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DATE

July 1923

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FOR CIRCULATION —

SUBJECT

Mr.
Mr.
Mr.
Asst. U.S. of S.

Memo regarding
common policy
regarding the limits
of territorial water.

Permit U.S. of S.
Patent U.S. of S.
Secretary of State.

Copy

Previous Paper

MINUTES

Sec 17.23
Room 14
Mr. Jeffries } to see

See off 9/17 then put by

(See Partington memo 22.23)
W.C.D. 16.7.23

Part by

See

Subsequent Paper

CONFIDENTIAL

MEMORANDUM REGARDING THE COMMON POLICY FOR
THE BRITISH EMPIRE ON THE QUESTION OF THE
LIMITS OF TERRITORIAL WATERS.

The question of the extent of territorial waters is of the greatest importance to the British Empire, particularly in time of war when any considerable extension of territorial waters would gravely hamper the exercise of naval power. As is well known, the views of this Country and of a number of other Powers are by no means in agreement, and it is probable that it will be impossible to avoid an International Conference on the subject in the near future. It is therefore essential that a common policy for the Empire with regard to all aspects of the question should be arrived at by mutual agreement, thus enabling a united front to be presented to any proposed alteration of the present conditions which would operate to the disadvantage of the Empire.

2. While fully recognising the importance which must be attached to the other aspects of the question (fisheries, customs, etc), it is considered that the naval aspect is, from the Empire point of view, of pre-eminent importance, and that consequently the object to be aimed at is, generally speaking, to reduce as far as possible the restrictions placed by territorial waters upon the exercise of naval power.

3. His Majesty's Government have always opposed the recognition by this country of the claim of any other power to exercise jurisdiction outside a three-mile limit, which has generally come to be understood as the envelope of all circles of a radius of three nautical miles whose centres are on the low-water mark of the coast-line.

4. This limit has also been accepted by many other Powers, but some exceptions from its rigid application are generally claimed, particularly as regards bays, while several Powers refuse in toto to accept this limit and set forward various claims to wider limits.

5. The following are the principal Powers that recognise the three-mile limit:

Great Britain, France, Germany, Italy,
Holland, Belgium, Denmark, Finland.

6. Wider limits are claimed by certain Powers in the case of bays obtained by certain Powers:

CONFIDENTIAL

<u>POWER.</u>	<u>EXTENT OF TERRITORIAL WATERS CLAIMED.</u>	<u>FOR WHAT PURPOSES.</u>	<u>REMARKS.</u>		
Spain	6 m ^{les}	All	Old standing claim.		
Norway Sweden Denmark	} 4 miles	All	{ Old standing claim; mutually recognised by the 3 countries named, but not by other Powers.		
Norway				Customs	Recent claim; intended to aid enforcement of prohibition.
Russia				12 miles	Mainly fisheries.
France	6 miles	Fisheries (in Morocco) and Neutrality.	Accepts 3 miles for exclusive fishery limits in the North Sea and in the English Channel under Fishery Conventions.		
Italy	{ 10 miles	Control of Merchant Vessels.	Law of 1912.		
	{ 6 miles	Neutrality	Decree of 1914.		
Greece	10 miles	Neutrality	Put forward in 1913.		
Uruguay	5 miles	All	Put forward in 1914.		
Ecuador	12 miles	Neutrality	Put forward in 1914.		
Columbia	12 miles	{ Fisheries. { Deposits of { Hydrocarbons	} Put forward in 1913.		

7. In addition to these claims to a greater limit of territorial waters than 3 miles, special territorial rights over certain bays, etc., are claimed by various Powers including both those who do, and those who do not, accept the principle of the three-mile limit.

8. There also appears to be a growing tendency to claim for all purposes the application of a rule laid down in various Fishery Conventions that for purposes of fishery protection the three mile limit in bays should have as its starting point a line drawn across the bay at the first point where the width does not exceed 10 miles.

9. In the case of fisheries, as distinguished from other purposes, a practical basis can be adduced in support of the 10 mile rule for bays. In a bay of 10 miles or less in width fishing in the narrow limits of the free waters between the 3-mile lines drawn on each side of the bay would be

Denmark has accepted the three-mile limit for purpose of exclusive fishery limits in the North Sea.

/impracticable.

impracticable. If foreign fishing craft were allowed to fish in such a small space there would be a constant risk of their violating territorial waters. They are therefore in certain cases excluded altogether from such bays by International Convention.

POLICY PROPOSED FOR ADOPTION.

10. After careful examination of the question, four draft resolutions are put forward as embodying the policy proposed.

RESOLUTION 1.

IT IS ESSENTIAL THAT THE GENERAL LIMIT OF TERRITORIAL WATERS SHOULD BE FIXED AT A DISTANCE OF THREE MILES FROM LOW-WATER MARK.

11. This resolution is in accordance with the policy of this country for upwards of a century past. So long as the Empire depends upon Naval supremacy it is essential that any extension should be vigorously opposed as it would gravely interfere with the successful conduct of naval operations, both those of a military nature and those connected with the extremely important and difficult operations for cutting off an enemy's sea-borne commerce.

12. One of the principal reasons, apart from the consequent restriction of the "high-seas", against widening the present 3-mile maritime belt is that the difficulty of determining with accuracy, either by observations taken on board or from shore, whether a ship is within the maritime belt or not is found in practice to be considerable even before the 3 mile limit is reached, while it increases very rapidly beyond this limit.

13. From the point of view of a neutral Power such extension is also objectionable, as increasing the responsibilities imposed upon that Power by the necessity of preserving its territorial waters from violation by belligerents.

14. The starting-point of the maritime belt (i.e. whether the latter should be measured from low-water mark, high water mark, or any other definition) is to some extent a moot point, but the general consensus of opinion amongst the various Powers is that the low-water mark should be adopted.

RESOLUTION 2.

THE LIMIT OF TERRITORIAL WATERS SHOULD BE THE SAME FOR THE PURPOSES OF EXERCISING JURISDICTION, CUSTOMS, COAST GUARD, CONTROL OF VESSELS, AND ALL OTHER PURPOSES.

15. It is considered that when rights outside the three-mile limit are once conceded for any purpose, it becomes more difficult to refuse to recognize similar rights for other purposes. Any jurisdiction beyond the normal

10-mile...

3-mile limit must be based on special international agreement. Special areas may, however, be defined by International Convention in which, with a view to the preservation of fish, trawling or other particular methods of fishing are prohibited to vessels of all countries that are parties to the Convention. The closing of such special areas would not involve any assertion of territorial rights over the waters in question.

RESOLUTION 3.

~~THE LIMIT OF TERRITORIAL WATERS SHOULD, IN THE CASE OF A BAY, GULF OR STRAIT, BE THE ENTRANCE DOES NOT EXCEED SIX MILES IN WIDTH MEASURED SEAWARD OF THE ENTRANCE OF THE BAY, GULF OR STRAIT.~~

~~BAY, GULF OR STRAIT, IN ADDITION, BE LIMITED BY THE WIDTH OF THE ENTRANCE OF THE BAY, GULF OR STRAIT, TO BE NOT MORE THAN TERRITORIAL WATERS, WHICH ARE NOT SPECIAL AREAS, AS DEFINED AND DESCRIBED IN THE CONVENTION.~~

16. Where the width of the entrance of an inlet (or, if there is more than one entrance, the widest) does not exceed six miles, it is generally recognised that the whole of the inner waters, however great their lateral extension, are territorial.

Territorial rights are, however, also claimed over certain inlets the width of whose entrances in many cases much exceeds twice the ordinary territorial limit.

Those inlets include openings of all kinds, i.e. bays, gulfs, estuaries and straits, and it is proposed to describe them by the special term "territorial inlets".

Such claims have in the past been based on :-

Configuration (that is, the shape and degree of enclosure of the area of water in question, with special reference to the extent to which it penetrates into the land),

either by itself or combined with one or more of the following reasons :-

- (a) that territorial rights are essential for reasons of national defence, safety or neutrality,
- (b) that sovereign jurisdiction has been exercised for a long period,
- (c) that territorial rights have been claimed for a long period,
- (d) that exclusive rights are necessary for the maintenance of the country's food supply, or for some other adequate economic reason,
- (e) that the waters in question are remote from general sea traffic routes.

17. It is recognised that it would probably be impossible and undesirable to obtain a general renunciation of these

"historical".....

- 5 -

"historical" claims, or of similar future claims based on reasons mentioned in paragraph 16, and it is accordingly proposed, that a schedule of such inlets within the Empire should be drawn up, stating the grounds on which exclusive jurisdiction is necessary or desirable, for consideration at an Imperial Conference. The policy of the Empire should, however, it is thought be to restrict such claims as much as possible in order to prevent excessive claims by foreign powers, which if upheld would seriously limit the exercise of naval power.

18. In the accompanying Appendix particulars are given of claims which have actually been made by foreign Powers. It is to be observed that in most cases they have not been substantiated.

19. It has been proposed that the "10 mile bay rule" should be put forward as a general international rule applicable to fisheries only. In other words that the "exclusive fishery limits" in bays should be generally recognised as including in all cases the waters within a distance of 3 miles measured from a straight line drawn across the bay in the part nearest the entrance at the first point where the width does not exceed 10 miles. This rule would be strictly limited to fishery purposes and would not affect territorial rights in bays.

20. It is, however, considered that while no strong objection can be taken to the 10-mile rule for bays being generally adopted, for fishery purposes only, if agreement to this effect can be negotiated with the other countries concerned, it is undesirable that the British Empire should take the initiative in any such negotiations.

RESOLUTION 4.

~~THE COAST-LINE FROM THE 10-MILE BAY RULE OF WHICH THE 3 MILES LIMIT OF A TERRITORIAL CLAIM SHOULD BE MEASURED IN THAT OF THE BAY AND ALSO THAT OF ALL ISLANDS, THE 10-MILE BAY RULE COVERS ALL PORTAGES OF TERRITORY EMPLOYED ABOVE HIGH WATER IN NORMAL CIRCUMSTANCES AND CAPABLE OF USE AS HABITATION.~~

APPENDIX.

EXTENSION OF FOREIGN MARITIME JURISDICTION
OVER (1) LAJOS BAY, AND (2) JAMBALI.

(Prepared by Foreign Office January 1925)

1. BAYS.ECUADOR.

GULF OF JAMBALI. In 1915 the Ecuadorian Government claimed territorial jurisdiction over the waters of Jambali from inside a line drawn one marine league west of Santa Salinas Point to one marine league west of the mouth of the Cayana. The Gulf of Jambali is an inlet of the sea between the mainland of Ecuador and the island of Iona; at its extremity it would appear to be upwards of twenty miles in width. The Government of Ecuador was informed that His Majesty's Government were unable to recognise territorial jurisdiction as extending beyond the usually recognised limit of three miles, whether along the open coast or in bays.

It may be observed that the waters at the head of the Cayana are also claimed to be territorial waters of the Republic of Peru.

FRANCE.

JEANVILLE BAY. By the Anglo-French Convention of 1892 a considerable stretch of water, east of the bay of Jeanville on the French coast, with the bay of Pointe de la Pointe de la Pointe, south-east of Jersey, and extending far beyond the three-mile limit, was placed at the disposal of French fishermen, the fisheries' jurisdiction being exercised on a coast annexed to the Convention. Fishing vessels were prohibited from carrying on any kind of fishing, whether floating fish, within this area. The Convention...

2.

is over seventeen miles in breadth and the closing line passes in some places about fourteen miles from the shore. This concession to France was a recognition of the principle that fisheries of this nature - that is for objects which are attached to or stationary on the bottom - require special treatment.

GREECE.

By a law of April 8, 1913, the Greek Government sanctioned the exclusion, in war time, of shipping from a zone of ten nautical miles from the coast, and in the case of gulfs and roadsteads the zone was to be measured along a straight line drawn across the indentation and at the outermost part thereof where the width of the opening did not exceed twenty miles. The usual protest was made by this country.

On August 15, 1914 the Greek Minister intimated that his Government had fixed the limits of Greek territorial waters, for neutrality purposes, at six nautical miles. The Admiralty, who were not prepared to make the same concession to the Greek Government as they had done in the case of a similar claim by Italy (see under that country), concurred in the proposal that no reply should be returned to the Greek announcement, the Foreign Office view being that it would be impolitic to differentiate more than was absolutely necessary between the two cases.

subsequent events proved that Greek steamers were arrested by His Majesty's ships in waters within the six-mile limit.

ITALY.

An Italian Royal Decree of August 10, 1914,

Antipalmed.

3.

stipulated that for purposes of neutrality, territorial waters in bays, creeks and gulfs extended as far as a straight line drawn at a tangent of the circumferences of two circles of six marine miles radius, having as their centres the extreme points of the opening of the bay, creek or gulf, provided the distance between these points does not exceed twenty marine miles. If this distance is exceeded, the territorial waters were stated to be comprised within a straight line drawn between the two farthest points which are 20 marine miles apart.

His Majesty's Ambassador in Rome was instructed to intimate to the Italian Government that the British Commander-in-Chief in the Mediterranean had been instructed to respect rigidly the neutrality of Italy, even to the extent of not approaching within six miles of the Italian coast. It was pointed out however that this act of courtesy did not entail any abandonment of the principle of the three-mile limit for territorial waters. Any further action was, for political reasons, deprecated at the time by H.M. Government.

It may be added that in 1911 when a bill providing for the extension, when considerations of national defence rendered it necessary, of territorial waters to the limit just referred to, was presented to the Italian parliament, the Italian Government were informed that His Majesty's Government could not recognise any claim to jurisdiction over, or to interference with, British vessels beyond the three-mile limit. A further protest was made on the passage into law of the bill.

NORWAY.

The question of the limits of Norwegian territorial

/waters.....

4.

waters, which are claimed to be "an ordinary sea-mile" (four English geographical miles) seawards from the outermost island or rock which is not washed over by the sea, together with the Varanger Fjord, Vest Fjord, and certain other "internal waters", was raised in a somewhat acute form by the arrest of the British trawler "Lord Roberts" on March 11, 1911, and by the refusal of His Majesty's Government to admit the right of Norway, in the absence of any specific agreement to the contrary, to exercise jurisdiction in waters outside the three-mile limit. His Majesty's Government proposed at the time to call an international conference for the settlement of maritime limits, but chiefly owing to the opposition of Germany it was impossible to arrange for its meeting.

The question still remains unsettled; but mainly out of regard to the services of Norwegian seamen during the war, the British Government has not wished to raise the matter in recent years.

RUSSIA.

GULF OF BOTHNIA. In 1915 the Russian Government called the attention of the Swedish Government to the legal status of the waters of the Gulf of Bothnia. By the Russo-Swedish Treaty of 1810 the frontier between Finland and Sweden was defined as following a certain line somewhat to the west of the middle of the Gulf, so that all the waters to the east of that line must be considered, in any case as between Russia and Sweden, as Finnish, and all the waters west of that line as Swedish.

The Admiralty considered that Russia and Sweden jointly could make out a strong case for the waters of the gulf being territorial unless there was an international

/location.....

custom of long standing to the contrary. During the war the matter was one of almost exclusively Russian interest and if at some later date it should be to our interest to claim that the waters of the gulf are the high seas, it would be enough that we should have expressed no opinion on the matter.

GULF OF FINLAND The Russian Ministry of Marine having issued a notification in 1913 respecting the area over the mouth of the Gulf of Finland which was prohibited for flying craft, His Majesty's Charge d'Affaires was instructed to call attention to the fact that the area in question, measuring one hundred and twenty miles by sixty miles, completely closed the whole entrance to the gulf over a considerable distance, and that the gulf being at its neck thirty miles wide on the average, the order of the Ministry of Marine claimed jurisdiction in the air over waters outside the territorial limits - a claim which His Majesty's Government were unable to admit. The treaty of Dorpat between Soviet Russia and Finland makes special provision in regard to the territorial waters of Finland within this gulf.

WHITE SEA. In July 1910 the British trawler "Osward Ho!" was seized for fishing in the White Sea, but on representation being made by His Majesty's Ambassador at St Petersburg the vessel was released.

In 1911 the Russian Government having introduced into the Duma a bill forbidding foreigners to fish in the White Sea south of a line from Cape Kane to Cape Svyatoi (a distance of one hundred and two miles), and also anywhere within twelve miles of the coast of the Archangel Government, mainland or island, His Majesty's Ambassador was instructed to point out that it was not generally admitted that foreign fishing vessels could be prevented from exercising their avocation beyond the ordinary three-

mile limit, and that His Majesty's Government certainly would not accept a limit extending as far as twelve miles.

A voluminous correspondence took place; and the bill was withdrawn in 1912.

In 1919 the provisional government of Northern Russia passed a decree prohibiting trawling for fish and sealing within the coastal waters of the Northern Territories. The limits of these waters were laid down as twelve sea miles from the outstanding points of the Murman Coast, the Kinof Islands and Kildin Island being reckoned as extensions of the coast. As regards the White Sea the limits extended to a line running twelve sea miles north of Capes Kain and Syvatoi.

Mr. Macdonald, Russian Charge d'Affaires in London, was told that His Majesty's Government saw no reason to depart from their consistent policy of opposing any extension of territorial waters beyond the three-mile limit. They recognised, nevertheless, that the circumstances affecting seal hunting were somewhat different from those affecting ordinary fishing, and would consequently be prepared to consider a convention specifically dealing with that question, provided that the wider question of the extension of the maritime territorial limits for a considerable distance was not affected thereby.

In July 1920 the Russian Government notified the British Government that Mr. Chicherin had stated that trawling and sealing in Russian territorial waters, especially south of a line from Kain Nos to Syvatoi Nos had been prohibited by a decree on July 1, 1919, and that the British Government was in violation of this decree.

a distance from the shore of more than three miles.

Declaring that the whole of the bay was within its jurisdiction, the United States required the restoration of the British vessel. France complied. The bay has a headland width of ten and a half miles.

CHESAPEAKE BAY. In 1885 it was held by the United States Court of Commissioners of Alabama Claims that Chesapeake Bay was American territory and that seizures made by the Confederate cruisers within any part of Chesapeake Bay were not made on the high seas. The headlands of Chesapeake Bay are twelve miles apart and its length is over one hundred and fourteen miles before its waters narrow to six miles. The fishing in this bay is controlled by state legislation.

2. STRAITS.

CHILE.

A Chilean decree of December 15, 1914, laid down that, for purposes of neutrality, the interior waters of the Strait of Magellan, and of the southern channels even in those places where the distance from shore to shore was more than three miles, were to be considered as a jurisdictional sea.

After some correspondence the Admiralty accepted the Foreign Office view that the question of jurisdiction should not then be raised with the Chilean Government. They placed it on record, however, that they were not disposed to go as far as the Foreign Office in admitting the validity of the Chilean claim. They considered it to be arguable that in a natural international highway, the internal waters of which open out so as to include a tract of water more than three miles

/from the.....

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from the nearest land, such an area should be regarded as outside territorial limits. The Admiralty pointed out that His Majesty's ships had, on occasion, performed acts which disregarded the Chilean claim, and which, if called in question, His Majesty's Government could and should justify.

DENMARK (See NORMAN.)

FRANCE

The French Government having, in October 1912, passed a decree relating to neutrality in maritime war, which decree fixed the limits of French territorial waters at six marine miles from low-water mark, the Admiralty after some correspondence pointed out that the case of France being neutral in a war between this country and a North Sea state was the very one in which British interests as a belligerent would be most affected by an extension of the French territorial limits. If France established the right to force belligerent warships to keep outside a six mile limit, it would be almost futile to station a British patrol force in the Straits of Dover in such a war. As matters stood, the off-lying shoals between Calais and Dunkirk compelled large vessels to keep more than three miles from the French coast, or at least render it very risky for them to keep closer in. With a three-mile limit, therefore, a British patrol could act effectively, but a six-mile limit would clear many of the dangers to navigation and enable an enemy's ship, or a contraband-carrying neutral, to pass with comparative impunity.

His Majesty's Ambassador at Paris was instructed

/on May 19.....

on May 19, 1914, to intimate to the French Government that His Majesty's Government did not recognise the claim to extended territorial waters, and that any such extension beyond the customary three-mile limit must be a matter for special agreement.

NORWAY

SKAGGERACK. At the North Sea Fisheries Conference of 1881 it was agreed, in deliberating on the boundaries of the North Sea for the purposes of the Convention, to exclude the Skaggerack (whose waters are nowhere less than sixty geographical miles in width) the fisheries of which it was stated by the President were not international but were "essentially within the jurisdiction of the States to which the shores belong".

It should be stated however that neither Denmark nor Norway appears to have asserted since the conclusion of the Convention exclusive jurisdiction in its moiety of those waters where in fact both British and German vessels were believed to carry on an extensive fishing.

SPAIN.

STRAITS OF GIBRALTAR. The Admiralty have pointed out that the effective control of the Straits of Gibraltar has been greatly weakened through the acquiescence of His Majesty's Government in the extension of the Spanish protectorate in Morocco to the westward, which carried the right of territorial waters with it, and gave an enemy a three-mile gap through the straits in which to pass in safety from attack.

UNITED STATES.

FUCA STRAITS. A case in which the principle of the sovereignty of the riverain Powers over straits seems to have been recognised by Great Britain and the United States in 1873, when in carrying out the award of the German Emperor, the international boundary was carried along the

11.

middle of the Fuca Straits, which are about seventy miles long and from fifteen to twenty miles wide. The treaty of the 15th June 1846 lays down that the boundary is to continue through the middle of the channel which separates the continent from Vancouver Island and of Fuca Straits. The commissioners appointed by the two Powers were unable to agree upon this portion of the boundary, i.e. as to whether it should run through the Canal of Haro. This definition of the boundary is finally established by Article 8 of the treaty between Great Britain and the United States respecting the demarcation of the boundary between the United States and the Dominion of Canada, signed at Washington on April 11, 1808. This agreement is naturally binding only on the parties to the treaty; and in that respect it corresponds to the Russo-Swedish Agreement of 1810, whereby the frontier of the two countries was defined as following a certain line somewhat to the west of the middle of the Gulf of Bothnia.

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