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DELIMITATION QUESTIONS IN *UNITED STATES v. CALIFORNIA* (1980)

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I. INTRODUCTION

Whether the federal government or the coastal states have jurisdiction over coastal submerged lands has been litigated since 1945 in successively more refined forms. In 1947, The Supreme Court held in *United States v. California*[1] that the federal government has jurisdiction seaward of the ordinary low water mark over all territorial sea lands. Congress, however, in the Submerged Lands Act of 1953,[2] quitclaimed to the coastal states all federal interest in all lands and natural resources three geographical miles seaward of a state's "coast line." For certain Gulf Coast states, the grant extended to nine geographic miles. In 1953 Congress also enacted the Outer Continental Shelf Lands Act.[3] It declared that the United States owned all submerged lands seaward of lands the Submerged Lands Act granted to the states. The Submerged Lands Act temporarily quelled the acrimonious dispute, because there was technology to exploit the natural resources, petroleum in particular, of submerged land in only the shallowest water.

By 1963, disputes between the federal government and the states

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1. 332 U.S. 804 (1947).
2. 43 U.S.C. §§ 1301-1303, 1311-1315 (1976).
3. 43 U.S.C. §§ 1331-1343 (1976).

intensified, as the scarcity of land-based natural resources increased and the technology for recovering off-shore natural resources advanced.[4] Thus, it became necessary to refine and to delineate the boundary between federal and state submerged lands.[5] The federal government asked the Supreme Court in *United States v. California*[6] to define the term "coast line" as used in the Submerged Lands Act. In 1965 the Supreme Court provided the definition, utilizing provisions of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone (Geneva Convention),[7] which had codified methods of delimiting the boundaries of the two maritime zones. In the 1980 decision in *United States v. California*,[8] the parties again asked the Court to construe the term "coast line." At issue was whether the California coast line at certain points followed the mean lower low-water line along the natural shore at certain points, or whether it followed the seaward edge of a number of piers and an artificial island complex projecting into the sea.

There are several reasons to consider the Supreme Court's 1980 decision in *United States v. California* which held that pile-supported piers and a shore-connected artificial island erected on the California coast were not to be treated as part of the baseline.[9] First, the decision ignored a wealth of scholarship which the parties provided. That scholarship contained the views of Philip C. Jessup for California and Elihu Lauterpacht, Q.B., for the United States.[10] The scholarship may prove useful in the near future because domestic litigation between the coastal states and the federal government shows no sign of abating. For example, Alaska's boundary in the Beaufort Sea is before a Special Master in *United States v. Alaska*, No. 84, Original; the status of the Mississippi Sound as inland waters, and the seaward boundaries of Mississippi and Alabama are before the Special Master in *United States v. Louisiana*, No. 9, Original; and

4. Report of Alfred A. Arraj, Special Master, United States v. California, 447 U.S. 1 (1980) [hereinafter cited as Report].

5. *Id.*

6. 381 U.S. 139 (1965) (the Court had retained jurisdiction over the case since its 1947 decision).

7. April 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639.

8. 447 U.S. 1 (1980).

9. *Id.* at 3.

10. *Compare* United States v. California, 447 U.S. 1 (1980) *with* United States v. Louisiana, 394 U.S. 11 (1969) (the depth of the Court's analysis in *California* far surpasses that in the *Louisiana* decision).

the question of the limits of the inland waters of Block Island Sound, Vineyard Sound and Nantucket Sound is before the Special Master in *United States v. Maine*, No. 35, Original.

Second, international questions of baseline determination, and thus of the delimitation of the seaward boundaries of offshore zones such as the territorial sea, touch current interests. The United Nations Law of the Sea Conference (United Nations Conference) approved the Convention on the Law of the Sea (Convention)[11] on December 10, 1982. It contains several provisions, absent from the 1958 Geneva Convention, relating to the determination of baselines and to the breadth and delimitation of offshore zones. Article 3 of the Convention, for example, provides that the breadth of the territorial sea may be as much as twelve miles. The 1958 Geneva Convention was silent on the point, but permitted the inference that the breadth could be no more than twelve miles. Moreover, Article 33 of the Convention doubles the permissible breadth of the contiguous zone to 24 miles. A new regime of archipelagic waters is in Part IV, and Article 47 describes the method of drawing baselines to enclose such waters. Part V of the Convention provides for the first international recognition of an Exclusive Economic Zone, the maximum breadth of which must not exceed two hundred miles. Also noteworthy are Article 16 provisions requiring the publishing of charts or lists of coordinates describing a coastal state's claimed baselines and offshore-zone limits. While there are no comparable provisions for depicting or describing the outer limits of the contiguous zone, Articles 47 and 75 contain parallel provisions with respect to archipelagic baselines and the outer limits of the Exclusive Economic Zone.

Finally, the Court did not address two questions in the *California* case concerning the status of ports and bays, which the Court had referred to its Special Master (Master). A brief recounting of the parties' arguments and of the Master's views on these questions may be useful because the Master's report was not published.

This article presents a brief history of the submerged-lands cases, emphasizing the *California* case. The article also describes the issues raised on the parties' motions which led to the 1980 decision and decree, the report to the Special Master, the decision of the Court, and the parties' substantial points which the Court did not treat. In addi-

11. Convention on the Law of the Sea, December 10, 1982, U.N. Doc.A/CONF.62/122 (1982).

tion, it considers the two questions the Special Master resolved adversely to the United States.

II. HISTORICAL DISCUSSION OF THE SUBMERGED LAND CASES

In 1945, the United States commenced an action against the State of California in the United States Supreme Court to determine ownership of the lands underlying the "three-mile belt" seaward of the low-water mark off California's coast.[12] Two years later, the first decision in the case held that the United States had not established its title to the Submerged lands, but possessed "paramount rights" in them.[13] An incident of these "paramount rights," wrote Justice Black for the majority, is "full dominion over the resources of the soil under that water area, including oil."[14] Foreshadowing its decision nearly thirty years later in *United States v. Maine*,[15] the Court found there was little historical support for the proposition that the thirteen original colonies acquired separate ownership of the three-mile belt or the soil under it. That is so even though the colonies' revolution gave them elements of the sovereignty of the English crown.[16]

The Court followed the 1947 *California* decision in two 1950 cases. The Court found that Louisiana's claim to the lands underlying the marginal sea and beyond were no more compelling than California's claims.[17] The Court also rejected Texas' claim, notwithstanding Texas' existence as an independent republic prior to admission to statehood.[18] Ironically, the same principle upon which California and Louisiana had grounded their arguments, the equal-footing doctrine,[19] defeated Texas' argument. Texas posited that as a republic, it possessed full sovereignty over the territorial sea as well as ownership

12. The United States invoked the original jurisdiction of the court conferred by Article III, Section Two, Clause Two of the United States Constitution. *See* U.S. CONST. art. III, § 2, cl. 2.

13. United States v. California, 332 U.S. 19, 39 (1947).

14. *Id.*

15. 420 U.S. 515 (1975).

16. 332 U.S. at 31-33.

17. United States v. Louisiana, 339 U.S. 699, 704-705 (1950).

18. United States v. Texas, 339 U.S. 707, 718-720 (1950).

19. The equal-footing doctrine holds that subsequently admitted states attain to all the incidents of sovereignty enjoyed by the original thirteen states, one of which was ownership and dominion over the tidelands within their state borders. *See* Shively v. Bowlby, 152 U.S. 1, 26 (1894); Knight v. U.S. Land Ass'n., 142 U.S. 161, 183 (1891); Pollards Lessee v. Hagen, 44 U.S. (3 How.) 212, 228-229 (1845).

of it. The Court held, however, that Texas relinquished sovereignty and ownership to the national government upon admission to the union. That placed Texas on an equal footing with the other states.[20]

After the 1947 *California* decision, the Court appointed William H. Davis of New York as Special Master to delineate the "ordinary low water mark" along certain disputed segments of the California coast. The Special Master's report was filed with the Court in 1952,[21] but before the Court took it up, Congress passed the Submerged Lands Act (Act).[22] The Act "restored" to the seaboard states the rights to their offshore submerged lands, rights Congress evidently thought the *California* decision of 1947 had divested.[23] The Submerged Lands Act quitclaimed to California and the other coastal states whatever interest the federal government may have had in the lands and natural resources therein lying within three geographic miles seaward of the "coast line."[24]

Virtually at the same time, Congress enacted the Outer Continental Shelf Lands Act, which declared that the subsoil and seabed of the outer continental shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition.[25] The Act defined "coast line," as "the line of ordinary low-water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."[26] That term was the principal point of contention in the thirty years of litigation[27] following passage of the Act.

The first decision came promptly. In *Alabama v. Texas*[28] the Court upheld the Act as a valid exercise of Congress' power under the property clause of the Constitution.[29] The power of Congress to dispose of federal property, the Court held, has no limitation.[30]

The Court next decided Submerged Lands cases in 1960. The Act

20. 339 U.S. at 718.
21. United States v. California, 344 U.S. 872 (1952).
22. 43 U.S.C. 1301-43 (1976).
23. *See* United States v. Louisiana, 363 U.S. 1, 28 (1960).
24. 43 U.S.C. at § 1311(b)(1) (1976).
25. *Id.* at § 1332(a).
26. *Id.* at § 1301(c).
27. The single exception is United States v. Alaska, 442 U.S. 184, 186 n.2 (1975).
28. 347 U.S. 272 (1954).
29. U.S. CONST. art. IV, § 3, cl. 2.
30. 347 U.S. at 275.

had relinquished to the coastal states the United States' interest in all lands beneath navigable waters within the boundaries of the states.[31] The "boundaries" of the states were defined as they existed at the time a state became a member of the Union, or thereafter approved by the Congress, not extending, however, seaward from the coast of any state more than three marine leagues (nine nautical miles) in the Gulf of Mexico or more than three nautical miles in the Atlantic and Pacific Oceans.[32] Thus, the Gulf coast states received an opportunity to prove that their boundaries extended seaward of three nautical or geographic miles. In *United States v. Louisiana*,[33] the Court held that the Submerged Lands Act gave Texas a belt of three marine leagues' width, but Louisiana, Mississippi, and Alabama had not proven their cases, and, therefore, received only the lands within three nautical miles from their coasts. In *United States v. Florida*,[34] the Court held that the Submerged Lands Act granted to Florida, on its Gulf coast, a three-marine league belt of land. The Constitution of Florida that Congress approved when it readmitted Florida to representation in Congress following the Civil War plainly describes this three-league boundary.[35]

The most significant decision in the submerged lands cases following passage of the Act was the 1965 *United States v. California* decision.[36] After its 1947 decision and its receipt in 1952 of the Special Master's report, the Court retained jurisdiction to resolve ensuing disputes between the parties, particularly those pertaining to the seaward boundary of the grant.[37] No action was taken on the Special Master's report following passage of the Act in 1953 because the Act's grant to California of the mineral rights in the three-mile belt vested in California all of the interests that were then thought to be important. By 1963, however, drilling techniques had improved so as to revitalize the importance of the line between state and federal submerged lands. The United States filed an amended complaint reviv-

31. 43 U.S.C. at § 1311.

32. *Id.* at § 1301.

33. 363 U.S. 1 (1960).

34. 363 U.S. 121 (1960).

35. *Id.* at 122-129.

36. 381 U.S. 139 (1965). A thorough treatment of this decision is beyond the scope of this article, and has in any event been given elsewhere.

37. *See, e.g.,* United States v. California, 332 U.S. 804, 805 (1947) (order and decree) *and* 382 U.S. 448, 453 (1966) (supplemental decree).

ing the Special Master's Report and redescribing the issues as modified by the Submerged Lands Act. Both the United States and California filed new exceptions to the Report and the case was ready for decision.[38]

The principal issue was the interpretation of "coast line" and "inland waters" in the Submerged Lands Act.[39] The Court reviewed the legislative history of the Act and developments in the international law of maritime boundaries since enactment of the Submerged Lands on May 22, 1953. The Court rejected the United States' contention that the Government's positions in international affairs as of that date should control the Act's construction. The Court held that Congress left the responsibility of defining "coast line" and "inland waters" to the Court.[40] The Court gave content to the Act's terms "coast line" and "inland waters," by adopting the definitions in the 1958 Convention on the Territorial Sea and the Contiguous Zone.[41]

In a point of considerable domestic significance today, the Court concluded that future changes in international law will not cause the boundary between state and federal lands to stray from its position under the terms of the 1958 Geneva Convention. The new Convention on the Law of the Sea, containing boundary provisions that differ in many respects from those of the 1958 Geneva Convention, if it is ratified by the United States may create one set of boundaries for purposes of the Submerged Lands Act and another for delimiting the extent of American territorial waters.[42] Ironically, it was precisely to avoid this circumstance that the Court adopted the provisions of the

38. 381 U.S. at 148-149.

39. Among the subsidiary issues addressed in the decision, the Court held that, in general, a state could not avail itself of the straight-baselines provision of the 1958 Geneva Convention if the United States had not chosen to employ such baselines for international purposes. *Id.* at 167-169. The Court also considered whether several indentations of the California coast constituted bays under the 1958 Geneva Convention, such that "closing lines" should be drawn across their entrance points, from which the three-mile belt would be measured, rather than from the shore line within the bay. It also treated the requirements for making out a claim of a historic bay, an exception to the strict geographic requirements of Article Seven of the 1958 Geneva Convention respecting "juridical" bays; the meaning of "ordinary low-water" as used in Article Three; and the status of roadsteads and new coast lands formed by "artificial" accretion. *Id.* at 170-177.

40. *Id.* at 164-165.

41. *See* 15 U.S.T. (Pt. 2) 1607, T.I.A.S. No. 5639.

42. There are some deviations at present; the nine-mile grants under the Submerged Lands Act to Texas and Florida in the Gulf of Mexico are the most salient examples. The new Convention must be ratified by sixty countries before it has more

Geneva Convention.[43]

Many decisions have followed the 1965 *California* case. The 1967 decision in *United States v. Louisiana*,[44] held that Texas' claim under the three-league grant of the Act would be measured by the boundary which existed in 1845 when Texas entered the Union, and not from artificial jetties built thereafter. Two years later, in what Justice Black's dissent termed a "heads I win, tails you lose" decision, the Court held, notwithstanding its 1967 decision, that where erosion had caused the Texas shoreline to recede from its 1845 location, Texas' three-league grant must be measured from its coastline as it exists at present.[45]

The 1969 *Louisiana Boundary Case*[46] is significant for its application of the principles of the 1958 Geneva Convention to numerous geographic features of the Louisiana coastline. As an example, the Court held that dredged channels do not constitute "outermost permanent harbour works" within the meaning of Article 8 of the 1958 Geneva Convention because they are not "raised structures."[47] The Court referred to a special master a number of questions respecting the location of Louisiana's coastline that the Court did not decide.[48] Special Master Walter P. Armstrong, Jr., took testimony and received evidence on these issues and filed his report, dated July 31, 1974, with the Court. Both the United States and Louisiana took exception to portions of the report. In its decree of March 7, 1975, the Court overruled the exceptions of each and adopted the Special Master's recommendations.[49]

In *United States v. Maine*,[50] the United States had filed suit against the thirteen Atlantic seaboard states, challenging those states' claims that their respective colonial charters had given them rights in the seabed and subsoil beyond three nautical miles into the Atlantic Ocean. The Court severed the action against Florida and referred

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than minimal international impact. The Convention will not bind the United States until the United States signs it.

43. United States v. Louisiana, 389 U.S. 155, 165 (1967).

44. 389 U.S. 155 (1967).

45. United States v. Louisiana, 394 U.S. 1 (1969).

46. 394 U.S. 11 (1969).

47. *Id.* at 36-40.

48. *Id.* at 74-78.

49. United States v. Louisiana, 420 U.S. 529 (1975).

50. 420 U.S. 515 (1975).

the remaining case to Special Master Albert B. Maris to conduct hearings on the contentions of the parties. The Special Master's Report, dated August 27, 1974, agreed with the United States that these states had relinquished, upon forming the Union, whatever rights they once enjoyed in lands beyond the three-mile belt. The Supreme Court, in an opinion by Justice White, adopted the recommendations of the Special Master.[51]

In another 1975 decision, the Court again addressed questions concerning the coastline of Florida.[52] This decision was similarly made upon exceptions of the United States and Florida to the Report of the Special Master, and it concerned both the seaward boundary of Florida's rights in the continental shelf of the Atlantic Ocean as well as Florida's boundary on the Gulf coast. The Court referred the status of Florida Bay back to the Special Master, and subsequently, the parties entered a stipulated decree.[53]

The Supreme Court decided *United States v. Alaska*[54] in 1975. It was the only Submerged-Lands case the Court did not hear under its original jurisdiction. The Court held that Alaska had not met its burden of proving that Cook Inlet was a "historic bay." Thus, the boundary of Alaska's submerged-lands grant must be measured from the low-water line of the shore of the inlet, not from a closing line drawn across its entrance.

Other recent Submerged-Lands decisions include the second supplemental decree in *United States v. California*,[55] which established closing lines across the entrances to several bodies of inland waters. The opinion also found a number of structures to constitute "artificial extensions" of the coastline. In the same case the following year, the Court rejected the United States' claim that following the Act's passage it had retained title to the submerged lands within one nautical mile of Santa Barbara and Anacapa Islands off California's coast as part of the Channel Islands National Monument. The Government based its argument on the "claim of right" exception to the grant of the Submerged Lands Act.[56] A 1980 decision in *United States v. Lou-*

51. *Id.* at 522-24.

52. United States v. Florida, 420 U.S. 531 (1975).

53. United States v. Florida, 425 U.S. 791 (1976).

54. 422 U.S. 184 (1975).

55. 432 U.S. 40 (1977).

56. United States v. California, 436 U.S. 32 (1978).

isiana,[57] perhaps the final chapter in the Louisiana litigation, concerned an agreement between the United States and Louisiana providing for impounding oil royalties pending resolution of the boundary dispute.[58]

III. THE 1980 *UNITED STATES V. CALIFORNIA* DECISION

The parties' cross-petitions for entry of a supplemental decree specifying the seaward limits of the inland waters of San Pedro and San Diego Bays[59] and whether sixteen pile-supported piers on the California coast were part of the "coastline" within the meaning of the Act precipitated the 1980 decision in *United States v. California*.[60] The Court referred the matter to Special Master Alfred A. Arraj. Judge Arraj conducted hearings in New York and Denver during 1979. He submitted his report to the Supreme Court on August 29, 1979.

a. *The Closing-Line Issues*

The questions of the closing lines of San Pedro and San Diego Bays are best understood by reading the account given of them by the Special Master and examining figures I, I-A and II accompanying his report.[61] In summary, the Special Master recommended adoption of California's positions on both questions. At San Diego, California argued for drawing the closing line from the seaward tip of the Zuniga jetty to the mean lower-low water line on the seaward tip of Point Loma. The United States argued for a line drawn from the seaward tip of Point Loma to a point more inland on the deteriorated jetty, where its crown dipped below the elevation of mean lower-low water. California argued for drawing the line at San Pedro from the east end of the Long Beach breakwater to the East Anaheim Bay jetty. The United States argued for drawing the line from the east

57. 452 U.S. 726 (1980).

58. The agreement is mentioned in A. SHALOWITZ, 1 SHORE AND SEA BOUNDARIES 199 n.42 (1962).

59. The two bays were concededly juridical bays; the sole questions were the locations of their "closing lines."

60. 447 U.S. 1 (1980).

61. Report, *supra* note 4, at 6-19. The mentioned diagrams are reproduced as an appendix to this article.

end of the Long Beach breakwater to the West Alamitos Bay jetty.[62]

There are several ways to frame the question of the proper location of the line enclosing the inland waters of the Port of San Pedro. In the Act's terms, the issue may be framed as the location of "the line marking the seaward limit of inland waters."[63] In addition, because both parties agreed that the "inland waters" of San Pedro constituted both a port and a harbor, the issue could be framed in terms of both Article 7 and Article 8 of the Geneva Convention. Article 7, which deals with bays, provides in Subsection (4) that the closing line is to be drawn between the "natural entrance points" of the bay. Article 8, which addresses the status of ports and harbors, specifies, when read in connection with its official commentary, that the closing line is to be drawn between the "outermost permanent harbour works which form an integral part of the harbour system . . . ." Thus, inasmuch as the Supreme Court had grafted onto the Act the provisions of the Convention, the San Pedro issue could be expressed in terms of (a) the "natural entrance points" to the bay, or (b) the outermost harbor facilities which formed an integral part of the harbor system. In addition, the issue entailed law of the case. The Supreme Court's 1966 Supplemental Decree[64] implementing its 1965 decision had specified certain portions of the closing line of San Pedro Bay. It decreed that the three segments of outer breakwaters, the San Pedro breakwater, the Middle breakwater and the Long Beach breakwater, together with straight lines drawn connecting the two gaps between the breakwaters, constituted the seaward limits of the port. The 1966 Supplemental Decree, however, expressly avoided drawing a closing line between the eastern end of the Long Beach breakwater and the shore on the east side of the Bay.[65]

California stressed that the Anaheim Bay jetties were the outermost harbor facilities, in the language of Article 8, "which form an integral part of the harbour system" of the San Pedro Bay area. The Special Master found this argument persuasive: "The San Pedro Bay is not one isolated harbor or bay which happens to contain facilities for loading and off-loading ships."[66] He noted that the harbor system

62. *See* Figures I and I-A appended to the report of the Special Master and reproduced as an appendix to this article.

63. 43 U.S.C. § 1301(c) (1976).

64. 382 U.S. 448 (1966).

65. *Id.* at 451.

66. Report, *supra* note 4, at 8.

comprised the facilities relating to Anaheim Bay, Alamitos Bay, Seal Beach pier, Long Beach marina, and extensive federal facilities at Terminal Island, as well as at Los Angeles, Wilmington, and San Pedro. Moreover, the Master noted that the Navy's facilities at Anaheim Bay and Terminal Island were integrally related because naval vessels destined for repairs at Terminal Island off-load their weapons and ammunition just inside the Long Beach breakwater. The weapons and ammunition are then transported to the Seal Beach Naval Weapons Station. The vessel then proceeds to the Terminal Island Naval Shipyard. These facts, the Master found, aided in establishing the Anaheim Bay jetties as an integral "part of the [San Pedro] harbor system."[67]

Approaching the San Pedro issue from Article 7 (bays), the Master noted that in the 1961 *Louisiana* decision[68] the Supreme Court expressly held that the Coast Guard's "inland water lines," were inappropriate to determine the seaward limits of "inland waters" for purposes of the Act and Convention because the Coast Guard had promulgated them simply to establish where mariners must follow inland rules of the road. Nonetheless, because of the utility of these lines for mariners, and the fact that the lines connect prominent landmarks for ease of ascertainment, the Master agreed with California that these lines constituted relevant evidence for the limited purpose of helping to determine the "natural entrance points" of a bay within the meaning of Article 7. The Master wrote,

> The inland water navigation lines simply provide one additional source of evidence shedding light on what constitute the entrance and the outermost permanent harbor works as those terms are used in the Geneva Convention.[69]

The lines separating, for navigation purposes, inland waters from those waters on which the London Convention controls are known as "COLREGS Demarcation Lines."[70] These lines were first promulgated in 1977.[71] Specifically, they establish a line from the seaward tip of the Anaheim Bay east jetty to the seaward tip of the Anaheim Bay west jetty to the eastern tip of the Long Beach breakwater.[72]

67. *Id.* at 12.
68. 394 U.S. at 17-19.
69. Report, *supra* note 4, at 12.
70. *See* 42 Fed. Reg. 35782 (1977) (now codified at 33 C.F.R. Part 80.01 (1983).
71. *See* 42 Fed. Reg. 35782 (1977).
72. *See* 33 C.F.R. § 82.1135(a) (1978).

The parties also agreed that San Diego Bay constitutes both a juridical bay and a port. As the Special Master noted[73] the question can be phrased as what constitutes the port's "outermost permanent harbour works," or, in Article 7 terms, what constitutes the bay's "natural entrance points." The San Diego dispute was more narrow than in the case of San Pedro. The principal controversy was whether the seaward tip of the Zuniga jetty was one of the "entrance points" (the parties agreed that Point Loma was the other) or, in terms of Article 8, an "outermost permanent harbour work." The United States contended that because the jetty had deteriorated such that its southernmost segment was largely "submerged," the appropriate eastern terminus of the closing line should be at that point where the crown of the jetty first dipped below the plane of mean lower-low water. The Master rejected the United States position, finding that the entire length of the jetty constituted a harbor work and that the seaward tip of the jetty constituted the outermost permanent harbor work within the meaning of Article 8 of the Convention and paragraph 4(b) of the 1966 Decree.[74] The Master also found that the Government's COLREGS line supported California's position.[75]

The Special Master rejected the United States' positions partly because he found that earlier Supreme Court cases did not sanction the two tests the United States urged for ascertaining the ends of the closing lines.[76] (A third such criterion, not applicable to the case, is the "bisector of the angle" test. The Supreme Court specifically approved it in the first supplemental decree in the *California* case.) The two tests the Government advocated in the case were the "45-degree-angle" test and the "shortest-distance-line" test, which the Government claimed is an appropriate criterion to employ when the 45-degree test is unworkable.[77] The Government, noting that its 45-degree test was inapplicable in each situation, urged adoption of the shortest-distance line test for enclosing the inland waters of San Pedro and San Diego Bays. The Special Master specifically disapproved this

73 Report, *supra* note 4, at 14.

74 *Id.* at 18; 382 U.S. at 450.

75. Report, *supra* note 4, at 18-19.

76 *Id.* at 8.

77. For an explanation of these tests for determining the "natural entrance points" of a bay, *see* Report, *supra* note 4, at 8 n.8; *see also* R. Hodgson and L. Alexander, *Towards an Objective Analysis of Special Circumstances*, Law of the Sea Institute Occasional Paper No. 13 at 3-22 (1972).

test. Inasmuch as the shortest-distance test, as the government notes, is to be employed where the 45-degree-angle test is unworkable, the latter criterion would seem likewise impermissible in the view of the Master. The United States did not file exceptions to the Special Master's recommendations on the two closing lines. The United States also acquiesced in the entry of a decree specifying the lines California wanted.

b. *The Status of the Sixteen Piers as Parts of the Baseline.*

Two prominent authorities in the field testified on the status of the sixteen pile-supported piers. Elihu Lauterpacht, Q.B., testified for the United States, and Philip C. Jessup, formerly judge of the International Court of Justice, testified for California. Both scholars focused on whether the structures qualified as part of the coast under Article 8 of the 1959 Geneva Convention. The Special Master found their views superfluous generally. The "practical approach" of commentators McDougal and Burke guided the Master's recommendations. In their book *The Public Order of the Oceans*, McDougal and Burke wrote in 1962:

> When the construction of an area of land served consequential coastal purposes, it would seem to be in the common interest to permit the object to be used for delimitation purposes. . . . The principal policy issue in determining whether any effect for delimitation purposes ought to be attributed to other formations and structures is whether they create in the coastal state any particular interest in the surrounding waters that would otherwise not exist, requiring that the total area of the territorial sea be increased.[78]

Influenced by the "reasonableness" test of McDougal and Burke, the Special Master found that neither the piers nor the Rincon Island complex created an "interest in the surrounding waters that would not otherwise exist." The Special Master noted that harbor works connected with a conventional harbor create an interest in maintaining the navigational integrity and safety of the surrounding waters. Such an interest, the Master concluded, justifies treating the artificial structures as modifications of the natural coast. Artificial structures not connected with a harbor, but considered a part of the coast, help maintain the natural shore line, create navigable channels for ocean-

78. M. McDOUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS 388 (1962) [hereinafter cited as McDOUGAL & BURKE].

going vessels, or otherwise aid coastal maintenance and improvement. In that context, they too, create an interest in the surrounding waters justifying use of the structures as base-points for measuring the Submerged Lands Act boundaries. The piers did not help maintain the coast and the volume of shipping handled by the three oil company piers did not justify assimilating those piers to harbor works within the meaning of Article 8.[79]

McDougal and Burke, however, did not suggest that their criterion was applicable to structures *connected* with the coast, as were the California piers. They suggested a test to determine the status of "man-made islands, temporarily submerged areas, structures erected on the ocean floor, and floating objects."[80] Moreover, the principle McDougal and Burke advocated would contravene Article 10 of the 1958 Geneva Convention, which confines the permissible claims of territorial sea surrounding islands to "naturally formed" islands.

California took exception to the Special Master's recommendations insofar as they addressed the status of the sixteen piers. After briefing and argument, the Court adopted the recommendation of the Special Master and ruled in favor of the United States. As when the matter was before the Special Master, the parties' principal contention was whether the sixteen piers qualified as parts of the "coast line" by virtue of Article 8 of the 1958 Geneva Convention. Article 8 provides:

> For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbor system shall be regarded as forming part of the coast.

While Article 8 appears to be facially inapplicable to the piers, which are primarily recreational facilities and not associated with the great harbors at San Pedro, San Diego and San Francisco, the "legislative history" of the Article raised substantial questions. The International Law Commission, which drafted the 1958 Geneva Convention, reported in its Official Commentary to the U.N. General Assembly with respect to Article 8 that "[p]ermanent structures erected on the coast and jutting out to sea (such as jetties and coast protective works) are assimilated to harbour works."[81] California contended that this Commentary and the history of its formulation demon-

79. Report, *supra* note 4, at 28-29.

80 McDOUGAL & BURKE, *supra* note 78, at 388.

81. 11 U.N. GAOR Supp. (No. 9) at 16, U.N. Doc. A/3159 (1956).

strated that the piers should be treated as part of the coast. The Court dismissed the contention stating,

> Comment number two has been held to envision erosion of jetties, but we have highlighted the beach protection or harbour protection role they fulfill as well. A construction of the Comment as including these piers and the island complex which concededly do not fulfill such a role would unwarrantly extend the most generous intimation of the Comment. [Footnote omitted; citation omitted.][82]

In dispatching the matter, the Court, as had the special Master, disregarded a wealth of scholarship on the interpretation of Article 8. The next section of this article summarizes that scholarship.

IV. ARTICLE 8 OF THE CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE

The International Law Commission (Commission) drafted the Convention on the Territorial Sea and the Contiguous Zone. The Commission was formed pursuant to Article 13 of the United Nations Charter. Article 13 mandates the General Assembly to "initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification."[83] The General Assembly Resolution 174(II) of November 21, 1947, created the Commission to fulfill this mandate. The Commission's purpose was to develop and codify international law.[84] At its first session in 1949, the Commission selected the regime of the territorial sea as a topic for consideration. The Commission began work on this subject in 1952 and culminated in Article 8.[85]

In the 1980 *California* case, before both the Special Master and the Court, the parties disagreed in several respects about the applicability of Article 8 to the piers question. A threshold point of disagreement was whether the article represented a codification of existing international law, or demonstrated "progressive development" of international law. If merely a codification of existing law, the United States would have handily won its point. The earlier writers and authorities had rarely addressed the question of coastal structures except in the

82. 447 U.S. at 8.

83. U.N. CHARTER art. 13, para. 1a.

84. G.A. Res. 174(II), U.N. Doc. A/519, at 105 (1947).

85. *See* A. SHALOWITZ, *supra* note 58, at 203.

context of ports,[86] and California's argument that several of the piers constituted ports had not been well received.[87] If Article 8 represented a "progressive development" of international law, California would benefit from a number of passages in the legislative history of the Convention. The United States, noting the similarity between the Commission's draft of Article 8 and the earlier League of Nations' draft of a similar article, contended that Article 8 merely represented a codification of existing international law.[88] California argued that Article 8, particularly in light of its legislative history, should be placed in the category of "progressive development" of international law, at least regarding structures not strictly associated with ports. California cited the statute of the Commission referred to above and the Commission's Report to the General Assembly respecting the final draft of the Convention.[89]

86 The work of the prestigious Institut de Droit International, for one, has carried considerable influence. The 1927 draft of the *Institut*'s rules, first adopted in 1894, provided that the baseline of the territorial sea for ports should be measured from their extremity. Professor Gidel asked during the 1928 session that this provision be made more precise, and the Institut adopted his suggestion that the formula speak of the "outermost fixed works" (*ouvrage fixe le plus avance*). *Annuaire de L'Institut de Droit International* 642-45, 755-56 (Session de Stockholm, 1928).

The League of Nations during its 1930 Conference for the Codification of International Law adopted the *Institut*'s formulation. *See* League of Nations Doc. C. 230, M. 117 1930 V.S. at 12 (1930). *See also* No. 3 Gidel, *L. Droit International Public de la Mer*, 524-525 (1934); L. OPPENHEIM, 1 INTERNATIONAL LAW § 231 (1905); P. JESSUP, THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION 69-70 (1927); HARVARD LAW SCHOOL, RESEARCH IN INTERNATIONAL LAW—NATIONALITY, RESPONSIBILITY OF STATES, TERRITORIAL WATERS 252 (1929); A.S. BUSTAMANTE, THE TERRITORIAL SEA 93, 98 (1930); HIGGINS AND COLOMBOS, THE LAW OF THE SEA 126 (6th ed. 1967 [first published in 1943]); C. HYDE, INTERNATIONAL LAW, 454 (1945).

87 Notwithstanding that the text of Article 8 speaks of a "harbour," which is a haven or protected area for vessels, the Commission titled Article 8 in both the French and English texts, "Ports." A port, as the Special Master found, is any place where passengers or cargo may be transferred between ship and shore. A port may or may not be a part of a harbour, which is a haven providing safe anchorage and sheltering for boats from weather conditions prevailing on the open sea. Report, *supra* note 4, at 7 n.7. While at least five of the California piers would qualify as "ports," *see id.* at 20-21, the Special Master did not address the question of whether this fact qualified them as part of the coastline under Article 8.

88 Brief for the United States in Opposition to California's Exception at 21-22, United States v. California, 447 U.S. 1 (1980).

89 The Commission's Report in pertinent part states:

The distinction established in the statute between these two activities can hardly be maintained. Not only may there be wide differences of opinion as to whether a subject is already sufficiently developed in practice, but also several of the provisions adopted by the Commission, based on a "recognized principle of interna-

The parties also disagreed about the degree of deference to accord the Convention's preparatory work. California noted that Justice Brandeis had written in an earlier sea-law case, "in construing [a] treaty its history should be consulted."[90] California also noted that the Supreme Court has frequently used the preparatory work of treaties including that of the Convention on the Territorial Sea and Contiguous Zone.[91] California also cited Article 32 of the Vienna Convention on Treaties, which provides, "recourse may be had [in interpreting treaties] to supplementary means of interpretation including the preparatory work of the treaty . . . in order to confirm the meaning resulting from the application of Article 31."[92] Significantly, in the negotiations on the Vienna Convention on Treaties, the United States objected to the "plain meaning" and "supplementary means" separating tests in two Articles, making a vigorous argument in favor of the use of preparatory work in the interpretation of treaties.[93] Mr. Lauterpacht testified for the Government that the discussions of the Commission, recorded in its yearbooks, are "summary records and their completeness and accuracy should, therefore, be treated with some reserve."[94]

The parties did not agree on the weight accorded the Commission's Commentaries to the text of the Convention. As noted by Professor Briggs, the statute creating the International Law Commission requires the Commission to prepare and submit commentaries together with the text of Articles. The Commission's views are set forth in the

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tional law," have been framed in such a way as to place them in the "progressive development" category. Although it tried at first to specify which articles fell into one and which into the other category, the Commission has had to abandon the attempt, as several do not wholly belong to either.

Report of the International Law Commission to General Assembly, 11 U.N. GAOR, Supp. (No. 9), U.N. Doc. A/3159 (1956) reprinted in 2 Y.B. Int'l L. Comm'n 255-256, U.N. Doc. A/CN.4/SER.A/1956/Add.1. (Emphasis added.)

90. Cooke v. United States, 288 U.S. 102, 112 (1933).

91. *See, e.g.,* United States v. Louisiana, 394 U.S. at 43 n.53, 45 n.58, 55, 56; Oklahoma v. Texas, 260 U.S. 606, 632 (1923); United States v. Texas, 162 U.S. 1, 23-38 (1896); Kinkhead v. United States, 150 U.S. 483, 486 (1893). *See also* 2 C. HYDE, INTERNATIONAL LAW § 533 D. (2d rev. ed. 1945) (collection of cases chiefly as interpreted and applied by the United States).

92. Article 31 adopts the literal textual test. *See* Kearney and Dalton, *The Treaty on Treaties*, 64 AM. J. INT'L L. 495 (1970) [hereinafter cited as Kearney and Dalton].

93. *Id.* at 519-20.

94. Brief for the United States at 22, United States v. California, 447 U.S. 1 (1980).

Commentaries, as well as in the texts of articles. The Commentaries interpret and qualify the text of articles. The Commission adopts both text and Commentary before referring them to the General Assembly.[95] On the other hand, Briggs acknowledges that other members of the Commission have held different views on the subject.[96]

The parties also differed in their reading of the *travaux*—the discussions among the members of the Commission concerning what became Article 8. They particularly disagreed about the meaning of the Commission's second Commentary to the Article. Assuming that California could not establish that any of the piers was part of a port or harbor,[97] the United States contended that "[N]either in 1930 [the League of Nations Conference] nor in the preliminary proceedings [of the drafting of the Convention] did anyone suggest that artificial structures jutting out to sea, whatever their construction, should be regarded as extensions of the mainland when not associated with a port or harbor."[98]

Early efforts at codification, such as the League of Nations Codification Conference, addressed the question of coastal structures, in the context of ports.[99] Coastal structures not strictly associated with ports appear not to have been given extensive consideration before the Commission began its work on the territorial sea. The Commission took up the subject of ports in 1952, leading to what ultimately became Article 8. One *may* read the Commission's discussions and Commentary as having sanctioned the use of fixed coastal structures connected with the coast and not associated with a port or harbor as base points for deliminting the territorial sea.

The Commission took the League of Nations ports proposal as its starting point. The Commission largely confined its first two years of

95. H. BRIGGS, THE INTERNATIONAL LAW COMMISSION 189 (1965).

96. *Id.* at 188-189.

97. Five piers were used to load and unload passengers and cargo, thus qualifying as "ports" according to the definition the Special Master accepted. Report, *supra* note 4, at 7 n.7. They are the Carpinteria, Ellwood, Morro Strand, Rincon, and Port Orford piers. The "port" at Port Orford is the pier itself; there have never been other port facilities at Port Orford.

98. Brief for the United States at 22, United States v. California, 447 U.S. 1 (1980).

99. *See, e.g.*, Report of the Second Committee, Conference for the Codification of International Law, The Hague, League of Nations Doc. C.230 M.117.1930.V. at 12 (1930) ("In determining the breadth of the territorial sea, in front of ports the outermost permanent harbour works shall be regarded as forming part of the coast").

discussions to port facilities as such. On July 1, 1954, however, the Commission discussed the status of jetties,[100] dikes used to harness tidal energy, the dikes which form the Dutch polders and other coastal structures not related to ports or harbors.[101]

While several members of the Commission evidently favored treating such coastal installations separately from ports, at the end of the 1954 session the Commission treated the installations in a "comment" to Article 8 in the report of the Commission's Sixth Session, June 3-July 29, 1954. The comment indicated that "permanent structures erected on the coast and jutting out to sea such as jetties and protecting wall or dykes" should be assimilated to "harbour works."[102] The comment underwent little change in wording during the next two sessions. It took the form of the second "Commentary" to Article 8 when the Commission reported its work to the General Assembly in 1956. The use of "assimilated," and the fact that most of the structures addressed in this comment were unrelated to any port, permit the inference that the comment addressed structures unconnected with a port or harbor. On the other hand, Mr. Lauterpacht, testifying for the United States, pointed out that the subject of the discussion was ports. He also noted that the comment was preceded by the remark, "this Article [then Article 9; subsequently Article 8] is consistent with the positive law now in force."[103] And as noted above, one finds but passing notice to coastal installations unconnected with a port or harbor.

As the work of the Commission continued over the next two years, discussions of coastal structures occurred on several occasions. The discussions often focused on concern over excessively long structures. For example, the United Kingdom raised a question prior to the Commission's 1955 session respecting a seven-mile long "pier" in the Persian Gulf. It was suggested that installations of this type should

100. Jetties are frequently not connected with a port or harbor. A number of jetties which the Supreme Court has decreed to constitute parts of California's coastline, for example, have no connection with a port or harbor nor are they "coast protective works." 432 U.S. at 41-42; *Hearings Before Special Master Alfred A. Arraj Conducted at Denver, Colorado* 220, 234, 292 (1979).

101. Summary Records of the 6th Session, [1954] 1 Y.B. Int'l L. Comm'n 88, U.N. Doc. A/CN.4/SER.A./1954.

102. Report of the International Law Commission to the General Assembly, 9 U.N. GAOR, Supp. (No. 9), U.N. Doc.A/2693 (1954), *reprinted in* [1954] 2 Y.B. Int'l L. Comm'n 155, U.N. Doc. A/CN.4/SER.A/1954/Add.1.

103. Report, *supra* note 4, at 26 (Testimony of Elihu Lauterpacht).

be treated as artificial installations on the continental shelf; *i.e.*, they should be entitled to a relatively limited navigational zone rather than to a belt of territorial waters.[104]

The United Kingdom's comment produced discussion during the Commission's meetings in 1955. Participants generally conceded that very long piers were too special to warrant the Commission's amending the general principle it had adopted. The importance of the discussion, however, was in the motive behind the United Kingdom's suggestion. The Commission stated that its rule that jetties and piers be treated as part of the coastline was based on the assumption that those installations would be of such a type as to constitute "a physical part of such coastline." Huge piers, the Commission noted, more closely resembled artificial constructions on the continental shelf than a physical part of the coastline. Therefore the Commission found it inadvisable to use huge piers as a ground for an extension of the territorial sea. The Commission suggested that it should treat huge piers as oil derricks and artificial islands erected on the continental shelf, because it had already agreed that such artificial installations had no territorial sea. Following this discussion, the Commission unanimously adopted Article 8.[105]

The subject arose several times during the Commission's work in 1956.[106] Based upon a discussion on June 12 the Commission agreed to include a reference to the United Kingdom's comment in the report. The United Kingdom's comment became the third paragraph of the Commission's Official Commentary to Article 8 as reported to the General Assembly. The Commentary in pertinent part states:

> Permanent structures erected on the coast and jutting out to sea (such as jetties and coast protective works) are assimilated to harbour works.[107]

The United Nations Conference on the Law of the Sea considered

104. Report of the International Law Commission to the General Assembly, 10 U.N. GAOR, Supp. (No. 9, Annex [Item 16]), U.N. Doc. A/2934 (1955), *reprinted in* [1955] 2 Y.B. Int'l L. Comm'n 58, U.N. Doc.A/CN.4/SER.A/1955/Add.1.

105. Summary of the 7th Session, [1955] 1 Y.B. Int'l L. Comm'n 73-74, U.N. Doc A/CN.4/SER.A/1955.

106. Regime of the High Seas and Regime of the Territorial Sea, Comments by Governments, United Kingdom of Great Britain and Northern Ireland, U.N. Doc.A/CN.4/99/Add.1 (1956), *reprinted in* Doc.A/CN.4/SER.A/1956/Add.1.

107. Report of the International Law Commission to the General Assembly, 11 U.N. GAOR, Supp. (No. 9), U.N. Doc.A/3159 (1956), *reprinted in* [1956] 2 Y.B. Int'l L. Comm'n 270, U.N. Doc.A/CN.4/SER.A/1956/Add.1.

the Commission text at Geneva in 1958. Prior to the final vote, Mr. Francois, the Special Rapporteur, stated that "the Commission had deliberately drawn the provision [of Article 8] in mandatory terms in order to eliminate every shadow of doubt."[108] Article 8 as drafted by the International Law Commission was adopted April 29, 1958, by a vote of seventy to none, with one abstention.[109] The Convention was signed by the President of the United States on March 24, 1961, and was entered into force on September 10, 1964.[110]

The Supreme Court has held that future changes in international law will have no effect on the grant made by the Submerged Lands Act. Thus the work of the Third United Nations Conference on the Law of the Sea, which was begun in 1974, is presumptively irrelevant for that purpose. While Article 8 has been the subject of considerable discussion in the work leading up to the Conference and in the sessions of the Conference itself, little consideration seems to have been given the status of coastal installations unconnected with a port or harbor.

Article 11 of the Draft Convention on the Law of the Sea (informal text) drafted at Geneva in 1980,[111] incorporates the text of Article 8 of the 1958 Geneva Convention and adds to it the following sentence: "Off-shore installations and artificial islands shall not be considered permanent harbour works." This provision appears to represent existing law. (Article 10 of the 1958 Convention confines islands—what one may generally call geographic features lying off a mainland—to naturally formed areas of land.) It first appeared as Article 10 of the "Informal Single Negotiating Text" drafted by the Second Committee Chairman at the Third Session of the Conference in May 1975. There is no recorded discussion of this provision because informal groups did much of the Second Committee's work.

CONCLUSION

With the renewed significance of delimination questions that the Convention on the Law of the Sea portends, one may expect the question addressed by the Supreme Court to be heard in the next

108. III Official Records, U.N. Conference on the Law of the Sea First Committee (Territorial Sea and Contiguous Zone), 142, U.N. Doc.A/CONF.13/39 (1958).

109. *Id.* at 142; M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 263 (1965).

110. 15 U.S.T. (Pt. 2) 1606.

111. *See supra* note 11.

decade or so by an international tribunal. The use of piers as base-points may well generate additional areas of territorial sea or Exclusive Economic Zone waters that coastal states covet. If so, the analysis should include consideration of some of the matters presented here.

Selecting the appropriate closing lines for bodies of inland waters is a matter of domestic as well as international significance. At present, special masters of the Supreme Court are considering the status of a number of alleged bodies of inland waters and will need to address the proper method of enclosing them. These bodies include Long Island, Block Island, Vineyard, Nantucket, Mississippi, and Stefansson Sounds, and Harrison Bay, Alaska. Billions of dollars of bonus payments and royalties are the prize.

The United States, as has been its practice everywhere (except in the cases of the two California bays), will employ its 45-degree-angle and shortest-distance-line tests to generate the closing lines it prefers. The states may well, as did California, argue that neither the 1958 Geneva Convention nor prior decisions of the Court sanction those tests, and therefore, the tests are not applicable. This is the view the Special Master adopted in the *California* case. Note that the tests were adopted by the Federal Government's "Baselines Committee," an unofficial interdepartmental group which, since 1970, has been responsible for formulating United States foreign policy on delimitation questions. Among the membership of this Committee are representatives of the Departments of Defense, Transportation (which includes the Coast Guard), and Commerce (whose National Ocean Survey publishes American coastal charts). The participation of these departments is natural. The formulation of foreign policy is a responsibility of the State Department which is another member of the Committee. The Department of the Interior, however, is also represented on the Committee. A primary interest of the Interior Department is to advocate delimitation positions that constrict the offshore holdings of the states and enlarge the Federal Government's Outer Continental Shelf holdings. The Interior Department administers those holdings.

The advocacy of Interior's views in the submerged-lands litigation is, of course, unobjectionable, if it is recognized as advocacy. The Supreme Court, however, has accorded a remarkable deference in these cases to the official position of the United States in the conduct of its foreign affairs, which in delimitation matters is now largely formulated by the Baselines Committee. (This deference has been

roundly criticized by the Government's former chief trial lawyer in the cases.[112]) Given the nature of our Government, it is too much to suggest that Interior be denied a voice on the Baselines Committee; however, it is not too much to ask that the Committee's views be recognized as something less than the product of pure foreign policy considerations.

From a historical perspective, one may view the continuing conflict over the ownership of the off-shore submerged lands as an inevitable consequence of our federal system of government, in which there are constituent "sovereign" states and a national government with constitutionally enumerated powers. Nevertheless, the position of the national government in the submerged-lands cases constitutes an undesirable anomaly. The government, which concededly adheres to the most conservative baseline positions in those cases, nevertheless, broke new ground in international law with its unilateral and expansive claim to the continental shelf resources in 1945,[113] its adoption of a 200-mile exclusive fisheries zone in 1976,[114] and its declaration of a 200-mile exclusive economic zone in 1983.[115] The new Convention on the Law of the Sea permits a 12-mile territorial sea.[116] Notwithstanding the present administration's refusal to sign the Convention, the United States may well elect to take advantage of this provision as it has taken advantage of the exclusive economic zone. Given these expansive claims of national jurisdiction, the United States' exceedingly conservative positions on baseline questions—as illustrated in the issues discussed here and by its adamant refusal formally to

112. J. Charney, *Judicial Deference in the Submerged Lands Cases*, 7 VAND. J. TRANS. L. 383 (1974).

113. Executive Proclamation No. 2667, 59 Stat. 884 (1945).

114. Fishery Conservation and Management Act of 1976, 16 U.S.C. § 1801-1882 (1982). Presumptively, the maximum permissible breadth of such a fisheries zone was twelve miles. *See* Convention on the Territorial Sea and the Contiguous Zone, *supra* note 41, Article 24; Magnuson, *The Fishery Conservation and Management Act of 1976: First Step Toward Improved Management of Marine Fisheries*, 52 WASH. U. L. Q. 427, 438-441, 441 n.46 (1977); Fisheries Jurisdiction (U.K. v. Ice.), 1974 I.C.J. 3 ("the extension of that fishery zone up to a 12-mile limit . . . appears now to be generally accepted.").

115. 48 Fed. Reg. 10605 (1983). The argument is that inasmuch as the Exclusive Economic Zone is but a creation of the 1982 Convention and has not been recognized in customary international law, no state which is not a party to the Convention can claim an Exclusive Economic Zone.

116. Convention on the Law of the Sea, *supra* note 11, Article 3.

declare straight baselines where appropriate—may ring hollow when pronounced in the name of foreign affairs.

With the recent developments in international law, the *Maine, Louisiana* and *Alaska* decisions in the submerged-lands litigation will be interesting. One wonders whether the Court will continue to adhere to its position that changes in international law will not occasion a shift in the boundaries of the Submerged Lands Act grant. Also, those decisions will likely precede adjudications by international tribunals of similar questions. One can hope the Court's decisions will serve as models of sound reasoning.

* * *

The diagrams which follow are found in the Appendix to the Report. They are examples to help illustrate this article. The Report disclaimed their accuracy, and therefore no exact measurements or other purpose requiring accuracy should be expected of them. For a complete set of the diagrams, the reader should refer directly to the Report.

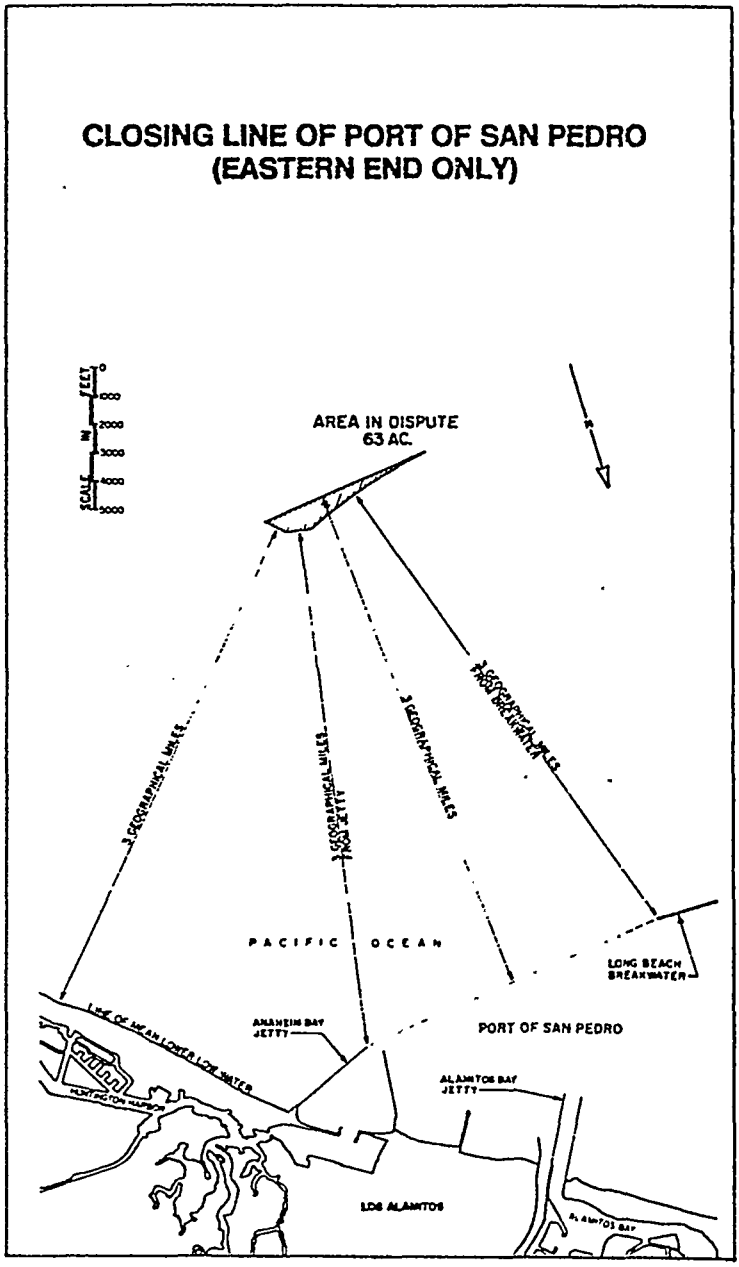
CLOSING LINE OF PORT OF SAN PEDRO
(EASTERN END ONLY)
SCALE IN FEET
0
1000
2000
3000
4000
5000
AREA IN DISPUTE
63 AC.
N
3 GEOGRAPHICAL MILES
3 GEOGRAPHICAL MILES
3 GEOGRAPHICAL MILES
3 GEOGRAPHICAL MILES
PACIFIC OCEAN
LONG BEACH BREAKWATER
LINE OF MEAN LOWER LOW WATER
ANAHEIM BAY JETTY
PORT OF SAN PEDRO
ALAMITOS BAY JETTY
HUNTINGTON HARBOUR
LOS ALAMITOS
ALAMITOS BAY

Figure 1

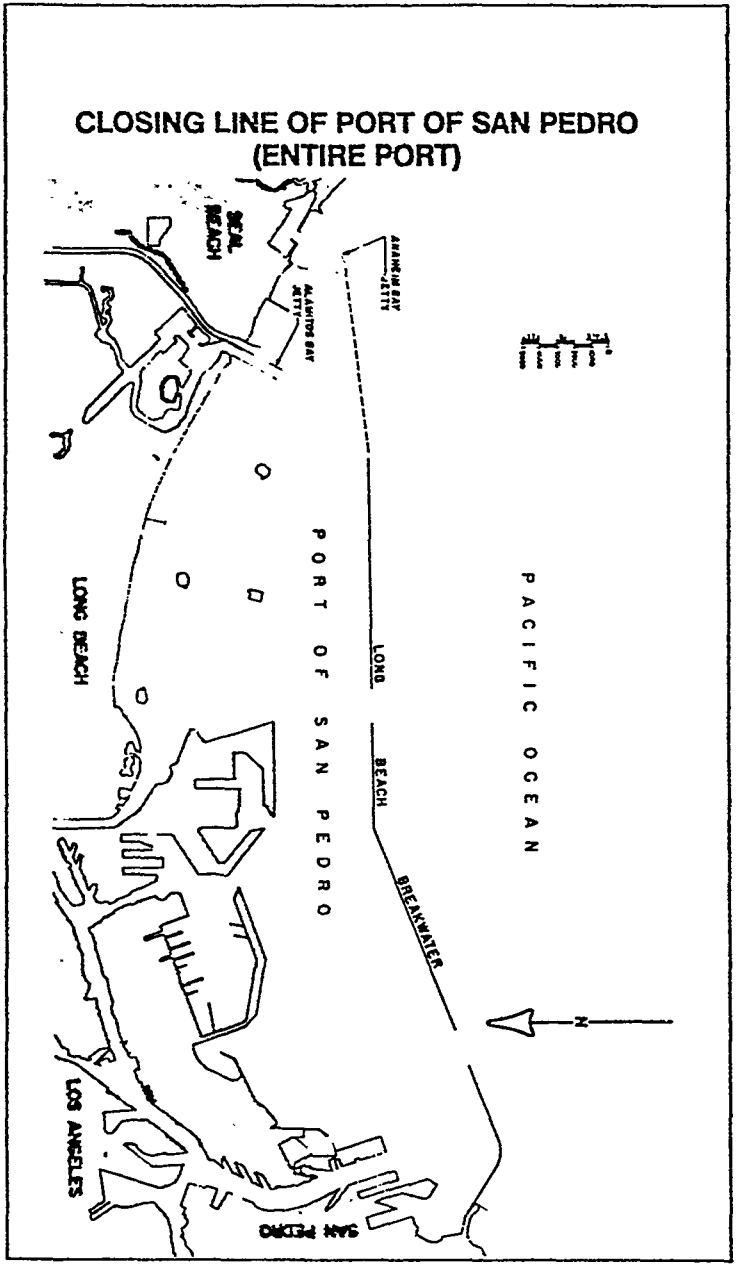

Figure 1a

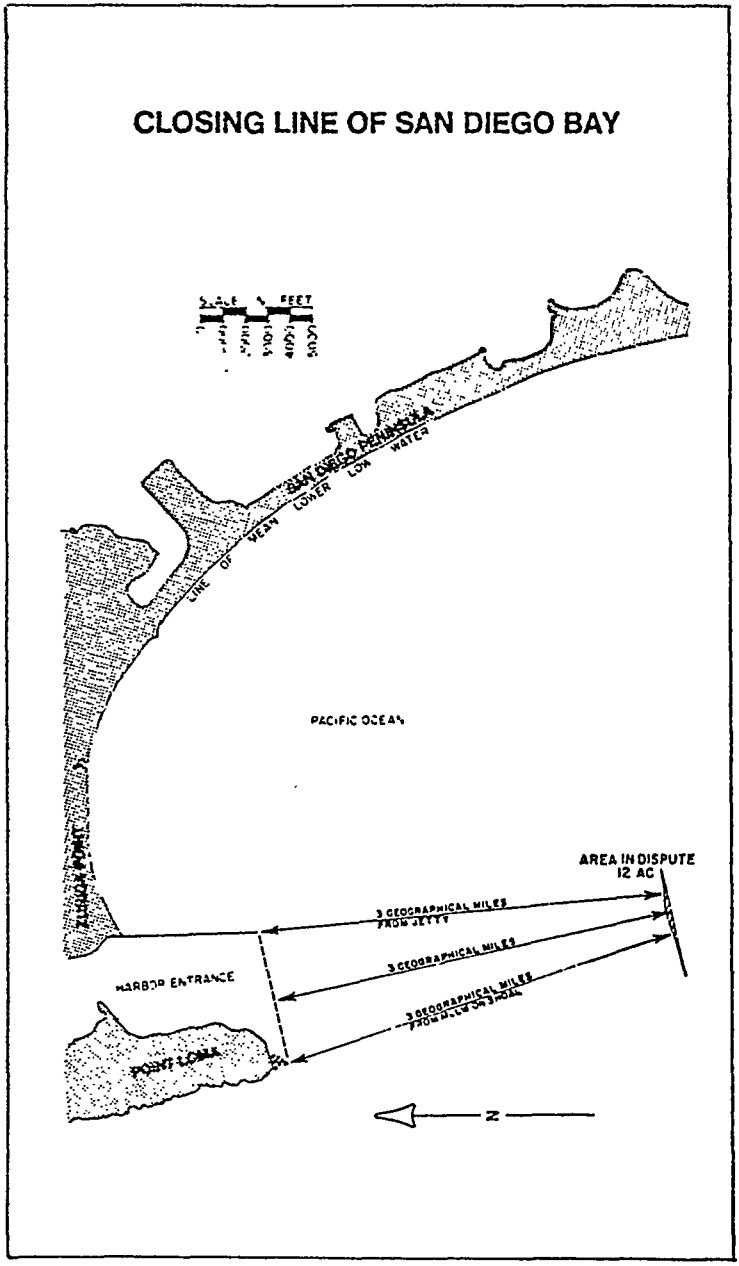
CLOSING LINE OF SAN DIEGO BAY
SCALE IN FEET
SAN DIEGO PENINSULA
LINE OF MEAN LOWER LOW WATER
PACIFIC OCEAN
AREA IN DISPUTE
12 AC
3 GEOGRAPHICAL MILES FROM JETTY
3 GEOGRAPHICAL MILES
3 GEOGRAPHICAL MILES FROM BASE LINE
HARBOR ENTRANCE
POINT LOMA
N

Figure 2

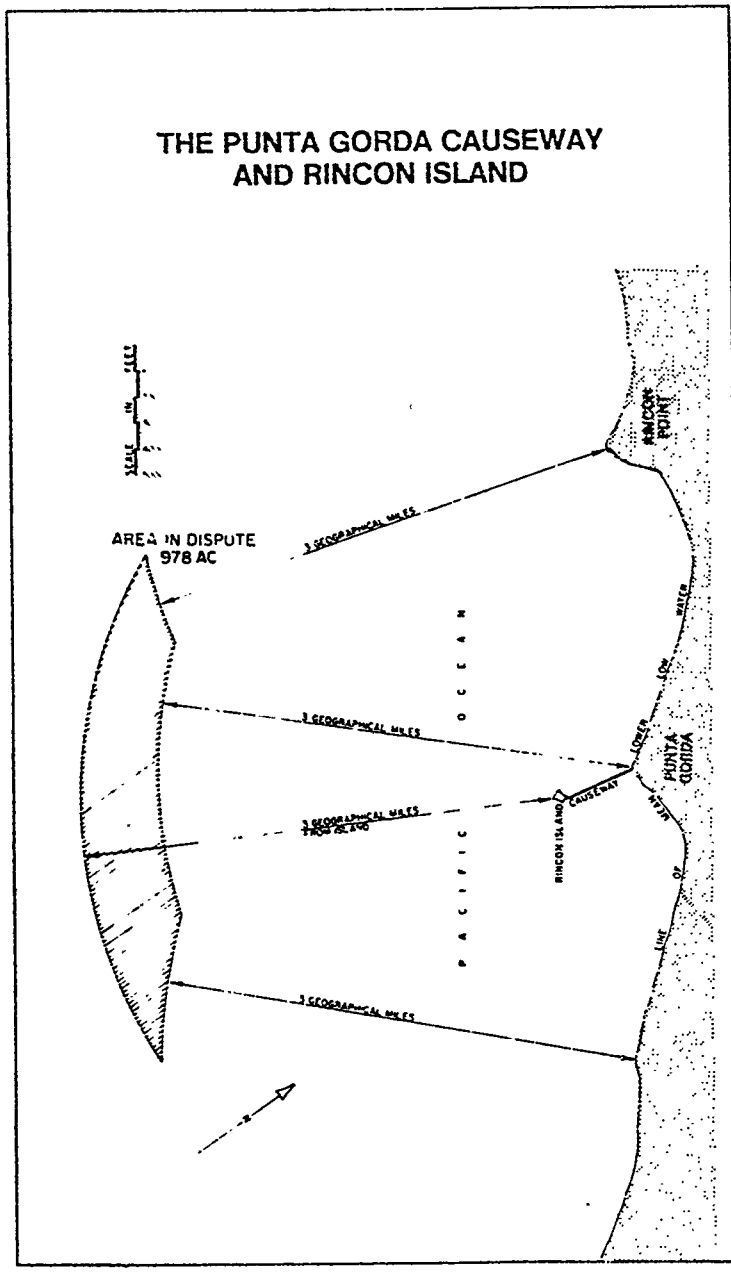

Figure 9

NOTES