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INTERNATIONAL LAW — ANTI-SMUGGLING BILL — JURISDICTION ON THE HIGH SEAS—The control which a littoral state may exercise over the adjacent sea has never been the subject of complete agreement among the nations of the world. Inability to agree and resulting confusion have arisen in many instances from a failure to distinguish between a claim of control over a definite strip of adjacent

water, often spoken of as "territorial waters,"[1] analogous to the control exercised on land and a claim that, for the well-being of the littoral state, control for limited and specific purposes may be extended beyond these territorial waters. The most obvious example of this latter type of control is the enforcement of preventive measures upon vessels, foreign and domestic, which are attempting to violate the revenue laws of the littoral state by smuggling activities.

It is agreed by all nations that the territorial waters embrace a distance of at least three marine miles from the shore. No state contends that this area is any less, but some claim that it is broader. The position assumed by the United States has been that the territorial waters extend only three marine miles from shore, but that for purposes of enforcement of the revenue laws and for the prevention of smuggling a littoral state may exercise such control on the adjacent high seas as is reasonable and necessary for such purposes.[2]

[1] To avoid confusion in language certain words and phrases are used herein as follows:

"Territorial waters" denotes the area of adjacent water over which the control of the littoral states is general for all purposes as on land. Unless otherwise indicated, this area will be considered as three marine miles from low water mark.

"Mile" and "marine mile" are used synonymously and indicate about 1.15 English statute miles.

"League" is used as the equivalent of three marine miles.

"Customs waters" is herein used as defined in Title II, section 201 (m) of the Anti-Smuggling Act of 1935 [49 Stat. L. 517, 19 U. S. C. (Supp. 1936), § 1401 m], as follows: "The term 'customs waters' means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States."

"High seas" herein denotes all waters more than three marine miles from shore.

[2] The first Congress of the United States provided that the proper officers were under a duty to seize, without restriction as to place, vessels which had become liable to seizure through violation of the revenue laws. I Stat. L. 43, c. 5, § 26, Act of July 31, 1789. In 1790 this act was repealed (c. 35, § 74, 1 Stat. L. 178, Aug. 4, 1790) and in its place was enacted a provision [Rev. Stat. (1878), 2d ed., § 3067, p. 589] authorizing customs officers to board vessels bound to the United States at any place within four leagues of the coast for purposes of examination and search and of demanding manifests. In 1866 [Rev. Stat. (1878), 2d ed., § 3059, p. 588] the customs officers were given authority to seize vessels as to which upon examination, as provided in the Act of 1790, it appeared that there had been a violation of the laws of the United States which rendered the vessels and their merchandise liable to forfeiture. These statutes were repealed in 1922 (42 Stat. L. 989) and replaced by provisions limiting the area in which the customs officers were authorized to seize vessels to four leagues or twelve marine miles, but removing the limitation of seizure only of vessels

With the advent of prohibition in the United States, the business of smuggling increased tremendously. The activities of the customs officers and Coast Guard within the twelve-mile zone took on greater proportions. Seizures of foreign vessels within this zone outside the three-mile limit gave rise to diplomatic difficulties with foreign governments which finally culminated in a series of treaties between the United States and sixteen foreign nations[3] which were ratified between 1924 and 1930. These treaties provide in effect that such nations will raise no objections to the boarding of private vessels under their respective flags by the authorities of the United States for the purpose of ascertaining whether such vessels have violated or are attempting to violate the liquor laws of the United States, nor will seizure of such vessels be protested by such governments if there is reasonable cause for belief that the vessels have violated or are violating or attempting to violate these liquor laws, provided that such boarding and seizure shall not take place "at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense." (Article II, section 3, of each treaty.) The treaties contain an added provision that if the liquor is intended to be conveyed to the shore by a vessel other than the one boarded and searched, the speed of such other vessel and not the speed of the vessel boarded shall determine the "one hour sailing distance" in which such search and seizure will not be contested.

Although the treaties operated to deprive the enforcement officers of authority to seize vessels of treaty-nations beyond the one hour sailing distance if such distance should be less than twelve miles from the shore, it appears from the language therein and from dicta in the opinions of the United States Supreme Court[4] that the treaties did not of themselves extend the territorial control of the Federal Government over smugglers beyond the twelve-mile zone. Smuggling operations within the treaty distance beyond the twelve-mile zone were not

bound to the United States and authorizing seizure of vessels within that area which were not bound for the United States. Various other acts were passed by Congress at an early date requiring vessels to comply with certain requirements within this twelve mile zone. See Rev. Stat. (1878) 2d ed., § 2811, p. 543, § 2867, p. 555, § 2773, p. 537.

[3] Great Britain (43 Stat. L. 1761), 1924; Norway (43 Stat. L. 1772), 1924; Denmark (43 Stat. L. 1809), 1924; Germany (43 Stat. L. 1815), 1924; Sweden (43 Stat. L. 1830), 1924; Italy (43 Stat. L. 1844), 1924; Panama (43 Stat. L. 1875), 1925; The Netherlands (44 Stat. L. 2013), 1925; Cuba (44 Stat. L. 2395), 1926; Spain (44 Stat. L. 2465), 1926; France (45 Stat. L. 2403), 1927; Belgium (45 Stat. L. 2456), 1928; Greece (45 Stat. L. 2736), 1929; Japan (46 Stat. L. 2446), 1930; Poland (46 Stat. L. 2773), 1930; Chile (46 Stat. L. 2852), 1930.

[4] Cook v. United States, 228 U. S. 102, 53 S. Ct. 305 (1933); Ford v. United

made illegal by Congress until 1935, at which time Congress also gave authority to the enforcement officials to seize treaty vessels within the treaty distance beyond the twelve mile zone.

It was supposed that with the repeal of prohibition in 1933 liquor smuggling would greatly decline. However, partly due to the customs duties and internal revenue taxes on liquor, smuggling continued with vigor. In 1935, Secretary Morgenthau estimated that the loss to the Federal Government in internal revenue and customs duties for 1935 from smuggling operations would be more than $30,000,000.[5] It was the opinion of the Treasury Department that much could be done toward the prevention of smuggling by the enactment of more adequate anti-smuggling legislation, and the Department sponsored an anti-smuggling bill which was approved by the President on August 5, 1935.[6]

This act has many detailed provisions which will enable the customs officials to grapple with the smugglers more effectively. There are two general classes of provisions in the act which are of special interest from the viewpoint of international law, namely, (1) provisions which make punishable certain acts committed by foreign vessels and foreign citizens outside the territorial authority of enforcement officials of the United States, and (2) provisions which enlarge the area on the high seas beyond the twelve-mile zone within which the enforcement officers are authorized to stop, search, and seize vessels suspected of smuggling.[7] Provisions of the former type are contained in Title I, section 3 (a), and Title II, section 205 (b), (c) and (d).[8]

Section 3 (a) of Title I provides that "Whenever any vessel which shall have been built, purchased, fitted out in whole or in part, or held in the United States or elsewhere" for the purpose of being employed to defraud the revenue laws of the United States or to smuggle goods into the United States, is found at any place where United States customs officers may examine it, the vessel may be seized and forfeited.

Section 205 (b) of Title II provides that any vessel from a foreign

States, 273 U. S. 593, 47 S. Ct. 531 (1927).

[5] See Secretary Morgenthau's statement to the House Ways and Means Committee at the hearings for the proposed anti-smuggling bill. H. Hearings on H. R. 5496, 74th Cong., 1st sess., p. 2, on March 8, 13, and May 1, 2, 1935.

[6] 49 Stat. L. 517, 14 U. S. C., § 64, 18 U. S. C., § 122, 19 U. S. C., §§ 1701-1711, 1401, 1432d, 1434, 1436, 1441, 1581, 1584-1586, 1587, 1601d, 1615, 1619, 1621, 483, 46 U. S. C., §§ 60, 91, 106, 277, 288, 319, 325.

[7] The provisions of the act relating to acts by American vessels and citizens and their seizure and arrest beyond the twelve mile zone will not be discussed here. They involve no new development in the controversial field of the extent of a state's authority on the high seas. The law of the flag follows the vessel and citizens.

[8] 49 Stat. L. 517, 19 U. S. C., § 1703 (a), 19 U. S. C., § 1586 (b), (c), (d).

port or place from which prohibited goods or alcoholic liquors are unladen at any place upon the high seas adjacent to the customs waters of the United States, to be transshipped to any vessel with knowledge on the part of the master of the first vessel, or under circumstances indicating that the purpose is to render it possible, to smuggle such goods into the United States, shall be seized and forfeited, and the master shall be liable to a penalty.

Section 205 (c) of Title II places the same penalties against any vessel and its master in case goods destined for the United States, the importation of which into the United States is prohibited, or which consist of alcoholic liquor, are unladen and transshipped upon the high seas adjacent to the customs waters of the United States to an American vessel or a vessel owned by a citizen of the United States or a person domiciled in the United States or a corporation incorporated in the United States, irrespective of whether the master had knowledge that such goods would be attempted to be smuggled into the United States.[9]

Title II, section 205 (d) reenacts the previous provisions as to transshipment so as to impose the same penalties against any vessel and its master, and any person assisting therein, in case a transshipment prohibited in subsections (b) and (c) is made.

Those provisions of the act which enlarge the area on the high seas beyond the twelve-mile zone within which the customs officers are authorized to stop and search and seize foreign vessels suspected of smuggling are Title II, sections 206 (a) and 203 (a), (d), (f), (g), and (h) and Title I, section 1 (a) and (b).[10] Section 206 (a) of Title II provides that any officer of the customs is authorized to board and examine any "hovering vessel" and if the examination discloses the presence of any dutiable merchandise destined for the United States or discloses that dutiable merchandise destined for the United States has been on board, the officers are authorized to seize the vessel and cargo. The significance of this provision lies in the meaning of the term "hovering vessel," which is defined in section 201 (n) of Title II of the act as, "any vessel which is found or kept off the coast of the United States within or without customs waters,[11] if, from the

[9] Subsection (c) of section 205 is based upon the novel theory that, an American vessel on the high seas being American territory, unlading and transshipping to an American vessel on the high seas constitutes bringing such goods into American territory, and consequently proof of knowledge or intent on the part of the master of the foreign vessel to aid in smuggling such goods into the United States is unnecessary.

[10] 49 Stat. L. 517, 19 U. S. C., § 1587 (a), 19 U. S. C., § 158 (a), (d), (f), (g) and (h), 19 U. S. C., § 1701.

[11] See note 1, supra, for a definition of the term "customs waters" as used in the act.

history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue." However, section 206 does not give authority to the enforcement officers to board, examine or seize vessels of treaty nations beyond the one hour sailing distance established in the treaties.[12]

Title II, section 203 (a) and (f), which are in effect carried over from previous law, authorize and make it the duty of the customs officers to hail and stop, by force if necessary, and to board, inspect and seize outside as well as within their respective districts, any vessel in the United States or within customs waters or customs-enforcement areas which shall become liable to seizure, and to arrest any person liable to arrest by virtue of any revenue law. Subsection (g) of section 203 gives statutory recognition to the doctrine of "constructive presence"; it provides that any vessel within or *without the customs waters* from which merchandise is being or has been unlawfully introduced into the United States by means of any boat belonging to, or owned or controlled by such vessel, "shall be deemed to be employed within the United States and, as such, subject to the provisions of" section 203 of Title II. (But subsection (h) of section 203 provides that no vessel subject to one of the treaties shall be seized beyond the treaty limits of one hour sailing distance.) Subsection (g) places no express limit upon the area of the high seas within which such hovering vessels of non-treaty nations are deemed to be employed within the United States and within which the customs officers are authorized to search and seize them. Presumably, the area in which the enforcement officers may act is co-extensive with any area within which the smuggling activities can be or are attempted to be carried on by the use of small auxiliary boats.

Title I, section 1, provides for the declaration by the President of a "customs-enforcement area" within which the customs officers are authorized to board and examine any vessel, foreign or domestic, and are required to seize such vessel and enforce upon it the customs laws of the United States applicable within such area. The customs-enforcement area is defined as that area or place on the high seas adjacent to but outside customs waters in which the President finds and declares that "any vessel or vessels hover or are being kept," the presence of which at such place or within such area may occasion, promote, or threaten the unlawful introduction of merchandise into the United

[12] Section 206 (a) says that the provisions of section 203 are to apply to such boarding and examination. Subsection (h) of section 203 denies authority to any officer of the United States to enforce any law of the United States upon the high seas upon a foreign vessel in contravention of the sixteen treaties.

States. The waters of the customs enforcement area are to include such waters as "are in such proximity to such vessel or vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessel or vessels." This "area" shall extend parallel to the coast for a distance of not more than one hundred miles in each direction from the place or immediate area in which such vessel or vessels are hovering or being kept. Nor is the area to extend more than fifty marine miles from the outer limits of customs waters. However, section 1 (b) of Title I contains a proviso to the effect that no customs officer is authorized to enforce any law of the United States upon the high seas upon a vessel of one of the treaty-nations beyond the one hour sailing distance. Consequently the declaration of a customs-enforcement area has no effect in granting authority to the enforcement officials to seize any vessel of one of the treaty nations beyond the one hour sailing distance. As to vessels which are not subject to one of the sixteen treaties, the outer limit of the customs-enforcement area will be fifty marine miles beyond the twelve-mile zone, or sixty-two marine miles from the coast. It appears that the customs-enforcement area gives very little additional authority to the activities of the customs enforcement agencies, for Title II, sections 203 and 206 authorize the customs officials to board and examine vessels of the treaty-nations at any place along the coast within one hour sailing distance, irrespective of whether a customs-enforcement area has been declared, and outside any such area as may have been declared. As to the vessels of countries not among the treaty-nations, sections 203 and 206 of Title II give the customs officers authority to operate in an indefinite area at any place along the coast beyond the twelve-mile zone against hovering vessels even though no customs-enforcement area has been declared and outside any such area as may have been declared.

Subsection (b) of section 205, Title II was construed by the Federal District Court for the Eastern District of New York in the first of two cases brought against the Reidun.[13] The Reidun was a Norwegian vessel which was loaded with alcohol at Antwerp and sailed ostensibly for Newfoundland. At a point on the high seas between five hundred and six hundred miles from the coast of the United States the alcohol was transshipped for the purpose of smuggling the alcohol into the United States. Some time later the Reidun came into New York on an innocent voyage and was seized there on March 17, 1936, by agents of the collector of customs. The Government claimed that unlading and transshipping alcohol at a point more than five hundred miles off the coast for the purpose of assisting in the smug-

[13] The Reidun, (D. C. N. Y. 1936) 14 F. Supp. 771.

gling of such alcohol into the United States was unlading "at any place upon the high seas adjacent to the customs waters of the United States" within the meaning of subsection (b) of section 205. The court ruled that this section of the act did not apply. It said that the phrase, "at any place upon the high seas adjacent to the customs waters of the United States" meant within fifty miles beyond the customs waters. The court indicated it could not believe that Congress intended to extend its jurisdiction to a point beyond the distance of a customs-enforcement area, or the limit set in the treaties. The court failed to note the distinction between the area within which the treaties allowed the United States enforcement officers to stop, search and seize vessels, which was the subject-matter of the treaties, and an area within which certain acts of foreign nationals and vessels become unlawful and punishable by American law, although enforcement of such laws in this latter area is beyond the authority of the officers of the United States.

In an amended libel filed against the Reidun[14] this distinction was brought to the attention of the same court. The amended libel declared upon Title I, section 3(a), and alleged that the Reidun was fitted out in part at Antwerp for the purpose of being employed to defraud the revenue laws of the United States. The libel was sustained. The court said that the statute meant that "no matter where a vessel was fitted out and no matter in what degree, if the purpose was to smuggle merchandise into the United States, then when found at any place at which such vessel could be examined by an officer of the customs, the vessel and its cargo shall be seized and forfeited." The court added, "There is no invasion here of treaty rights. There is no search and seizure on the high seas beyond customs enforcement areas nor beyond one hour's sailing distance from the coast. The terms 'in the United States or elsewhere' as used in this subsection are certainly without ambiguity . . . Congress may very well have intended to mete out punishment to those who conspire outside of the territorial jurisdiction to violate the laws of the nation by subjecting them to apprehension or punishment when found within the jurisdiction."

Statutes providing for the punishment of acts done outside the territorial jurisdiction by foreign citizens and subjects are not new. Many of the countries of Europe have at various times provided for the punishment of foreigners who have committed acts or have conspired to commit acts outside the territorial jurisdiction against the safety of the state, and of those who have counterfeited the seals of the state and its currency.[15] The United States has consistently main-

[14] The Reidun, (D. C. N. Y. 1936) 15 F. Supp. 112 at 113.

[15] U. S. DEPT. OF STATE, REPORT ON EXTRATERRITORIAL CRIMES AND THE

tained that a country may not punish foreign nationals for offenses committed in the territorial jurisdiction of another country against the former's subjects,[16] and the Anti-Smuggling Act in no way weakens the American position on this point. The act is not an attempt to assume extraterritorial control over offenses against American citizens by foreign citizens or subjects. Rather, the offenses made punishable by the act come within the general category of acts against the state itself, and are analogous to the counterfeiting of currency and seals of the state. The state has a direct interest of its own in preventing its revenue laws from being evaded. The provisions of the act are necessary to combat smuggling activities, are effective to that end, and do not contravene any legitimate interest of foreign states. No nation can seriously claim that it has an interest in the protection of its ships and nationals from prosecution for activities designed to circumvent the revenue laws of another state.

Those provisions of the act which enlarge the area upon the high seas within which American officials are authorized to stop and seize foreign vessels raise no problem as to the vessels of the treaty-nations. The act expressly denies authority to the enforcement officials to seize such vessels beyond the treaty limits. The problem of international law raised by these provisions is limited to the validity of seizures of vessels of non-treaty nations within the enlarged areas. The thesis for the validity of such seizures, and the premise upon which the act was introduced and passed,[17] is that a nation is authorized to extend its customs control to such a distance from its shores as may be reasonably necessary to enforce its revenue and customs laws. Chief Justice Marshall crystallized this principle in the famous case of *Church v. Hubbart*.[18] This case involved a suit upon two policies of assurance upon cargo with a provision for no liability if the vessel or cargo should be seized for illicit trade. The vessel was seized between twelve and fifteen miles from the coast of Brazil for alleged trading with this

CUTTING CASE (by John Bassett Moore) 38-56 (1887). See also, MASTERSON, JURISDICTION IN MARGINAL SEAS 121-124 (1929), for a brief discussion of the application of British laws providing for seizure and forfeiture of foreign vessels for acts committed on the high seas, upon a later entry within British territorial waters.

Section 37 of the United States Criminal Code [35 Stat. L. 1096, 18 U. S. C., § 88 (1909)] makes unlawful a conspiracy to defraud the United States, made outside of the United States by any one, if there is a subsequent attempt within the jurisdiction by one party to carry out the plan.

[16] See the stand taken by the United States Department of State in the Report on Extraterritorial Crime and the Cutting Case by John Bassett Moore (1887).

[17] H. Rep. 868, 74th Cong., 1st. sess. (1935), by Mr. Doughton of the House Committee on Ways and Means; S. Rep. 1036, 74th Cong., 1st sess. (1935), by Senator King of the Committee on Finance.

[18] 2 Cranch (6 U. S.) 187, 2 L. Ed. 249 (1804).

Portuguese colony, contrary to a Portuguese prohibition. The plaintiff claimed that the vessel was not seized for "illicit trade" and that the seizure itself was illegal. In deciding for the insurer, Chief Justice Marshall said that the power of a nation to secure itself from injury

> "may certainly be exercised beyond the limits of its territory. Upon this principle the right of a belligerent to search a neutral vessel on the high seas for contraband of war is universally admitted, because the belligerent has a right to prevent the injury done to himself by the assistance intended for his enemy: so, too, a nation has a right to prohibit any commerce with its colonies. Any attempt to violate the laws made to protect this right, is an injury to itself which it may prevent, and it has the right to use the means necessary for its prevention. These means do not appear to be limited within any certain marked boundaries, which remain the same at all times and in all situations. If they are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to."[19]

The validity of this position is amply supported by the customs, usages and acquiescence of nations. England has had numerous hovering acts in force since before 1700, providing for the prevention of smuggling offenses occuring from two to one hundred leagues from the English coast, and in certain cases on the high seas with no specified limit. The preamble to the Territorial Waters Jurisdiction Act, passed by Parliament in 1878,[20] declared, "the rightful jurisdiction of Her Majesty, her heirs and successors, extends and has always extended over the open seas adjacent to the coasts of the United Kingdom and of all other parts of Her Majesty's dominions to such a distance as is necessary for the defence and security of such dominions." The Spanish Government, in claiming in 1875 that its laws authorizing control over a six-marine-mile zone for enforcement of its revenue laws was valid in international law, based its contention on the principle enunciated by Marshall in *Church v. Hubbart*.[21] Until the controversy arose between Great Britain and the United States in 1922 over the enforcement of the twelve-mile zone against liquor smuggling activitives, there was complete acquiescence among the nations to the enforcement of hovering acts at various distances from shore. The courts of both England and the United States have consistently

[19] Ibid, pp. 234-235.
[20] 41 and 42 Vict., c. 73.
[21] MASTERSON, JURISDICTION IN MARGINAL SEAS 257 (1929).

applied these hovering acts and have denied objections that they are not justified in the law of nations.[22]

Assuming, then, that a littoral state has the right in international law to exercise a control over the adjacent high seas which is reasonably necessary for the protection of its revenue, the question arises as to whether the provisions of this act are reasonable. With the development of faster boats and better means of communication it has become a rather easy matter to bring contraband goods to the shore from the larger base ships stationed outside the twelve-mile zone. The experience of the enforcement agencies of the United States clearly demonstrates that the twelve-mile zone does not allow effective enforcement of the revenue laws, without a tremendous increase in personnel, boats and equipment at an expense which would practically nullify the increased revenue return to the Federal Government which would be realized if illegal importations were checked. To enlarge

[22] Dean Masterson, in the work cited in the previous note on the control of the littoral state over the adjacent waters, has exhaustively analyzed the legislation, practice and court decisions of England and her dominions and of the United States on this problem; and he has gone into the diplomatic correspondence, treaties and international arbitrations among the nations which have dealt with the question. He concludes that legislation for control of smuggling activities beyond territorial waters is consistent with recognized principles of international law. He backs up his conclusions with a cogent argument for the desirability of such a principle. He points out that there is no injury to the interests of a foreign state or of the community of nations which can begin to balance the interests of the littoral state which are secured by such legislation.

Professor Herbert Arthur Smith of the University of London has arrived at the same general conclusions that hovering legislation is proper in international law because of prevailing custom. 2 SMITH, GREAT BRITAIN AND THE LAW OF NATIONS 169 (1935). Professor Philip C. Jessup of Columbia University is of the same opinion and believes that Chief Justice Marshall was correct in his statement in Church v. Hubbart quoted herein. JESSUP, THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION 91-96 (1927). Professor Jessup repeats this opinion in commenting upon this Anti-Smuggling Act in 31 AM. J. INT. L. 101 (1937).

The validity in international law of the provisions of this act was supported at the hearings before the House Ways and Means Committee by an exhaustive brief submitted by Professor Hessel E. Yntema of the University of Michigan. H. Hearings on H. R. 5496, 74th Cong., 1st sess., 82-124, March 8, 13, and May 1, 2, 1935. Professor Yntema reviewed the evidence of the propriety in international law of such hovering legislation. British and American legislation was summarized, diplomatic correspondence, treaties, judicial precedents and opinions, arbitral awards and opinions of textwriters were analyzed. The conclusion was drawn therein that the evidence in favor of the validity of reasonable hovering legislation is overwhelming. Professor Yntema pointed out that the principle is supported by sound reason and the interests of nations, for, there being no international police of the open sea the alternative to such anti-smuggling laws is to leave the open sea an asylum of lawlessness. He also urged that this limited control over the adjacent high seas is necessary to the littoral state in the exercise of its right to regulate its internal and foreign commerce.

the outward limit of the customs waters to fifteen or twenty or twenty-five miles would have but a limited effect, for the smugglers would only move to a point beyond the new outer limit and continue their operations. The result would simply be that the enforcement agencies would have a greater area to patrol and if there were no greater enforcement personnel and equipment to cover the enlarged area, greater effectiveness in enforcement of the revenue laws could not be expected unless the outer limit were placed at a distance beyond which the hovering vessels could not effectively operate. With the development of newer types of smuggling vessels, that distance would be continually increasing and the enforcement area would have to be constantly enlarged, each time by an amendment to the enforcement provisions of the anti-smuggling laws. This problem is efficiently cared for in sections 203 and 206 of Title II of the Act, which authorize the enforcement officials to seize foreign vessels wherever they are found if they are being used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the revenue laws. The limits upon this authority will be determined by the distance over which hovering vessels can effectively carry on smuggling operations.

There has been little opportunity to test the efficacy of the hovering provisions of the act, for with the prosecution of the Reidun and the realization of the significance of the provisions enforced against her, smuggling liquor into the United States has practically ceased, so far as appears, with a minimum of foreign protest.

James H. Roberton