ambassador Koh, the Conference President, during an address at a symposium, stated:[81]

> I think the Convention is quite clear on this point. Warships do, like other ships, have a right of innocent passage through the territorial sea, and there is no need for warships to acquire the prior consent or even notification of the coastal State.

As noted earlier the U.S. and the Soviet Union have jointly stated that:[82]

> All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required.

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[79] UN Doc. A/Conf.62/L.97, Vol. 16, at 217.

[80] UN Doc. A/CONF.62/WS/37, vol. 17, at 243-44.

[81] Quoted in Bernard Oxman, "The Regime of Warships Under the United Nations Convention on the Law of the Sea, 24 Virginia Journal of International Law 809, at 854 n.159 (1984).

[82] The Uniform Interpretation of the Rules of Innocent Passage, attached to the Joint Statement signed by U.S. Secretary of State Baker and Soviet Foreign Minister Schevardnadze September 23, 1989, Annex III.

Enforcement of Violations

In 1981 Malta implemented a law which gave the Prime Minister the power to make and enforce regulations to control the passage of ships through the territorial sea. The regulations may relate to the arrest, detention and seizure of ships "and such other power as necessary" to ensure compliance with "any law, rule, regulation or order" and include the imposition of punishments, including imprisonment.[83]

The United States, in its protest of this law, stated that:[84]

> ...wishes to express its concern that Section 5 of the Territorial Waters and Contiguous Zones Act makes no reference to the internationally recognized right of innocent passage.

State practice on warship innocent passage

Over 40 states currently have excessive claims to control the entry of foreign warships into the territorial sea (see Graph 2). These claims range from requiring permission or notification prior to entry into the territorial sea to specifying the maximum number of warships allowed in the territorial sea at one time. The United States has been diligent to protest these claims.

An example of a portion of U.S. statement on this subject is the 1984 U.S. aide-memoire to Sweden:[85]

> ...In stating this position, and in exercising its right of warship innocent passage in accordance with the international law, the United States implies no disregard for the sovereignty of Sweden or for its rights in the territorial sea. Innocent passage of any vessel, including a warship, is the continuous and expeditious transit of such a vessel in a manner not prejudicial to the peace, good order or security of the coastal State. United States warships engaged in innocent passage adhere strictly to the requirements of international maritime law and practice regarding the modalities of innocent passage. Thus, for example, submarines must navigate on the surface and fly their national flags. Ships may neither launch nor recover aircraft, and there may be no exercise or practice with weapons. The passage of United States warships under such conditions poses no threat to the security of the coastal State and constitutes no violation of its territorial sovereignty.

Protests to claims involving pre-conditions for warship innocent passage have been lodged

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[83] Malta Act XXVIII of 1981 may be found in UN Doc. LE 113 (3-3), November 16, 1981.

[84] Protest note dated October 16, 1981.

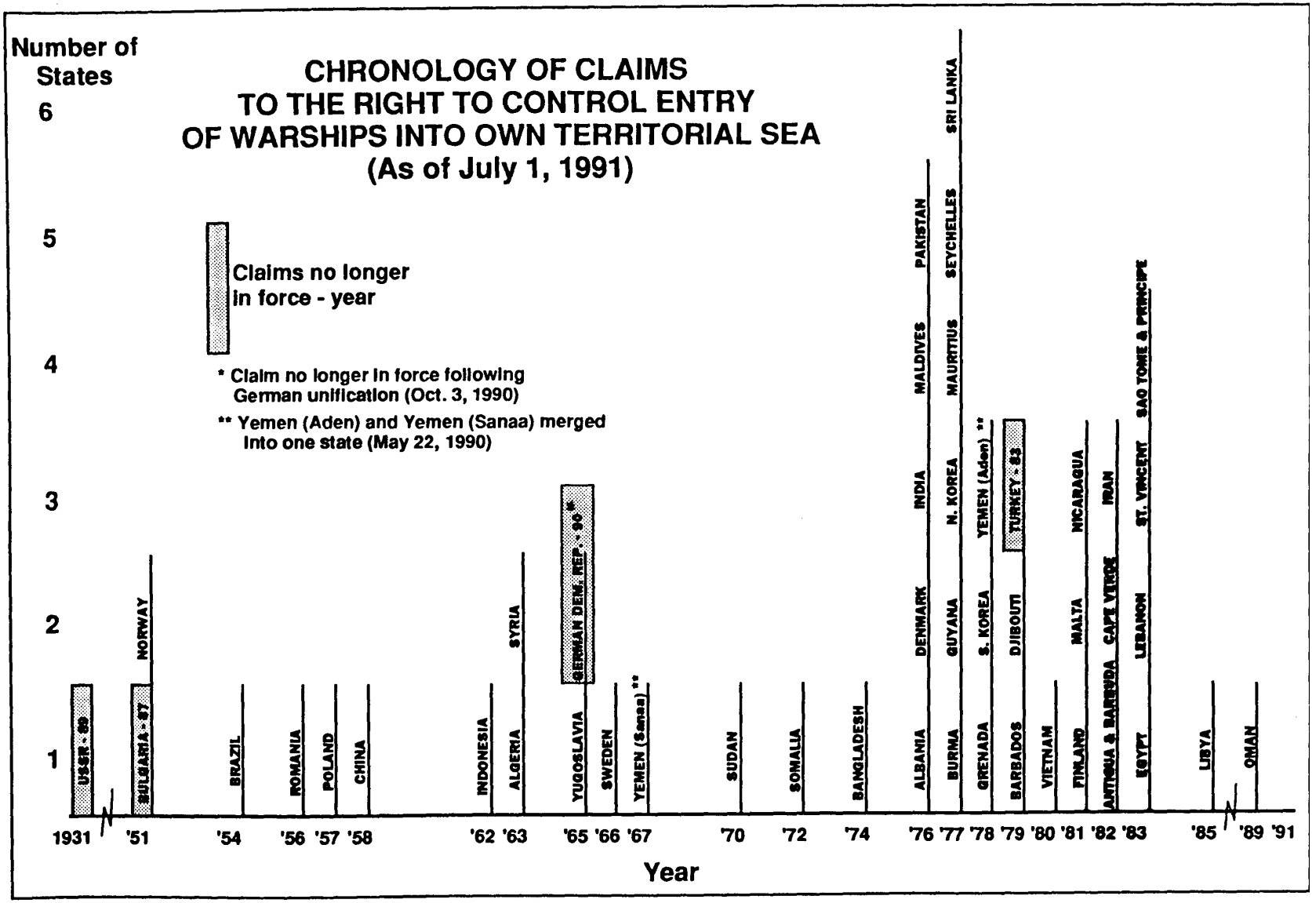
[85] Aide-memoire dated December 4, 1984 from the American Embassy at Stockholm.

by the United States to the following states:[86]

Albania
Algeria
Antigua and Barbuda
Bangladesh
Barbados
Brazil
Bulgaria
Burma
Cambodia
China
Congo
Denmark
Djibouti
Egypt
Finland
Grenada
Guyana
India
Iran
Korea, South
Libya
Maldives
Malta
Mauritius
Oman
Pakistan
Philippines
Poland
Romania
Seychelles
Somalia
Sri Lanka
Sudan
Sweden
Syria
Vietnam
Yemen[87]
Yugoslavia

[86] In 1985 the German Democratic Republic claimed the foreign warships needed prior permission. The United States protested the claim in 1986. After German unification this requirement is not being claimed by Germany.

[87] Prior to its merger into one country both Yemen (Aden) and Yemen (Sanaa) claimed that foreign warships required prior permission or notification before entering the territorial sea. The United States protested the Aden claim in 1982, the Sanaa claim in 1986.


Number of States
CHRONOLOGY OF CLAIMS
TO THE RIGHT TO CONTROL ENTRY
OF WARSHIPS INTO OWN TERRITORIAL SEA
(As of July 1, 1991)
Claims no longer in force - year
* Claim no longer in force following German unification (Oct. 3, 1990)
** Yemen (Aden) and Yemen (Sanaa) merged into one state (May 22, 1990)
USSR - 89
BULGARIA - 87
NORWAY
BRAZIL
ROMANIA
POLAND
CHINA
INDONESIA
ALGERIA
SYRIA
YUGOSLAVIA
GERMAN DEM. REP. - 90 *
SWEDEN
YEMEN (Sanaa) **
SUDAN
SOMALIA
BANGLADESH
ALBANIA
DENMARK
INDIA
MALDIVES
PAKISTAN
BURMA
GUYANA
N. KOREA
MAURITIUS
SEYCHELLES
SRI LANKA
GRENADA
S. KOREA
YEMEN (Aden) **
BARBADOS
DJIBOUTI
TURKEY - 83
VIETNAM
FINLAND
MALTA
NICARAGUA
ANTIGUA & BARBUDA
CAPE VERDE
IRAN
EGYPT
LEBANON
ST. VINCENT
SAO TOME & PRINCIPE
LIBYA
OMAN
1
2
3
4
5
6
1931
'51
'54
'56
'57
'58
'62
'63
'65
'66
'67
'70
'72
'74
'76
'77
'78
'79
'80
'81
'82
'83
'85
'89
'91
Year

Other restrictions on innocent passage

Several states have claimed illegal restrictions on innocent passage of nuclear-powered warships. The United States has protested all these claims.

In 1977 the People's Democratic Republic of Yemen - Yemen (Aden) - claimed that "foreign nuclear-powered ships or ships carrying nuclear material shall give...prior notification...."[88] The United States protested saying, in part:[89]

> ...that the internationally recognized legal right of innocent passage through the territorial sea may be exercised by all ships, regardless of type of cargo, and may not in any case be subjected to a requirement of obtaining prior authorization from or giving notice to the coastal State...

The **Yemen Arab Republic** (which merged with Yemen-Aden on May 22, 1990) made a similar claim to require prior permission in 1982 when it signed the LOS Convention. The United States protested on October 6, 1986.

Pakistan, in its 1977 law, claimed that "foreign super-tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may enter or pass through the territorial waters after giving prior notice to the Federal Government."[90] The United States protested on June 8 1982.

Djibouti's claim that "foreign vessels with nuclear propulsion or transportation of nuclear materials or other radioactive substances must inform Djibouti beforehand about their entrance and crossing of Djibouti territorial waters" was protested by the United States on May 22, 1989.[91]

Egypt, upon deposit of its instrument of ratification of the LOS Convention made a declaration which stated that nuclear-powered ships and ships carrying nuclear substances required Egyptian authorization prior to entering its territorial sea.[92] The United States protested this claim in February 1985.

Roll Back of Claims

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[88] Yemen Act No. 45 of 1977.
[89] Protest note dated August 2, 1982.
[90] Pakistan's Territorial Waters and Maritime Zones Act, 1976, may be found in UN Legislative Series, National Legislation and Treaties Relating to the Law of the Sea, UN Sales No. E/F.80.V.3, at 86 (1980).
[91] Djibouti Law No. 52/AN/78 may be found in Robert W. Smith, Exclusive Economic Zone Claims (Martinus Nijhoff Publishers, Dordrecht, 1986) at 111.
[92] The Egyptian declaration may be found in UN, Status of the United Nations Convention on the Law of the Sea, UN Sales No. E.85.V.5, at 35 (1985).

Turkey, in 1979, implemented Decree 7/17114 which required foreign warships to provide prior notice before transiting the Turkish territorial sea. The United States protested the claim on December 4, 1979. The Turkish government notified the State Department in May 1985 that this decree,[93]

> ...has been cancelled by the Directive dated November 24, 1983, No.83/7467. [From] then on foreign warships transiting territorial seas of Turkey are subject to the general provisions of international law.

The **Soviet Union** modified its claim restricting innocent passage of foreign warships on September 20, 1989. Bulgaria's requirement for prior permission was replaced in its July 8, 1987 Act, with a limitation of innocent passage to designated sea lanes.

INTERNATIONAL STRAITS

Legal Regime

Part III of the LOS convention addresses five different kinds of straits used for international navigation, each with a distinct legal regime:

1. Straits connecting one part of the high seas/EEZ and another part of the high seas/EEZ (Article 37- governed by transit passage).

2. Straits connecting a part of the high seas/EEZ and the territorial sea of a foreign state (Article 45(1) (a)- regulated by nonsuspendable innocent passage).

3. Straits connecting one part of the high seas/EEZ and another part of the high seas/EEZ where the strait is formed by an island of a state bordering the strait and its mainland, if there exists seaward of the island a route through the high seas/EEZ of similar convenience with regard to navigation and hydrographic characteristics (Article 38(1)- regulated by nonsuspendable innocent passage).

4. Straits regulated in whole or in part by international conventions (Article 35(c)). The LOS Convention does not alter the legal regime in straits regulated by long-standing international conventions in force specifically relating to such straits.

5. Straits through archipelagic waters governed by archipelagic sea lanes passage (Article 53(4)).

Transit passage

Straits used for international navigation through the territorial sea between one art of the

[93] Turkish Embassy letter 780-144, May 2, 1985, to the Office of The Geographer, U.S. Department of State.

high seas or the EEZ and another part of the high seas or EEZ, category one described above, are subject to the legal regime of transit passage. Transit passage is defined in the LOS Convention (Articles 38(2) and 39(1) (c)) as the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit in the normal modes of operation utilized by ships and aircraft for such passage. This means that submarines are free to transit international straits submerged, since that is their normal mode of operation; surface warships may transit in a manner consistent with sound navigation practices and the security of the force, including formation steaming and the launching and recovery of aircraft. All transiting ships and aircraft must proceed without delay; must refrain from the threat or the use of force against the sovereignty, territorial integrity, or political independence of states bordering the strait; and must otherwise refrain from any activities other than those incidental to their normal modes of continuous and expeditious transit (Article 39(1)).

Transit passage through international straits cannot be suspended by the coastal state for any purpose (Article 44). The state bordering the international strait may designate sea lanes and prescribe traffic separation schemes to promote navigational safety. However, such sea lanes and separation schemes must be approved by the competent international organization in accordance with generally accepted international standards. Ships in transit must respect properly designated sea lanes and traffic separation schemes (Articles 41(1) and 41(3)).

The U.S. position on transit passage is well known. In the Proclamation extending the territorial sea of the United States, President Reagan stated:[94]

> In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the United States,...the ships and aircraft of all countries enjoy the right of transit passage through international straits.

In a December 1984 aide-memoire delivered to Sweden the United States described the legal regime followed by U.S. warships navigating through international straits:[95]

> ...warships of the United States navigate through territorial seas in straits used for international navigation in accordance with international law as reflected in Part III of the 1982 Convention of the Law of the Sea. As is true of innocent passage in non-straits waters, exercise of the appropriate navigational regime in straits poses no threat to the security of the coastal State and constitutes no violation of its territorial integrity.

It is the position of the United States that transit passage also applies in the approaches to international straits. In a telegram to the U.S. Embassy in Santiago, Chile the State Department discussed the rights of navigation through the Strait of Magellan and the

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[94] Presidential Proclamation 5928, December 27, 1988: Federal Register, vol. 54, no. 5, January 9, 1989, at 777.
[95] Aide-memoire of December 4, 1984, from the American Embassy at Stockholm.

Beagle Channel:[96]

> The fact that a vessel navigating through [an international strait] (or a aircraft overflying it) would have to traverse an area of Argentine territorial sea is a matter of no legal consequence. It is an extremely rare occurrence for a strait to be so configured that a vessel can enter it without traversing some extent of territorial sea before reaching the headlands. It is, nevertheless, the firm position of the USG that the
> regime of transit passage applies not only to the territorial sea actually within the strait, but also to those in the approaches to it. The presence of Argentine territorial sea outside the eastern end of the strait no more "blocks" it than does the presence of Chilean territorial sea outside the western end.

The same position was taken in 1988 with regard to the approaches to the Strait of Hormuz. A U.S. Navy telegram stated, in part:[97]

> ...the regime [of transit passage] applies not only in or over the waters overlapped by territorial seas but also throughout the strait and in its approaches, including areas of the territorial sea that are overlapped. The Strait of Hormuz provides a case in point: although the area of overlap of the territorial seas of Iran and Oman is relatively small, the regime of transit passage applies throughout the strait as well as in its approaches including areas of the Omani and Iranian territorial seas not overlapped by the other.

Innocent passage

The regime of innocent passage, rather than transit passage, applies in straits used for international navigation that connect a part of the high seas or EEZ with the territorial sea of a coastal state. There may be no suspension of innocent passage through such straits (Article 45). Included in this category are Head Harbour Passage (leading through Canadian territorial sea to the United States' Passamaquoddy Bay), and the Bahrain-Saudi Arabia Passage.

Navigation Regimes of Particular Straits

The United States position on navigation through international straits and its response to the excessive claims can best be illustrated by looking at particular international straits. The following examples, however, do not include all straits the United States considers subject to the transit passage regime.

Aland Strait

[96] 1984 State telegram 375513.
[97] Navy JAG, telegram 061630Z June 1988.

When it signed the LOS Convention Sweden declared, in part:[98]

> It is the understanding of the Government of Sweden that the exception from the transit regime in straits provided for in Article 35(c) of the Convention is applicable to the strait between Sweden and Denmark (Oresund) as well as to the strait between Sweden and Finland (the Aland islands). Since in both those straits the passage is regulated in whole or in part by long-standing international conventions in force, the present legal regime in the two straits will remain unchanged after the entry into force of the Convention.

In claiming the Aland Strait- the 16 mile wide entrance to the Gulf of Bothnia- as an exception to the transit passage regime, Sweden relies on the fact that passage in that strait is regulated in part by the Convention relating to the Non-fortification and Neutralization of the Aland Islands.[99] It should be noted that under Article 4.II of this Convention, the territorial sea of the Aland Islands extends only "three marine miles" from the low water line. The Convention therefore is not applicable to all the waters that form the strait. The United States, which is not a party to this Convention, has never recognized this international strait as falling within the Article 35(c) exception.

Bab el Mandeb

This strategically important strait links the Red Sea and the Suez Canal of the Gulf of Aden and the Arabian Sea. When it signed the LOS Convention in 1982 the Yemen Arab Republic declared that warships are warplanes must obtain permission prior to passing through or over its "territorial waters", including international straits.[100]
The United States protested this claim stating, in part:[101]

> ...the Government of the Yemen Arab Republic may not legally condition the exercise of the right of transit passage through or over an international strait, such as Bab-el-Mandeb, upon obtaining prior permission. Transit passages is a right that may be exercised by ships of all nations, regardless of type or means of propulsion, as well as by aircraft, both state and civil. While warplanes and other state aircraft normally require prior authorization before overflying another State's territory, authorization is not required for the exercise of the right of straits transit passage under customary law as reflected in Article 32 of the Convention.…

Bosporous and Dardanelles

These straits, connecting the Aegean Sea and the Black Sea, are governed by the Montreux Convention of July 20, 1936 and therefore fall under the LOS Article 35(c)

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[98] Sweden's declaration can be found in UN, The Law of the Sea: Status of the United Nations Convention on the Law of the Sea, UN Sales No. E. 85.V.5, at 26 (1985).
[99] Geneva, October 20, 1921, 9 L.N.T.S. 211, article 5.
[100] Yemen's declaration may be found in UN, Status of LOS Convention, p.29.
[101] Diplomatic Note No. 449, October 6, 1986 from the American Embassy at Sanaa.

exception.[102]

Gibraltar

Upon signing the LOS Convention in 1984, Spain made several claims of coastal authority over the transit passage rights of aircraft and vessels.[103] The United States protested Spain's declaration in 1985 because Spain attempted to impose upon aircraft in general, and state aircraft (military, customs, and police aircraft) in particular, obligations that the customary international law reflected in the LOS Convention neither imposes nor permits.[104]

Hormuz

The Strait of Hormuz provides the sole entrance and exit of the Persian Gulf (map 10). Iran and Oman are the riparian states to the Strait. When signing the LOS Convention in 1982 Iran made a declaration stating, in part:[105]

> ...it seems natural...that only States parties to the Law of the Sea Convention shall be entitled to benefit from the contractual rights created therein. The above considerations pertain specifically (but not exclusively) to the following: The right of transit passage through straits used for international navigation....

On April 30, 1987, the Algerian Embassy in Washington delivered a Diplomatic Note transmitting a communication from Iran concerning the right of transit passage through the Strait of Hormuz in the context of an alleged violation of claimed Iranian territorial waters. The United States replied to the Iranian note by saying:[106]

> ...the United States...particularly rejects the assertions that the...right of transit passage through straits used for international navigation, as articulated in the [LOS] Convention, are contractual rights and not codification of existing customs or established usage. The regimes of...transit passage, as reflected in the Convention, are clearly based on customary practice of long standing and reflects the balance of rights and interests among all States, regardless of whether they have signed or ratified the Convention...

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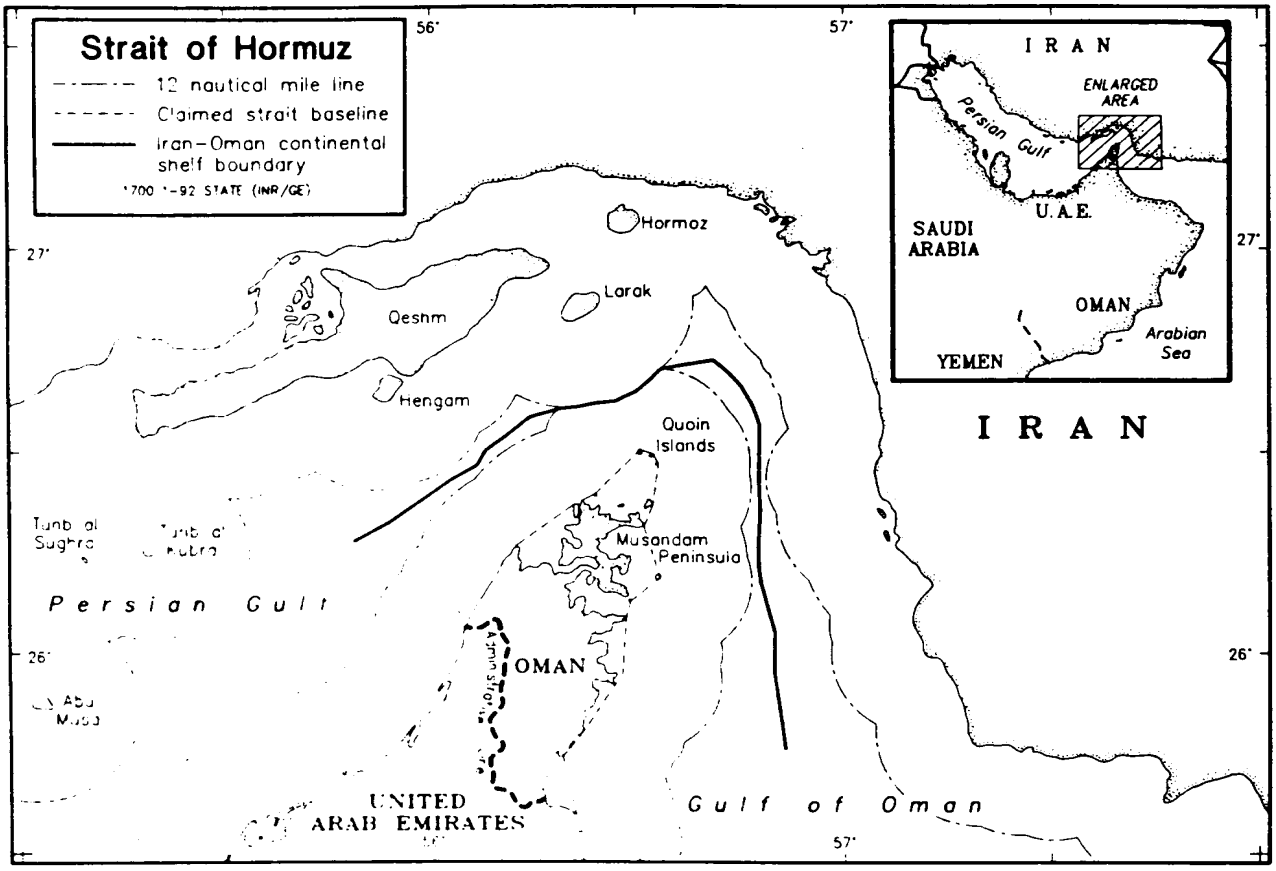
[102] Montreux Convention, 173 L.N.T.S. 213, 31 American Journal of International Law, Supp.4.
[103] Spain's declaration may be found in UN Status of LOS Convention, p.25.
[104] Diplomatic Note No. 806, August 14, 1985 from the American Embassy in Madrid.
[105] See UN, Status of LOS Convention, p.18.
[106] Diplomatic Note of August 17, 1987, to the Democratic and Popular Republic of Algeria.

Map 10



Strait of Magellan

Navigation through the Strait of Magellan is governed by Article V of the Boundary Treaty between Argentina and Chile of July 23, 1881.[107] which states that the straits are neutralized forever, and free navigation is assured to the flags of all nations. Article 10 of the Treaty of Peace and Friendship between Argentina and Chile of November 29, 1984, reaffirms this status.[108] This article states that "the delimitation agreed upon herein, in no way effects the provisions of the Boundary Treaty of 1881, according to which the Straits of Magellan are perpetually neutralized and freedom of navigation is assured to ships of all flags under the terms of Art. 5 of said Treaty."

[107] 82 Brit. Foreign and State Papers 1103, 159 Parry's T.S. 45.
[108] 24 International Legal Materials 11, 13 (1985).

In concluding that the Strait of Magellan fell under the LOS Article 35(c) exception, the State Department has stated that,[109]

> This long-standing guarantee of free navigation for all vessels [in the 1881 Treaty] has been amply reinforced by practice, including practice recognizing the right of aircraft to overfly....Essentially, the USG position would be that of the 1881 Treaty and over a century of practice have imbued the Strait of Magellan with a unique regime of free navigation, including the right of overflight. That regime has been specifically recognized and reaffirmed by both Argentina and Chile in the Beagle Channel Treaty. Hence, the United States and other States may continue to exercise navigational and overflight rights and freedoms in accordance with this long-standing practice.

Strait of Messina

The Strait of Messina separates the Italian island of Sicily from Italy's mainland. This strait comes under category three, listed on page 60, which connects one part of the high seas/EEZ and another part of the high seas/EEZ where the strait is formed by an island of a state bordering the strait and its mainland.

Effective April 3, 1985, Italy closed the strait to vessels 10,000 tons and over carrying oil and other pollutants, as well as instituting compulsory pilotage for ships over 5,000 tons carrying oil and other pollutants and for ships over 10,000 tons regardless of cargo while transiting the strait. This action was taken following a collision at sea resulting in an oil spill in the area.

The United States submitted a diplomatic note on Italy on April 5, 1985, making the following observations:

> As the Government of the United States understands it, this decree is not intended to apply to warships or other governmental ships on non-commercial service exercising the right of innocent passage.
>
> It is the understanding...that this prohibition on navigation through the Strait of Messina by specified vessels, and this requirement of pilotage for others, is intended to give the Government of Italy time in which to formulate proposals for the regulation of maritime traffic in the strait.
>
> ...the Strait of Messina is a strait used for international navigation, to which...the regime of non-suspendable innocent passage applies. The regime of innocent passage is one that may be exercised by vessels of all States, regardless of type of cargo. By purporting to prohibit navigation through the Strait of Messina by vessels of specified size carrying specified cargo, the Government of Italy appears to be attempting to

[109] State Department telegram 375513, December 21, 1984.

suspend the right of innocent passage for such vessels, in contravention of long-settled customary and conventional international law...

Furthermore, the Government of the United States must express its objection to the requirement, in the decree, that certain other vessels require pilots in order to exercise the right of innocent passage...[t]his requirement is inconsistent with the regime of non-suspendable innocent passage that applies in the Strait of Messina.

Northeast Passage

The Northeast Passage is situated in the Arctic Ocean, north of the Soviet Union and includes the Dmitry, Laptev and Sannikov Straits. The United States conducted oceanographic surveys in this area during the summers of 1963 and 1964. During the 1963 survey the USCGC Northwind collected data in the Laptev Sea; during the following summer the USS Burton Island surveyed in the East Siberian Sea. On July 21, 1964 the Soviet government presented the American Embassy in Moscow an aide-memoire regarding the Burton Island survey. The following are excerpts from this communication:

...The Northern seaway route is situated near the Arctic coast of the USSR. This route, quite distant from international seaways, has been used and is used only by ships belonging to the Soviet Union or chartered in the name of the Northern Seaways...

It should also be kept in mind that the northern seaway route at some points goes through Soviet territorial and internal waters. Specifically, this concerns all straits running west and east in the Karsky Sea. Inasmuch as they are overlapped two-fold by Soviet territorial waters, as well as by the Dmitry, Laptev and Sannikov Straits, which unite the Laptev and Eastern Siberian Seas and belong historically to the Soviet Union. Not one of these stated straits, as is known, serves for international navigation. Thus over the waters of these straits the statute for the protection of the state borders of the USSR fully applies, in accordance with which foreign military ships will pass through territorial seas and enter internal waters of the USSR after advance permission of the Government of the USSR.…

On June 22, 1965, the United States replied stating, in part:[110]

While the United States is sympathetic with efforts which have been made by the Soviet Union in developing the Northern Seaway Route and appreciates the importance of this waterway to Soviet interests, nevertheless, it cannot admit that these factors have the effect of changing the status of the waters of the route under international law. With respect to the straits of the Karsky Sea described as overlapped by the Soviet territorial waters it must be pointed out that there is a right of innocent passage of all ships through straits used for international navigation between two parts of the high seas and that this right cannot be suspended....In the case of straits comprising high

[110] U.S. Aide-memoire dated June 22, 1965.

> seas as well as territorial waters there is of course unlimited right of navigation in the high seas areas...
>
> For the reasons indicated the United States must reaffirm its reservations of its rights and those of its nationals in the waters in question whose status it regards as dependent on the principles of international law and not decrees of the coastal state.

The Northwind conducted its transit from July to September of 1965.

In the summer of 1967 the United States planned an Arctic circumnavigation by the U.S. Coast Guard icebreakers Edisto and East Wind. The U.S. advised the Soviet government of the planned route which would have taken the ships north of Novaya Zemlya and Severnaya Zemlya into the Laptev Sea and the East Siberian Sea and that the oceanographic surveys would be conducted entirely in international waters.[111] Due to ice conditions along this route the ships entered the Karsky Sea and were proceeding towards the Vilkitsky Straits.[112]

The Soviet government reiterated, by a written aide-memoire (on August 24) and by an oral demarche (on August 28) its position that these straits were Soviet waters and that the U.S. had not advised the Soviet authorities of the proposed passage thirty days in advance, as required by Soviet regulations.

The U.S. terminated its circumnavigation and delivered a note to the Soviet government reiterating its position stating, in part:[113]

> ...strongly protests the position taken by the Soviet government with regard to the peaceful circumnavigation of the Arctic by the United States Coast Guard icebreakers Edisto and Eastwind.
>
> ...the circumnavigation ...was undertaken as a part of regular scientific research operations in the Arctic Ocean. The Department of State, as a matter of courtesy, informed the Soviet Government of these operations. Owing to unusually severe ice conditions the icebreakers failed in their efforts to pass north of Severnaya Zemlya and, accordingly, on August 24, Embassy informed the Ministry by note that the vessels would find it necessary to pass through Vilkitsky Straits in order to continue their voyage...[the Soviet government] has taken the unwarranted position that the proposed passage of the Edisto and Eastwind would be in violation by Soviet regulations, raising the possibility of action by the Soviet Government to detain the vessels or otherwise interfere with their movement.
>
> These statements and actions of the Soviet Government have created a situation which

[111] This information was conveyed by a diplomatic note dated August 14, 1967.
[112] The Soviet Union was notified of this change in course by Note No. 340 delivered by the American Embassy on August 24, 1967.
[113] Diplomatic note dated August 30, 1967.

> has left the United States Government with no other feasible course but to cancel the planned circumnavigation. In doing so, however, the United States Government wishes to point out that the Soviet Government bears full responsibility for denying to United States vessels their rights under international law.…

Northwest Passage

The United States and Canada have a long-standing dispute over the legal status of the waters of the Northwest Passage between Davis Strait/Baffin Bay and the Beaufort Sea (see map 6, p.22). The United States considers the passage a strait used for international navigation subject to the transit passage regime. Canada considers these waters to be Canadian and that controls can be applied to the passage, including requirements for prior authorization of the transit of all non-Canadian vessels.

U.S. Coast Guard Cutters transited the Northwest Passage in 1952 and 1957. In 1969 the S.S. Manhattan, accompanied by the U.S. Coast Guard Cutters Northwind and Staten Island, transited this Passage. Following the S.S. Manhattan transit, Canada, in 1970, enacted its Arctic Waters Pollution Prevention Act to address the fragile Arctic environment and to prevent potential damage by vessel-source pollution. In the same year the U.S. protested the validity of the law because of the law's interference with navigational rights and freedoms.[114]

In 1985 several diplomatic notes were exchanged regarding an upcoming transit of the Northwest Passage by the U.S. Coast Guard icebreaker Polar Sea. In May of that year the U.S. informed the Canadian government that due to the operational requirements the Polar Sea would be navigating the Northwest passage in August and invited Canadian Coast Guard personnel to participate. The United States also informed Canada that it considers this transit[115]

> will be an excuse of navigational rights and freedoms not requiring prior notification. The United States appreciates that Canada may not share this position.

Canada, in a June 11 diplomatic note, replied by inter alia, restating its position that the waters of the Northwest Passage were Canadian internal waters.[116] The United States responded by stating in part that,[117]

> ...although the United States is pleased to invite Canadian participation in the transit, it

[114] The United States continues to object to the application of the law in so far as it purports to apply to sovereign immune vessels. The United States believes that internationally agreed standards should be developed to replace many of the unilateral provisions. However, the United States considers U.S. commercial vessels subject to this law. The United States has agreed to consult with Canada in the development of standards and operational procedures to facilitate commercial navigation in the Arctic.
[115] 1985 State telegram 151842, May 17, 1985.
[116] Canadian Note No. 331, June 11, 1985.
[117] Diplomatic Note No. 222, June 24, 1985.

> has not sought the permission of the Government of Canada, nor has it given Canada notification of the fact of transit.

Canada responded by stating that it,[118]

> ...noted with deep regret that the United States remains unwilling, as it has been for many years, to accept that the waters of the Arctic archipelago, including the Northwest Passage, are internal waters of Canada and fall within Canadian sovereignty.
>
> ...In this regard, the Government of Canada indeed shares the view of the United States, communicated in the State Department's Note No. 222 of June 24, 1985 that "the transit, and the preparations for it, in no way prejudice their juridical position of either side regarding the Northwest Passage."
>
> This information and these assurances have satisfied the Government of Canada that appropriate measures have been taken by and under the authority of the Government of the United States to ensure that the Polar Sea substantially complies with required standards for navigation in the waters of the Arctic archipelago and that in all other respects reasonable precautions have been taken to reduce the danger of pollution arising from this voyage. Accordingly, the Embassy is now is a position to notify the United States that, in the exercise of Canadian sovereignty over the Northwest Passage, the Government of Canada is pleased to consent of the requested transit...

The transit of the Northwest Passage was accomplished by the Polar Sea in early August 1985.

On January 11, 1988, an Agreement on Arctic Cooperation was signed in Ottawa by Secretary of State George P. Shultz and Canadian Secretary of State for External Affairs Joe Clark. This agreement sets forth the terms for cooperation by the two governments in coordinating research in the Artic marine environment during icebreaker voyages and in facilitating safe, effective icebreaker navigation off their Arctic coasts. The agreement does not affect the rights of passage by other warships or by commercial vessels.

Oresund and The Belts

These straits, which connect the North Sea and the Baltic Sea, are governed by two treaties: (1) the Treaty for the Redemption of the Sound Dues, Copenhagen, March 14, 1857[119], which grant free passage of the Sound and Belts for all flags; and (2) the U.S. - Danish Convention on Discontinuance of Sound Dues, April 11, 1857[120] guaranteeing "the free and unencumbered navigation of American vessels, through the Sound and the Belts forever".

---

[118] Diplomatic Note No. 433, July 31, 1985.
[119] 116 Perry's T.S., 357; 47 Brit. Foreign and State Papers 24.
[120] 11 Stat. 719, T.S.67; 7 Miller 519; 7 Bevans 11.

Warships were never subject to payment of the so-called "Sound Dues," and thus the U.S. position is that no part of these "long-standing international conventions" is applicable to them.[121] The U.S. position is that warships and state aircraft traverse the Oresund and the Belts based either under the customary right of transit passage or under the conventional right of "free and unencumbered navigation."

Both Denmark and Sweden, however, maintain that warship and state aircraft that transit these straits are subject to coastal state restrictions. They argue that the "longstanding international conventions" apply as "modified" by longstanding domestic legislation.[122]

Strait of Tiran

The Strait of Tiran connects the Gulf of Aqaba with the Red Sea (see map 11). Article V(2) of the Treaty of Peace between Egypt and Israel states that "the parties consider the Strait of Tiran and the Gulf of Aqaba to be international waterways open to all nations for unimpeded and non-suspendable freedom of navigation and overflight."[123]

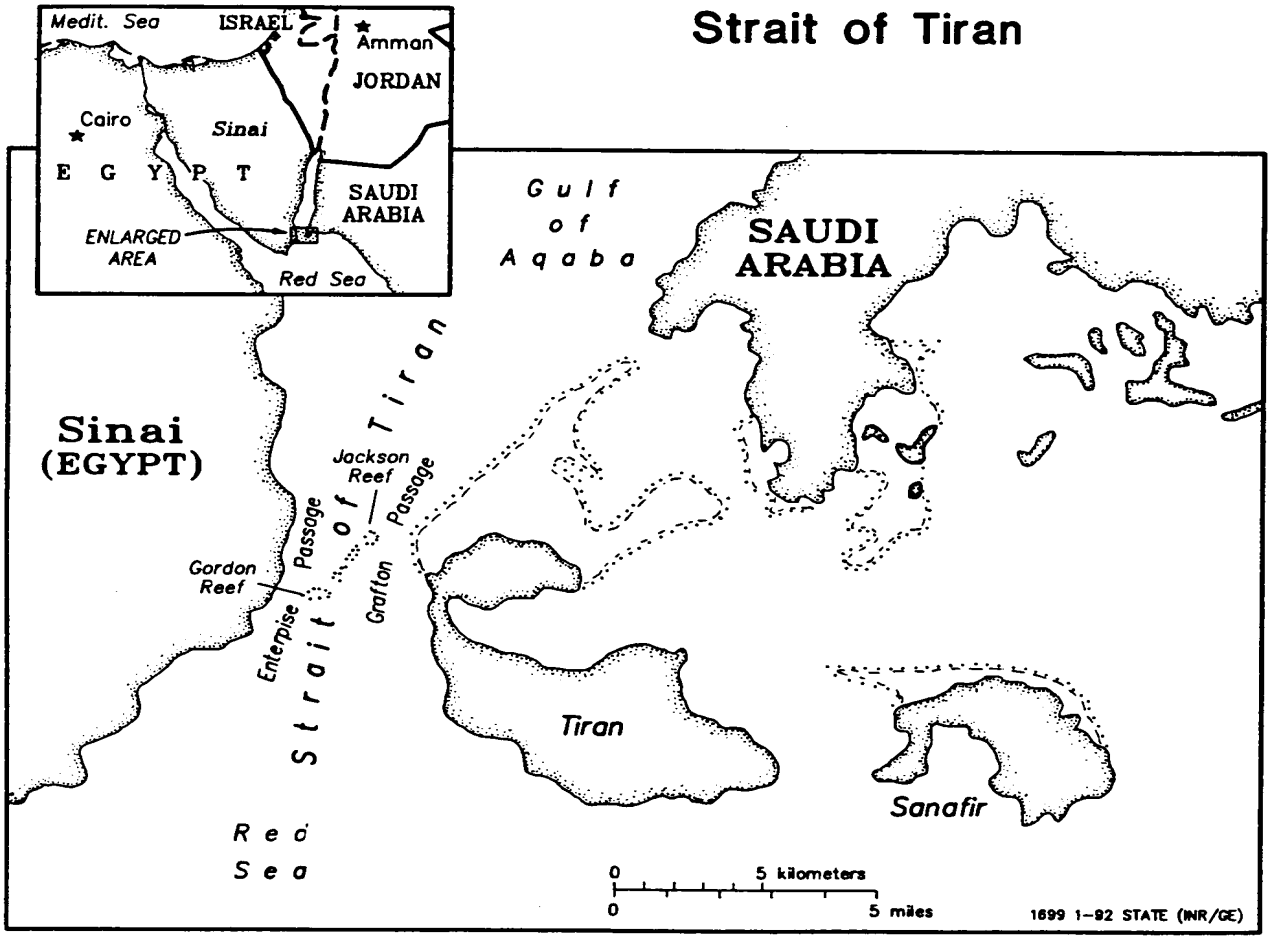
When asked about the effect of the LOS Convention on the regime of navigation and overflight for this strait and the Gulf of Aqaba, a U.S. official replied[124]

The U.S. fully supports the continuing applicability and force of freedom of navigation and overflight for the Strait of Tiran and the Gulf of Aqaba as set out in the peace treaty between Egypt and Israel. In the U.S. view, the treaty of peace is fully compatible with the LOS Convention and will continue to prevail. The conclusion of the LOS Convention will not affect these provisions in any way.

---

[121] 7 Miller 524-86.
[122] See Alexandersson, The Baltic Straits 82-86 & 89 (1982).
[123] Treaty of Peace between Egypt and Israel, March 26, 1979; found in 1979 Digest of U.S. Practice in International Law 1691; 18 International Legal Materials 362.
[124] Statement by Assistant Secretary of State James L. Malone, January 29, 1982; Cong. Rec., v. 128, no. 47, April 27, 1982, at S4089.

Map 11



OVERFLIGHT RESTRICTIONS

The United States has protested several countries claiming jurisdiction to control overflight of ocean areas not subject to such jurisdiction. In most cases, these claims correspond with illegal territorial sea claims that exceed the 12 mile limit.

Cuba: In 1986 Cuba complained to the United States that U.S. military aircraft were operating within the Cuban Flight Information Region (FIR) without Cuban permission. The United States responded on August 20, 1986, stating, in part, that it

> ...rejects the implicit assertion in the note of 16 May, 1986, that state aircraft of the United States are required to notify and obtain authorization from Cuban authorities before entering Flight Information Regions (FIR) administered by Cuba. There is no

authority for the imposition of such a requirement....

Ecuador: In 1986 Ecuador interfered with a U.S. Air Force aircraft flying over the high seas more than 175 miles from Ecuador's coast. (The United States previously had protested Ecuador's claim to a 200-mile territorial sea in 1967). The American Embassy was instructed to again protest the 200 mile territorial sea claim and to express U.S. opposition to countries imposing burdensome requirements on overflights.[125]

Libya: The United States protested Libya's establishment in 1973 of a 100 mile "restricted area" of airspace around Tripoli.[126]

Peru: In 1986 Peru complained that a U.S. Air Force C-141 did not receive permission to overfly its airspace. The U.S. responded by saying that it did not recognize any territorial sea claim in excess of 12 miles and that the U.S. aircraft was 80 miles off the Peruvian coast.[127] Similar incidents occurred in 1987 and 1988. The U.S. again lodged a protest on March 16, 1988.

ARCHIPELAGIC SEA LANES PASSAGE

Under the LOS Convention an archipelagic state may designate sea lanes and air routes suitable for the continuous and expeditious passage of foreign ships and aircraft through it or over its archipelagic waters (Article 53(1)). Archipelagic sea lanes "shall include all normal passage routes...and all normal passage routes…and all normal navigational channels....(Article 53(4)). Innocent passage applies in other archipelagic waters beyond the internal waters of the islands of the archipelago.

If a state meets all the requirements of being an archipelagic state, but has not claimed that status, then archipelagic sea lanes passage applies in sea lanes and air routes normally used for international navigation (Article 53 (12)). Innocent passage applies in other parts of the archipelagic waters.

Excessive claims

Philippines: In conjunction with the deposit of its instrument of ratification of the LOS Convention on May 8, 1984 the Philippines asserted certain rights over archipelagic straits inconsistent with international law. The Philippines had stated that,[128]

The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the

[125] 86 State telegram 262333, August 20, 1986.
[126] 1973 Digest of United States Practice in International Law, 302-03; UN Security Council document S/10956, June 20, 1973.
[127] Diplomatic note dated August 15, 1986.
[128] Philippine declaration can be found in UN, Status of the LOS Convention, p.37.

> economic zone or high sea from the rights of foreign vessels to transit passage for international navigation.

The United States protested stating, in part,[129]

> ...the concept of internal waters differs significantly from the concept of archipelagic waters. Archipelagic waters are only those enclosed by properly drawn archipelagic baselines and are subject to the regimes of innocent passage and archipelagic sea lanes passage...straits linking the high seas or exclusive economic zone with archipelagic waters, as well as straits within archipelagic waters, are, if part of normal passage routes used for international navigation or overflight through or over archipelagic waters, subject to the regime of archipelagic sea lanes passage.
>
> ...A coastal State properly claiming archipelagic waters may lawfully exercise sovereignty over archipelagic sea lanes through such waters, if such sea lanes encompassing all normal passage routes for international navigation are designated in accordance with international law, and if the regime of archipelagic sea lanes passage is applied.

[129] Diplomatic note dated January 29, 1986.

ANNEX I
PRESIDENTIAL PROCLAMATION 5030
MARCH 10, 1983

WHEREAS the government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law;

WHEREAS international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over natural resources and related jurisdiction; and

WHEREAS the establishment of an Exclusive Economic Zone by the United States will advance the development of ocean resources and promote the protection of the marine environment, while not affecting other lawful uses of the zone, including the freedoms of navigation and overflight, by other States;

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.

The Exclusive Economic Zone of the United States is a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and other State concerned in accordance with equitable principles.

Within the Exclusive Economic Zone, the United States has, to the extent permitted by international law, (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.

This Proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction and require international agreements for effective management.

The United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law.

Without prejudice to the sovereign rights and jurisdiction of the United States, the Exclusive Economic Zone remains an area beyond the territory and territorial sea of the United States in which all States enjoy the high seas freedoms of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea.

In WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

RONALD REAGAN

STATEMENT BY THE PRESIDENT

The United Stated has long been a leader in developing customary and conventional law of the sea. Our objectives have consistently been to provide a legal order that will, among other things, facilitate peaceful, international uses of the oceans and provide for equitable and effective management and conservation of marine resources. The United States also recognizes that all nations have an interest in these issues.

Last July I announced that the United States will not sign the United Nations Law of the Sea Convention that was opened for signature on December 10. We have taken this step because several major problems in the Convention's deep seabed mining provisions are contrary to the interests and principles of industrialized nations and would not help attain the aspirations of developing countries.

The United States does not stand alone in those concerns. Some important allies and friends have not signed the Convention. Even some signatory States have raised concerns about these problems.

However, the Convention also contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all States.

Today I am announcing three decisions to promote and protect the oceans interests of the United States in a manner consistent with those fair and balanced results in the Convention and international law.

First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans-- such as navigation and overflight. In this respect, the United States will recognize the rights of other States in the waters off their

coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal States.

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner consistent with the balance of interests reflected in the Convention. The United States will not, however, acquiesce in unilateral acts of other States designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

Third, I am proclaiming today an Exclusive Economic Zone in which the United States will exercise sovereign rights in living and non-living resources within 200 nautical miles of its coast. This will provide United States jurisdiction for mineral resources out to 200 nautical miles that are not on the continental shelf. Recently discovered deposits there could be an important future source of strategic minerals.

Within this Zone all nations will continue to enjoy the high seas rights and freedoms that are not resource-related, including the freedoms of navigation and overflight. My Proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction. The United States will continue efforts to achieve international agreements for the effective management of these species. The Proclamation also reinforces this government's policy of promoting the United States fishing industry.

While international law provides for a right of jurisdiction over marine scientific research within such a zone, the Proclamation does not assert this right. I have elected not to do so because the United States interest in encouraging marine scientific research and avoiding any unnecessary burdens.

The United States will nevertheless recognize the right of other coastal States to exercise jurisdiction over marine scientific research within 200 nautical miles of their coasts, if that jurisdiction is exercised reasonably in a manner consistent with international law.

The Exclusive Economic Zone established today will also enable the United States to take limited additional steps to protect the marine environment. In this connection, the United States will continue to work through the International Maritime Organization and other appropriate international organizations to develop uniform international measures for the protection of the marine environment while imposing no unreasonable burdens on commercial shipping.

The policy decisions I am announcing today will not affect the application of existing United States law concerning the high seas or existing authorities of any United States government agency.

In addition to the above policy steps, the United States will continue to work with other countries to develop a regime, free of unnecessary political and economic restraints, for

mining deep seabed minerals beyond national jurisdiction. Deep seabed mining remains a lawful exercise of the freedom of the high seas open to all nations. The United States will continue to allow its firms to explore for and, when the market permits, exploit these resources.

The Administration looks forward to working with the Congress on legislation to implement these new policies.

ANNEX II

STATES RATIFYING THE UNITED NATIONS LAW OF THE SEA CONVENTION

As of February 15, 1992, the following states have deposited with the United Nations their instruments of ratification for the United Nations Law of the Sea Convention. The first listing is alphabetical, the second chronological.

List 1:

	State	Date Ratified
1.	Angola	December 14, 1990
2.	Antigua and Barbuda	February 2, 1989
3.	The Bahamas	July 29, 1983
4.	Bahrain	May 30, 1985
5.	Belize	August 13, 1983
6.	Botswana	May 2, 1990
7.	Brazil	December 22, 1988
8.	Cameroon	November 19, 1985
9.	Cape Verde	August 10, 1987
10.	Côte d'Ivoire	March 26, 1984
11.	Cuba	August 15, 1984
12.	Cyprus	December 12, 1988
13.	Djibouti	October 8, 1991
14.	Dominica	October 24, 1991
15.	Egypt	August 26, 1983
16.	Fiji	December 10, 1982
17.	The Gambia	May 22, 1984
18.	Ghana	June 7, 1983
19.	Grenada	April 25, 1991
20.	Guinea	September 6, 1985
21.	Guinea-Bissau	August 24, 1986
22.	Iceland	June 21, 1985
23.	Indonesia	February 3, 1986
24.	Iraq	July 30, 1985
25.	Jamaica	March 21, 1983
26.	Kenya	March 2, 1989
27.	Kuwait	May 2, 1986
28.	Mali	July 16, 1985
29.	Marshall Islands	August 9, 1991
30.	Mexico	March 18, 1983
31.	Micronesia, Federated States of	April 29, 1991

32.	Namibia (U.N. Council for Namibia)		April 18, 1983
33.	Nigeria	August 14, 1986	
34.	Oman	August 17, 1989	
35.	Paraguay		September 26, 1986
36.	Philippines		May 8, 1984
37.	Saint Lucia		March 27, 1985
38.	Sao Tome and Principe		November 3, 1987
39.	Senegal	October 25, 1984	
40.	Seychelles		September 16, 1991
41.	Somalia	July 24, 1989	
42.	Sudan	January 23, 1985	
43.	Tanzania		September 30, 1985
44.	Togo	April 16, 1985	
45.	Trinidad and Tobago		April 25, 1986
46.	Tunisia	April 24, 1985	
47.	Uganda		November 9, 1990
48.	Yemen, Dem. Rep.		July 21, 1987
49.	Yugoslavia		May 5, 1986
50.	Zaire		February 17, 1989
51.	Zambia	March 7, 1983	

List 2

	State		Date
			1982
1.	Fiji		December 10
			1983
2.	Zambia		March 7
3.	Mexico		March 18
4.	Jamaica		March 21
5.	Namibia (UN Council for Namibia)		April 18
6.	Ghana	June 7	
7.	The Bahamas		July 29
8.	Belize	August 13	
9.	Egypt	August 26	
			1984
10.	Côte d'Ivoire		March 26
11.	Philippines		May 8
12.	The Gambia		May 22
13.	Cuba	August 15	
14.	Senegal	October 25	
			1985

15.	Sudan	January 23	
16.	Saint Lucia		March 27
17.	Togo	April 16	
18.	Tunisia	April 24	
19.	Bahrain	May 30	
20.	Iceland	June 21	
21.	Mali		July 16
22.	Iraq		July 30
23.	Guinea	September 6	
24.	Tanzania		September 30
25.	Cameroon		November 19
			1986
26.	Indonesia		February 3
27.	Trinidad and Tobago		April 25
28.	Kuwait	May 2	
29.	Yugoslavia		May 5
30.	Nigeria	August 14	
31.	Guinea-Bissau		August 24
32.	Paraguay		September 26
			1987
33.	Yemen, Dem. Rep.		July 21
34.	Cape Verde		August 10
35.	Sao Tome and Principe		November 3
			1988
36.	Cyprus	December 12	
37.	Brazil		December 22
			1989
38.	Antigua and Barbuda		February 2
39.	Zaire		February 17
40.	Kenya	March 2	
41.	Somalia	July 24	
42.	Oman	August 17	
			1990
43.	Botswana		May 2
44.	Uganda		November 9
45.	Angola	December 14	
			1991
46.	Grenada		April 25

47.	Micronesia, Federated States of		April 29
48.	Marshall Islands		August 9
49.	Seychelles		September 16
50.	Djibouti	October 8	
51.	Dominica		October 24

ANNEX III

United States - U.S.S.R.
Uniform Interpretation of the
Rules of International Law Governing
Innocent Passage Through the Territorial Sea
September 23, 1989

1. The relevant rules of international law governing innocent passage of ships in the territorial sea are stated in the 1982 United Nations Convention on the Law of the Sea (Convention of 1982), particularly in Part II, Section 3 ["Innocent Passage in the Territorial Sea"].

2. All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required.

3. Article 19 of the Convention of 1982 sets out in paragraph 2 an exhaustive list of activities that would render passage not innocent. A ship passing through the territorial sea that does not engage in any of those activities as in innocent passage.

4. A coastal State which questions whether the particular passage of a ship through its territorial sea is innocent shall inform the ship of the reason why it questions the innocence of the passage, and provide the ship an opportunity to clarify its intentions or correct its conduct in a reasonably short period of time.

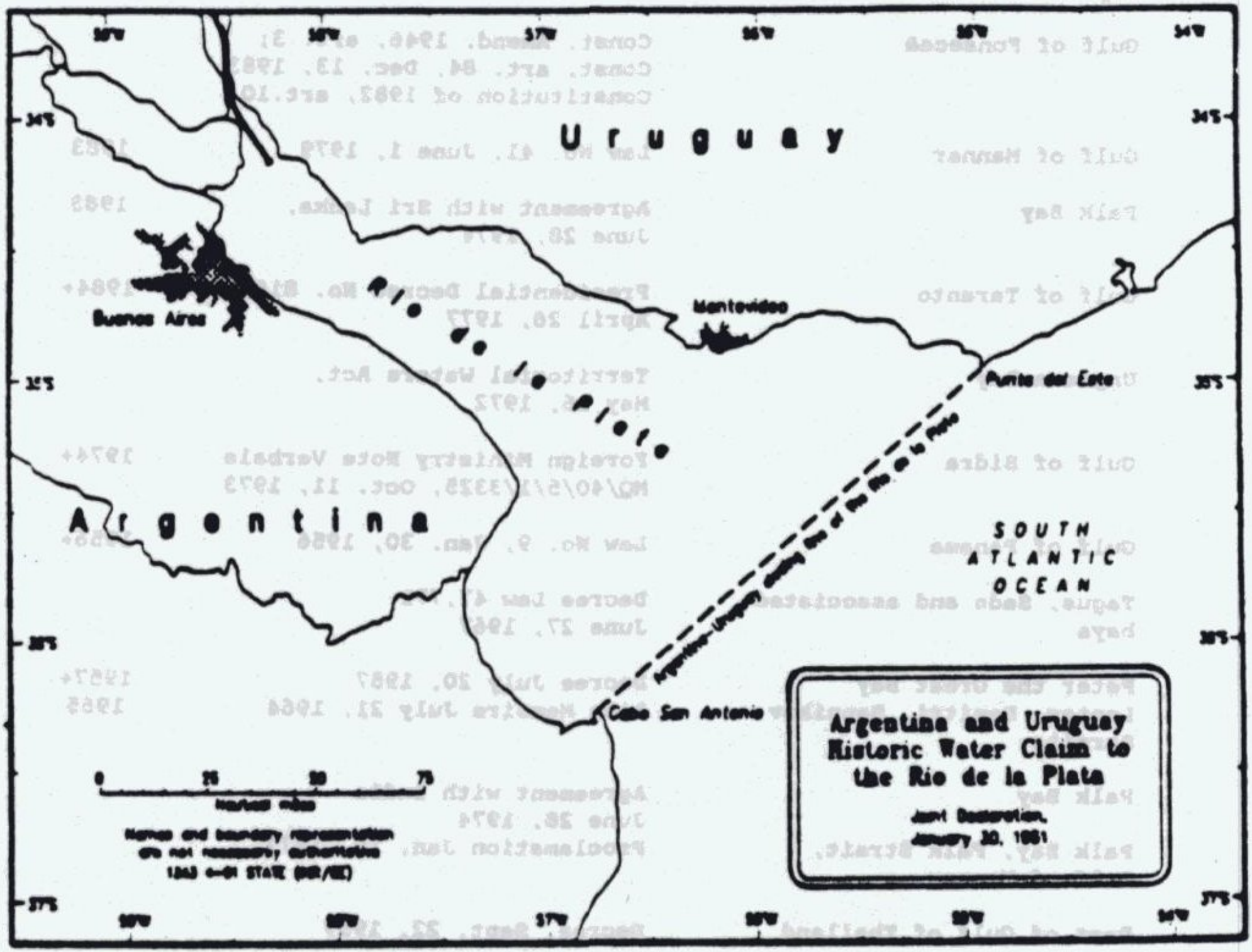
5. Ships exercising the right of innocent passage shall comply with all laws and regulations of the coastal State adopted in conformity with relevant rules of international law as reflected in Articles 21, 22, 23 and 25 of the Convention of 1982. These include the laws and regulations requiring ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may prescribe where needed to protect safety of navigation. In areas where no such sea lanes or traffic separation schemes have been prescribed, ships nevertheless enjoy the right of passage.

6. Such laws and regulations of the coastal State may not have the practical effect on denying or impairing the exercise of the right of innocent passage as set forth in Article 24 of the Convention of 1982.

7. If a warship engages in conduct which violates such laws or regulations or renders its passage not innocent and does not take corrective action upon request, the coastal State may require it to leave the territorial sea, as set forth in Article 30 of the Convention of 1982. In such case the warship shall do so immediately.

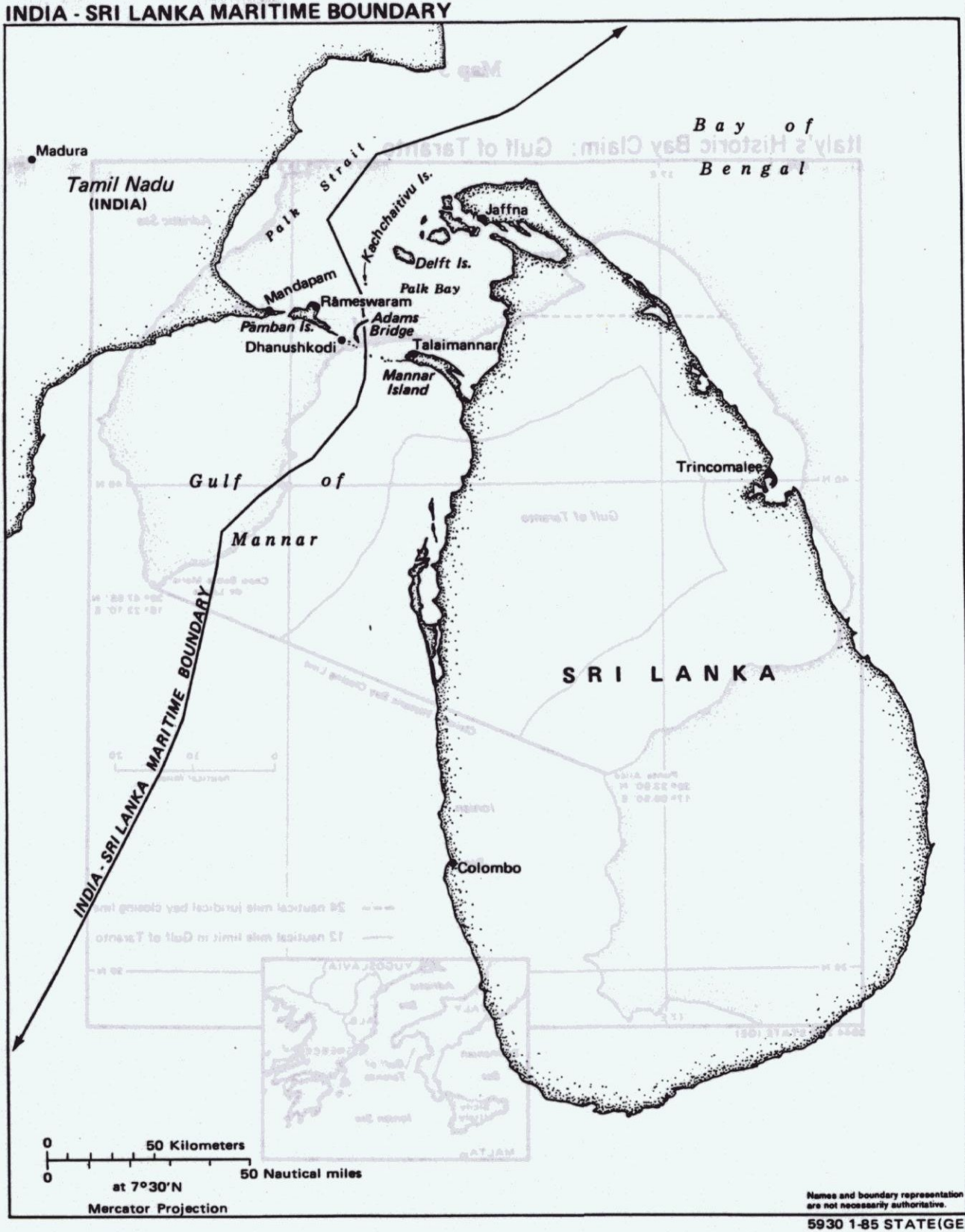
8. Without prejudice to the exercise of rights of coastal and flag States, all differences which may arise regarding a particular case of passage of ships through the territorial sea shall be settled through diplomatic channels or other agreed means.

Map 1


Uruguay
Argentina
Buenos Aires
Montevideo
Punta del Este
Cabo San Antonio
Río de la Plata
SOUTH ATLANTIC OCEAN
Argentine-Uruguay claim of historic waters in the Río de la Plata
Argentina and Uruguay
Historic Water Claim to
the Rio de la Plata
January 20, 1961

Map 2

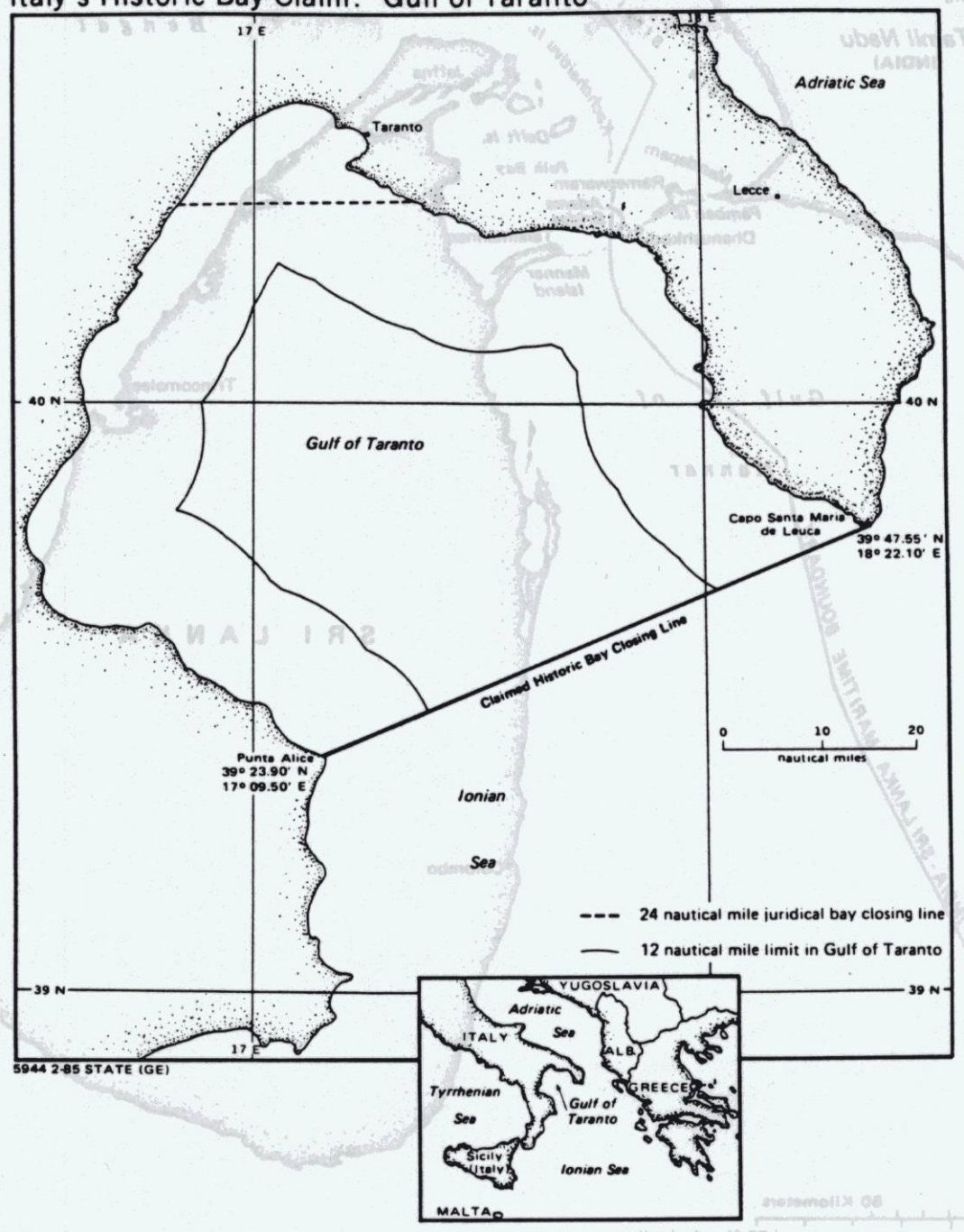
INDIA - SRI LANKA MARITIME BOUNDARY



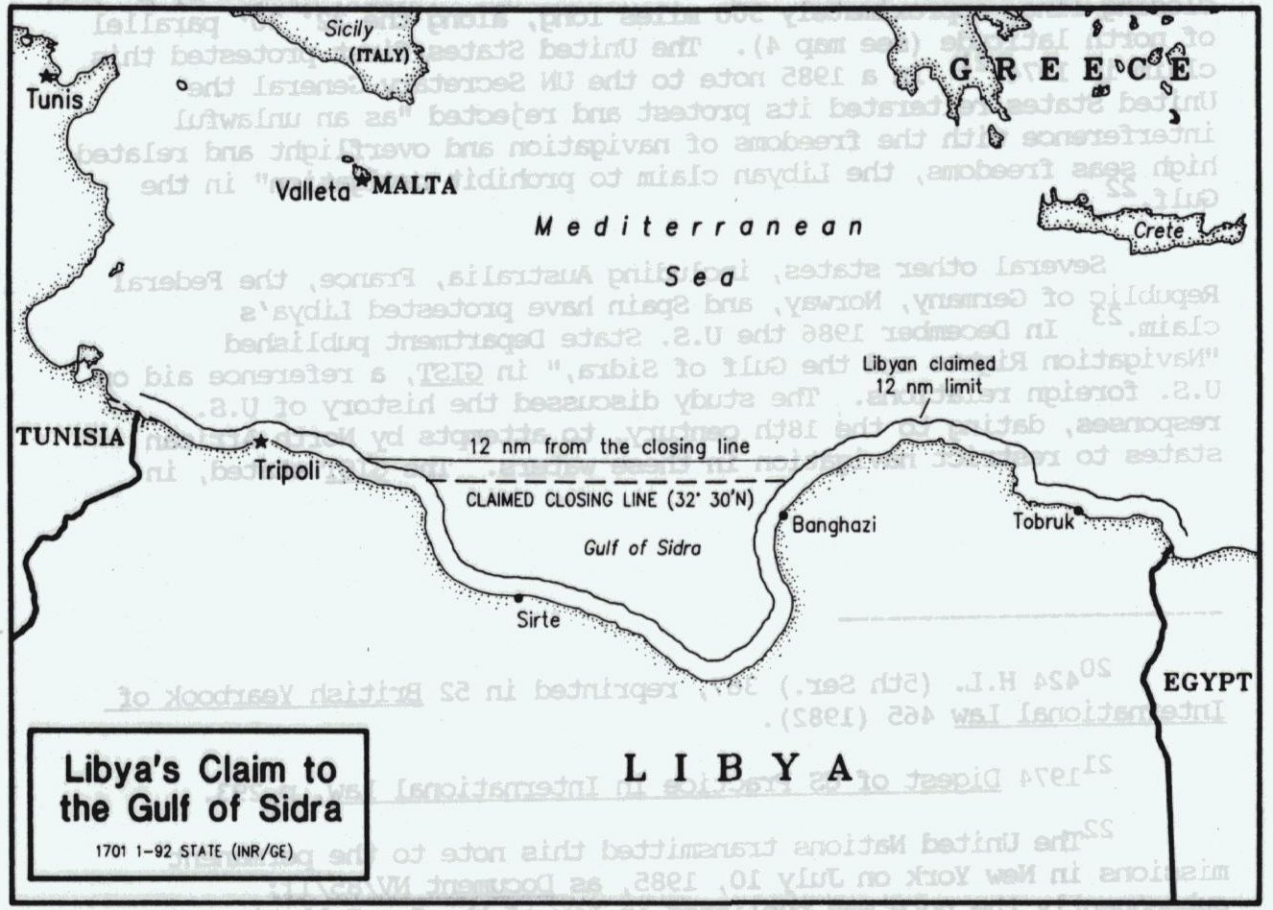
Names and boundary representation are not necessarily authoritative.

5930 1-85 STATE(GE)

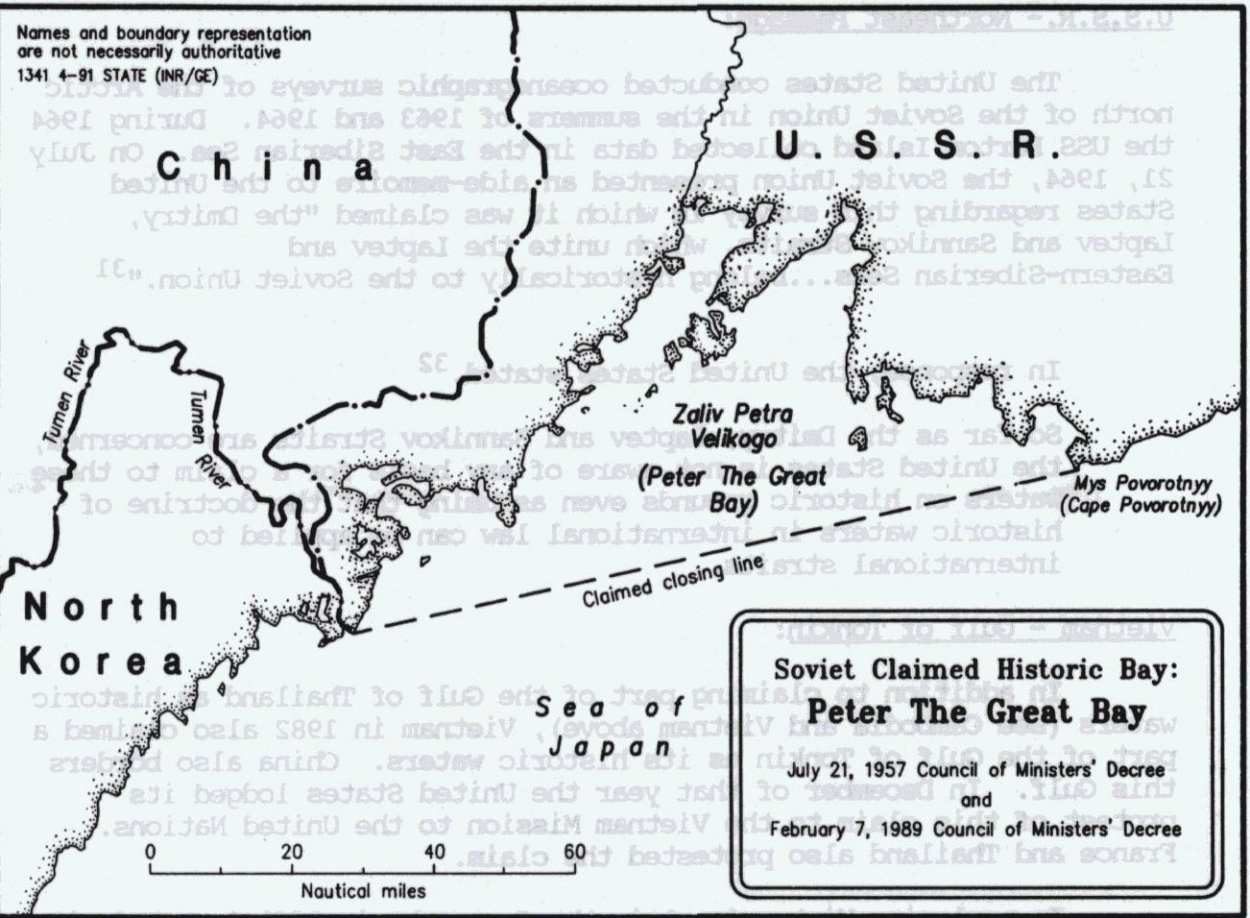
Map 3


Italy's Historic Bay Claim: Gulf of Taranto
17° E
18° E
Adriatic Sea
Taranto
Lecce
40° N
Gulf of Taranto
Capo Santa Maria de Leuca
39° 47.55' N
18° 22.10' E
Claimed Historic Bay Closing Line
0
10
20
nautical miles
Punta Alice
39° 23.90' N
17° 09.50' E
Ionian
Sea
24 nautical mile juridical bay closing line
12 nautical mile limit in Gulf of Taranto
39° N
17° E
5944 2-85 STATE (GE)
YUGOSLAVIA
Adriatic
Sea
ITALY
ALB.
GREECE
Tyrrhenian
Sea
Gulf of
Taranto
Sicily
(Italy)
Ionian Sea
MALTA

Map 4

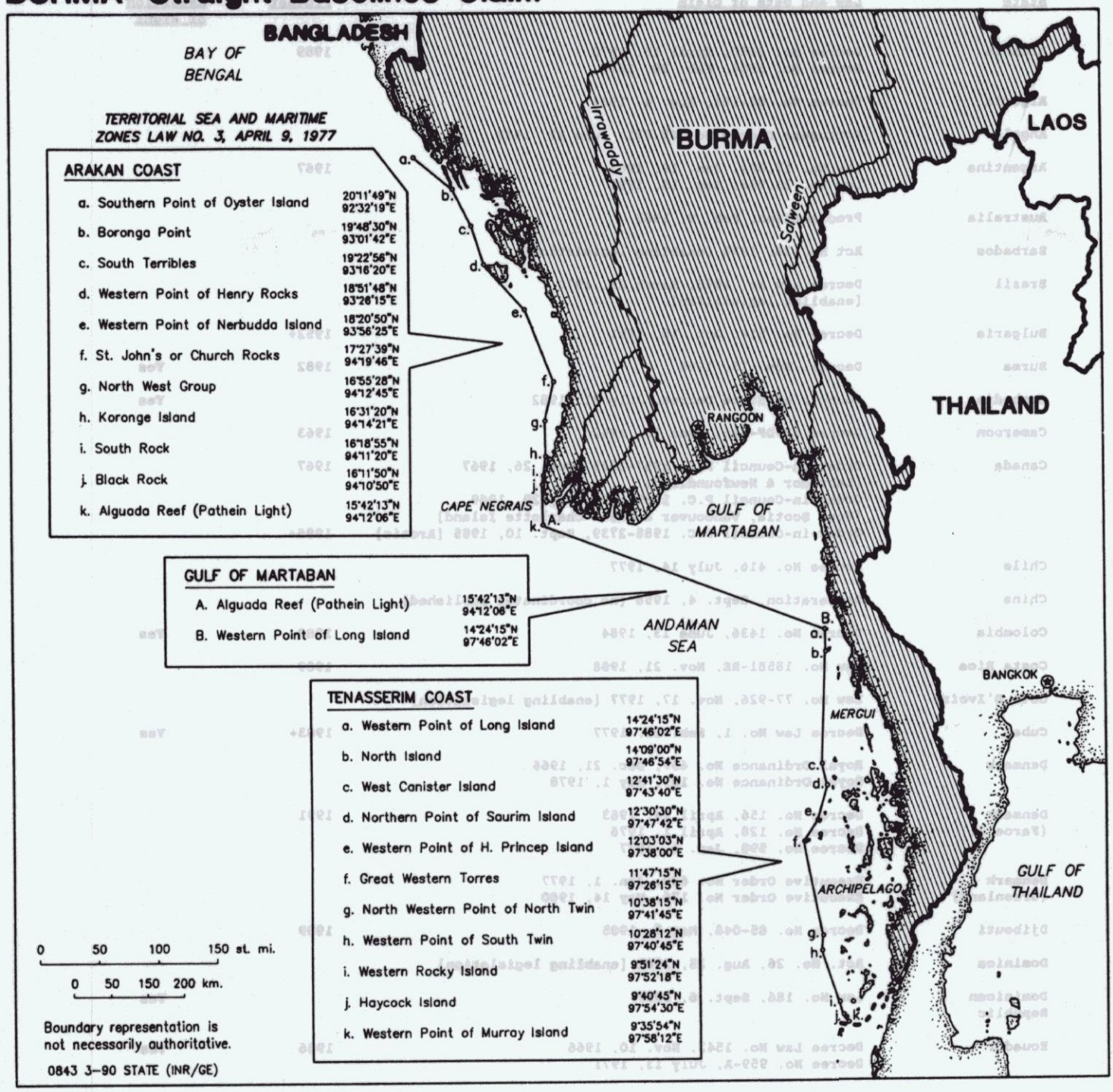

Sicily
(ITALY)
GREECE
Tunis
Valleta
MALTA
Mediterranean
Sea
Crete
Libyan claimed
12 nm limit
TUNISIA
12 nm from the closing line
Tripoli
CLAIMED CLOSING LINE (32° 30'N)
Banghazi
Tobruk
Gulf of Sidra
Sirte
EGYPT
LIBYA
Libya's Claim to
the Gulf of Sidra
1701 1-92 STATE (INR/GE)

Map 5


Names and boundary representation are not necessarily authoritative
1341 4-91 STATE (INR/GE)
China
U.S.S.R.
Tumen River
Tumen River
Zaliv Petra Velikogo
(Peter The Great Bay)
Mys Povorotnyy
(Cape Povorotnyy)
Claimed closing line
North Korea
Sea of Japan
0
20
40
60
Nautical miles
Soviet Claimed Historic Bay:
Peter The Great Bay
July 21, 1957 Council of Ministers' Decree
and
February 7, 1989 Council of Ministers' Decree

Map 6

BURMA: Straight Baselines Claim



TERRITORIAL SEA AND MARITIME ZONES LAW NO. 3, APRIL 9, 1977

ARAKAN COAST

a. Southern Point of Oyster Island	20°11'49"N 92°32'19"E
b. Boronga Point	19°48'30"N 93°01'42"E
c. South Terribles	19°22'56"N 93°16'20"E
d. Western Point of Henry Rocks	18°51'48"N 93°26'15"E
e. Western Point of Nerbudda Island	18°20'50"N 93°56'25"E
f. St. John's or Church Rocks	17°27'39"N 94°19'46"E
g. North West Group	16°55'28"N 94°12'45"E
h. Koronge Island	16°31'20"N 94°14'21"E
i. South Rock	16°18'55"N 94°11'20"E
j. Black Rock	16°11'50"N 94°10'50"E
k. Alguada Reef (Pathein Light)	15°42'13"N 94°12'06"E

GULF OF MARTABAN

A. Alguada Reef (Pathein Light)	15°42'13"N 94°12'06"E
B. Western Point of Long Island	14°24'15"N 97°46'02"E

TENASSERIM COAST

a. Western Point of Long Island	14°24'15"N 97°46'02"E
b. North Island	14°09'00"N 97°46'54"E
c. West Canister Island	12°41'30"N 97°43'40"E
d. Northern Point of Saurim Island	12°30'30"N 97°47'42"E
e. Western Point of H. Princep Island	12°03'03"N 97°38'00"E
f. Great Western Torres	11°47'15"N 97°28'15"E
g. North Western Point of North Twin	10°38'15"N 97°41'45"E
h. Western Point of South Twin	10°28'12"N 97°40'45"E
i. Western Rocky Island	9°51'24"N 97°52'18"E
j. Haycock Island	9°40'45"N 97°54'30"E
k. Western Point of Murray Island	9°35'54"N 97°58'12"E

0 50 100 150 st. mi.

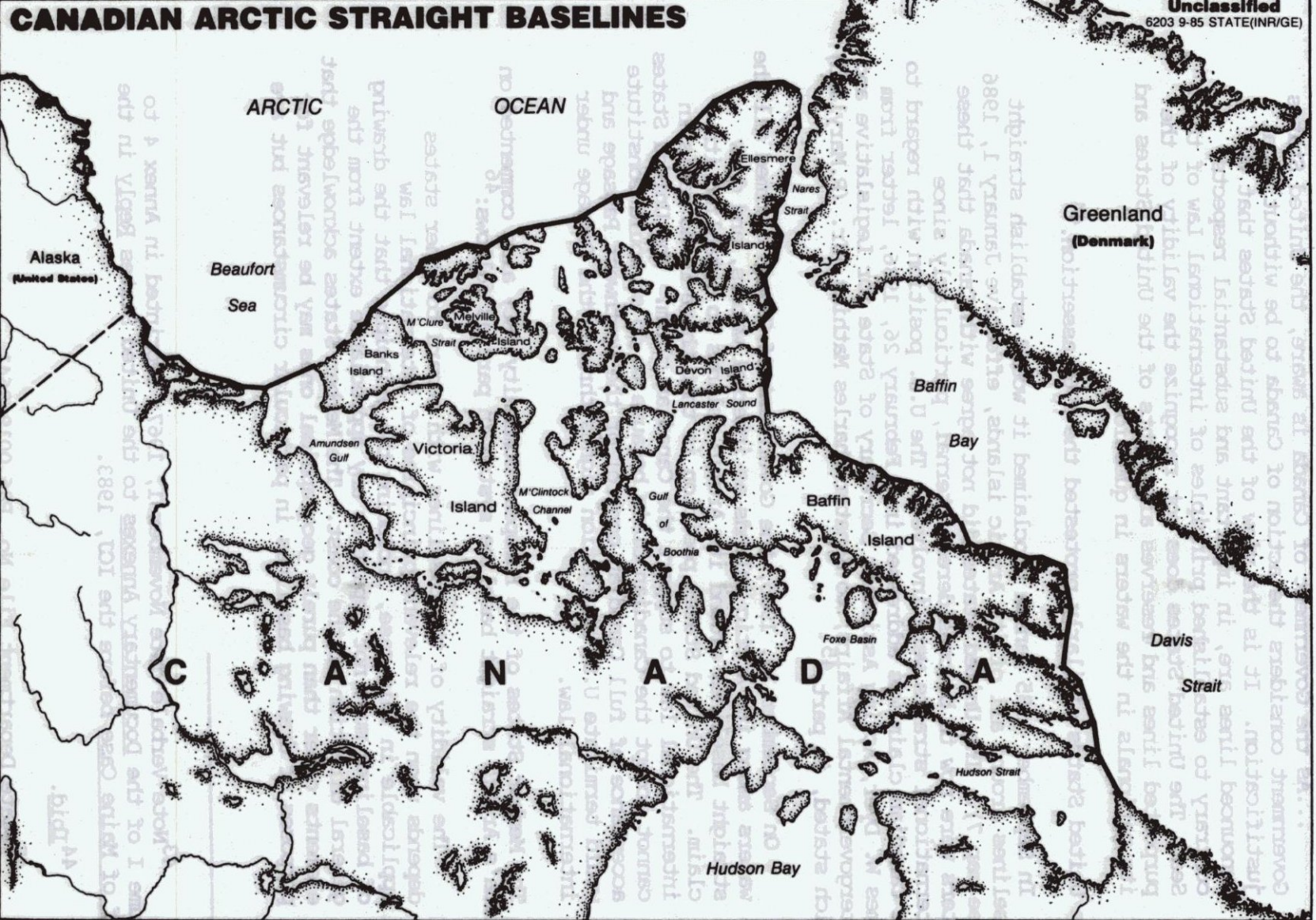
0 50 150 200 km.

Boundary representation is not necessarily authoritative.

0843 3-90 STATE (INR/GE)

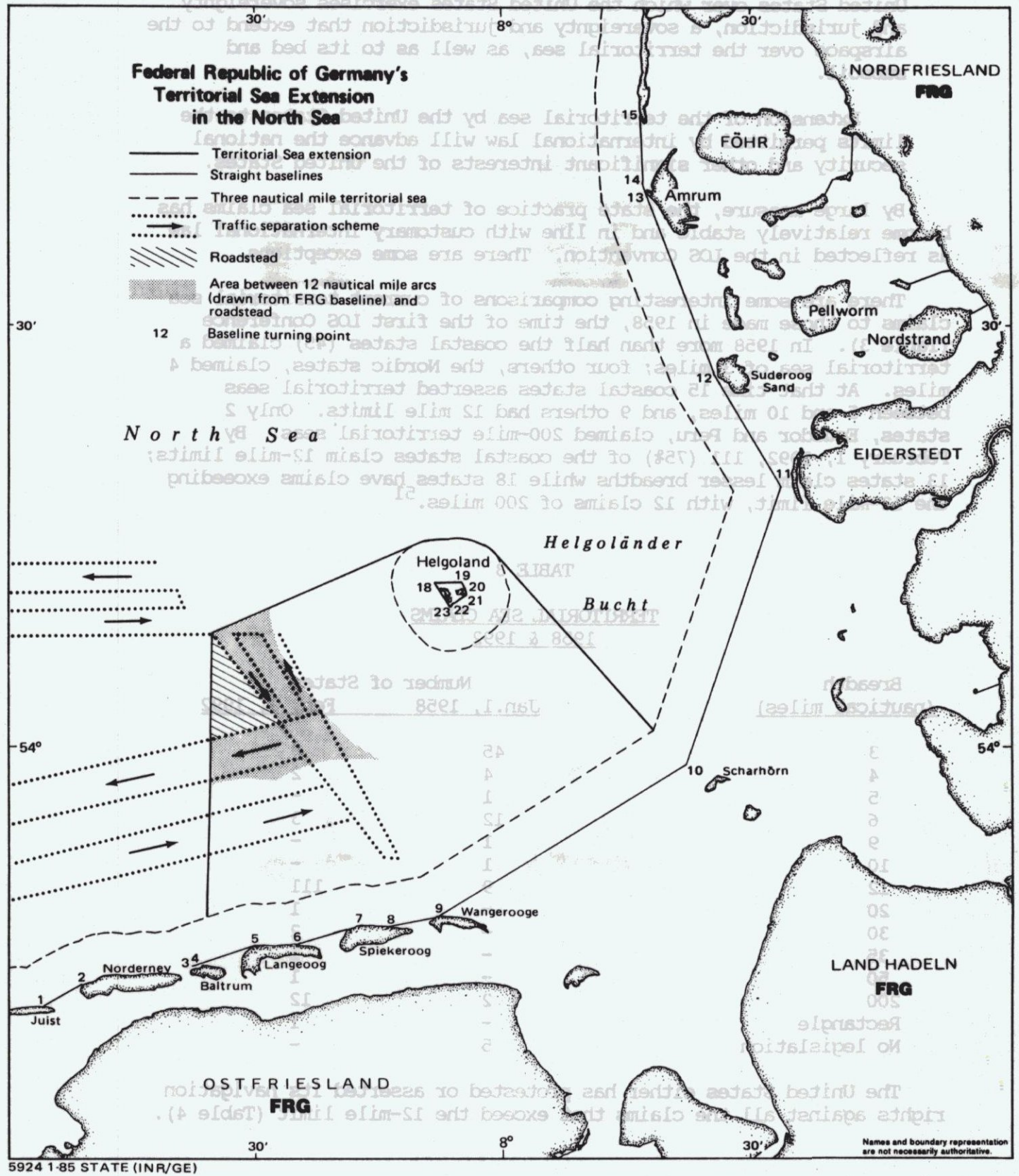
CANADIAN ARCTIC STRAIGHT BASELINES

Unclassified
6203 9-85 STATE(INR/GE)



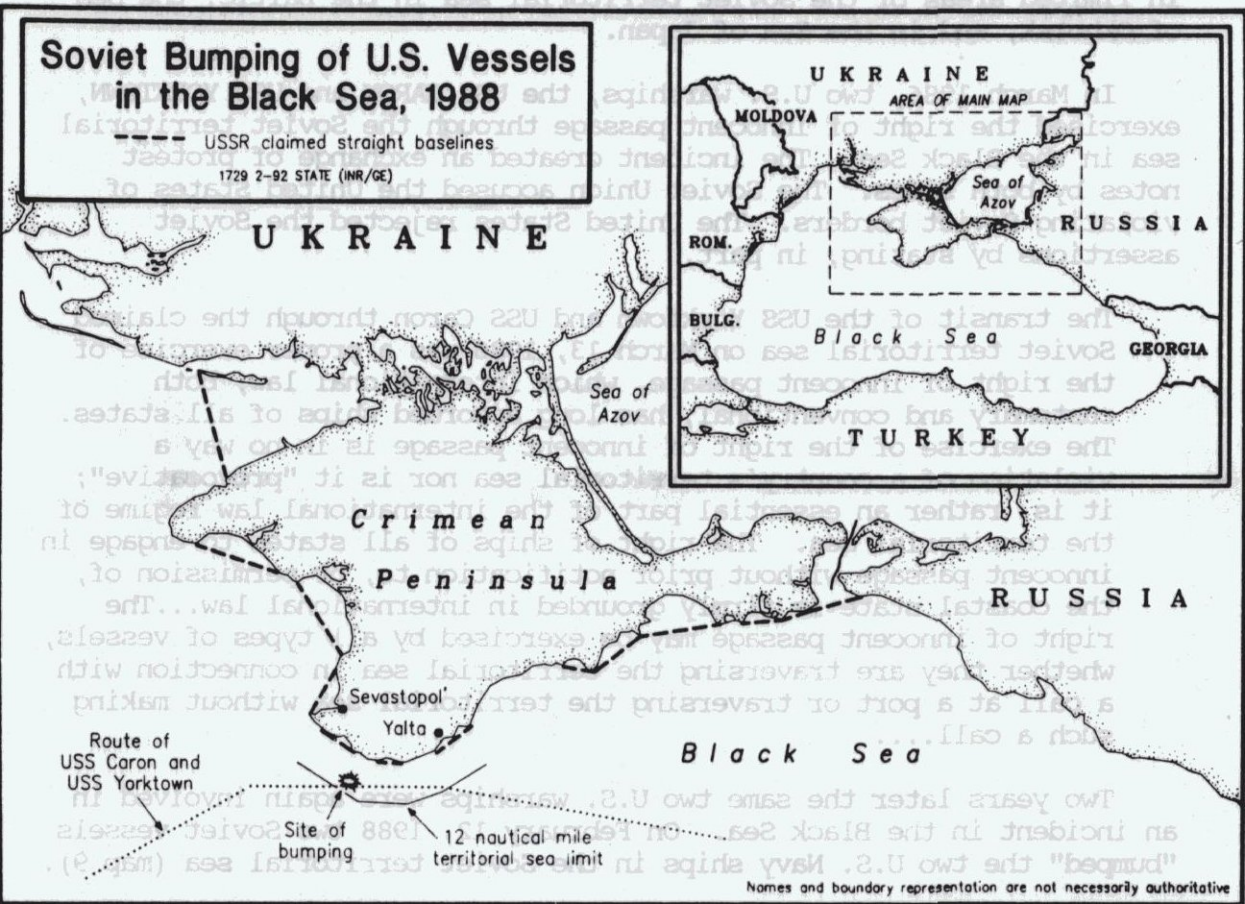
Map 7

Map 8

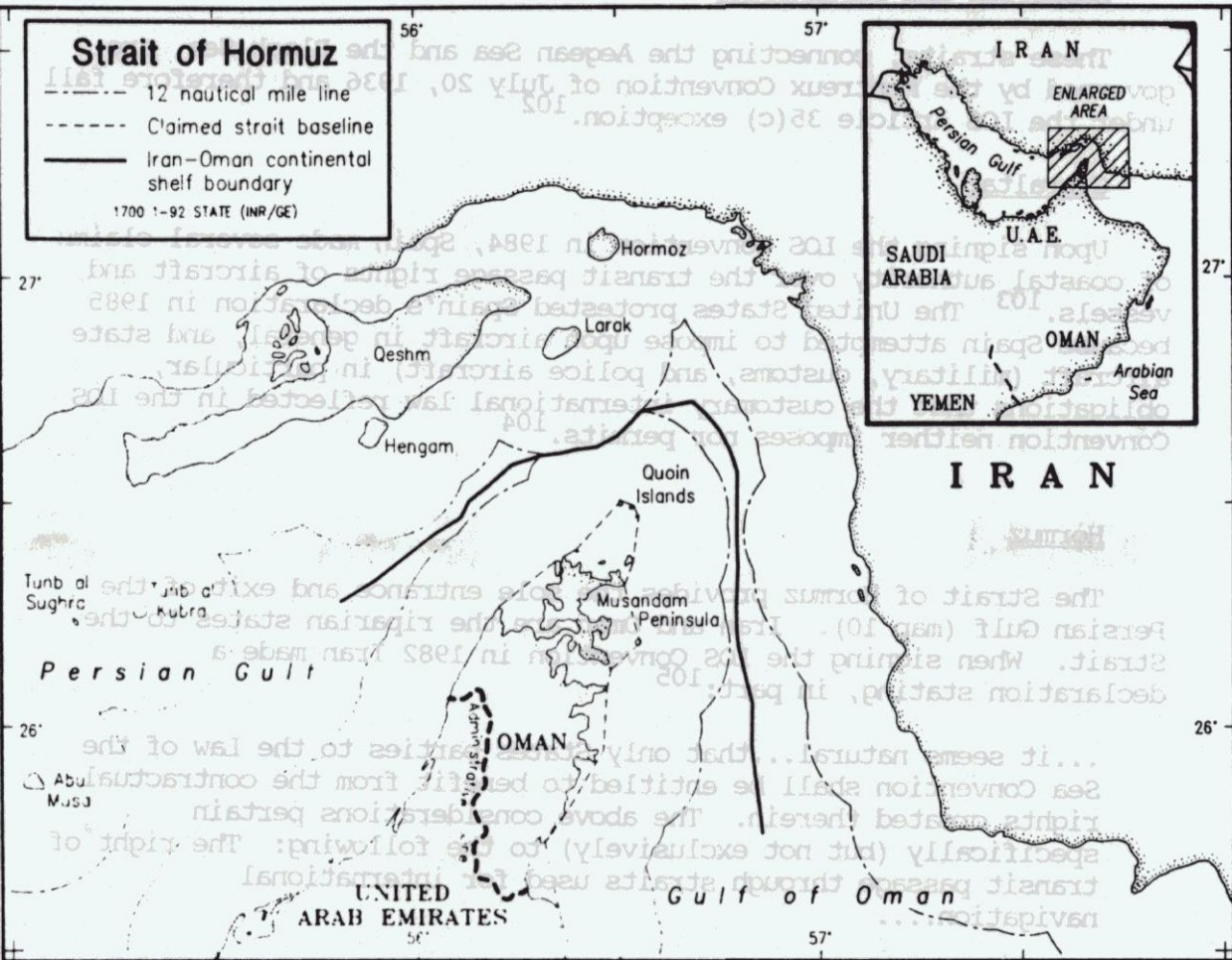


5924 1-85 STATE (INR/GE)

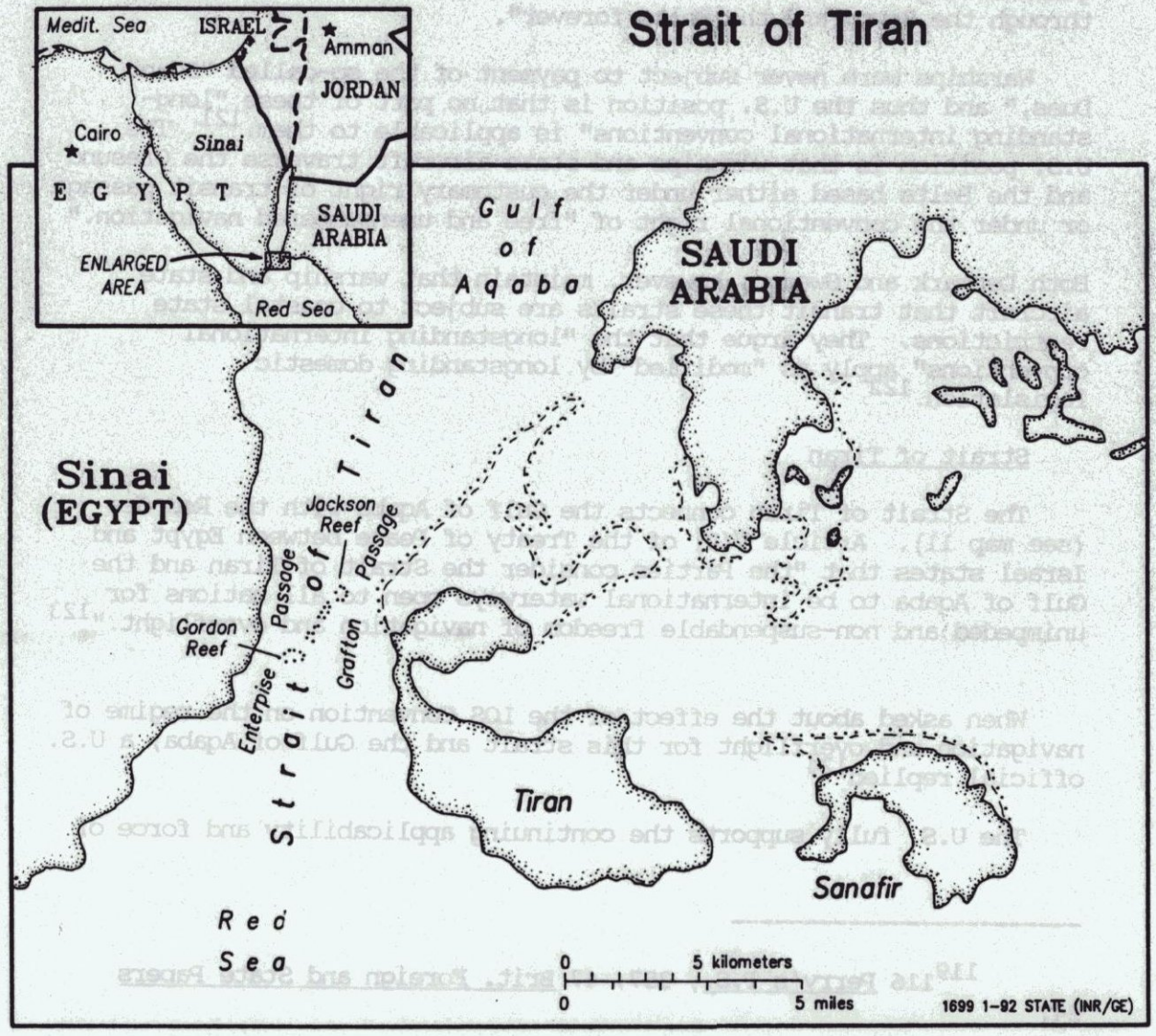
Map 9


Soviet Bumping of U.S. Vessels in the Black Sea, 1988
USSR claimed straight baselines
1729 2-92 STATE (INR/GE)
UKRAINE
AREA OF MAIN MAP
MOLDOVA
Sea of Azov
RUSSIA
ROM.
BULG.
Black Sea
GEORGIA
TURKEY
UKRAINE
Sea of Azov
Crimean Peninsula
RUSSIA
Sevastopol'
Yalta
Black Sea
Route of USS Caron and USS Yorktown
Site of bumping
12 nautical mile territorial sea limit
Names and boundary representation are not necessarily authoritative

Map 10


Strait of Hormuz
12 nautical mile line
Claimed strait baseline
Iran–Oman continental shelf boundary
1700 1-92 STATE (INR/GE)
56°
57°
27°
26°
IRAN
ENLARGED AREA
Persian Gulf
U.A.E.
SAUDI ARABIA
OMAN
Arabian Sea
YEMEN
Hormoz
Larak
Qeshm
Hengam
Quoin Islands
Tunb al Sughra
Tunb al Kubra
Musandam Peninsula
Persian Gulf
OMAN
Abu Musa
UNITED ARAB EMIRATES
Gulf of Oman
IRAN

Map 11


Strait of Tiran
Medit. Sea
ISRAEL
Amman
JORDAN
Cairo
Sinai
E G Y P T
SAUDI ARABIA
ENLARGED AREA
Red Sea
Gulf of Aqaba
SAUDI ARABIA
Sinai (EGYPT)
Jackson Reef
Passage
Strait of Tiran
Gordon Reef
Enterprise Passage
Grafton
Tiran
Sanafir
Red Sea
0
5 kilometers
0
5 miles
1699 1-92 STATE (INR/GE)