



**Delimitation of the Territorial Sea: The Method of Delimitation Proposed by the Delegation of the United States at the Hague Conference for the Codification of International Law**

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## DELIMITATION OF THE TERRITORIAL SEA

THE METHOD OF DELIMITATION PROPOSED BY THE DELEGATION OF  
THE UNITED STATES AT THE HAGUE CONFERENCE FOR  
THE CODIFICATION OF INTERNATIONAL LAW

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Since the legal rights of the coastal state and of foreign states within the territorial sea<sup>1</sup> differ greatly from the rights of all states on the high sea, it should be made possible for a navigator, or a fisherman, or the coastal state, to determine with certainty whether or not a vessel is in territorial waters or on the high sea. It will be practically impossible to negotiate a general convention embodying fundamental international law relating to territorial waters until the geographical problem of delimiting the zone of territorial waters is solved. The complexity and importance of the geographical problem are evident in the fact that, of the 28 "bases of discussion" which were formulated by the preparatory committee, for the consideration of the Commission on Territorial Waters at the Conference for the Codification of International Law recently held at The Hague, one-half related to the delimitation of territorial waters, while the other half related to legal rights and obligations.

The proposal of the delegation of the United States of America which was submitted at the Conference at the session of March 27, 1930, represented an attempt to view all of the problems of delimitation as a whole, and to set forth a body of rules both simple in application and definite in result. This is believed to be the first attempt to draft a comprehensive and systematic body of rules for the purpose, and it was suggested that they be studied objectively, so far as practicable, on the charts and maps of the coasts in which the participating countries were especially interested.

The American proposal was based on the assumption that, since we cannot choose our coasts but must take them as we find them, so the limit of the territorial sea, once the breadth of the belt is agreed upon, must be a line which is derived directly from the coast-line, in an automatic manner except where allowance must be made for existing agreements and situations.

In order to delimit the territorial sea it is necessary to have agreement re-

<sup>1</sup> At the Conference for the Codification of International Law, which was held at The Hague, March 13-April 12, 1930, the Second Commission (that on Territorial Waters) chose the term "territorial sea" in preference to the more commonly used term "territorial waters."

garding the breadth of territorial waters, the landward base-line from which it is measured, and the method of drawing the seaward boundary line.

With reference to the question of the breadth of the territorial sea, and the base-line, the American position is that territorial waters extend to three marine or nautical miles<sup>2</sup> measured from low-water mark<sup>3</sup> along the coast. Norway, Sweden, Finland, and Iceland claim four miles; several countries, principally in the Mediterranean, claim six miles. It was pointed out at the conference that four-fifths of the shipping of the world is conducted by nations which regard three nautical miles as the width of the territorial waters. In the interests of clarity and brevity the three-mile rule will be assumed.

The problems involved in the method of delimiting territorial waters are almost entirely independent of the breadth of territorial waters—whether three miles, four miles, six miles, or any other width. In front of straight and simple convex coast-lines there is general agreement as to the method of drawing the boundary line between the high sea and the territorial sea. Complications arise, however, when there are bays, islands, archipelagos, straits, and roadsteads to be taken into consideration. Difficulties increase when there are straits between islands, and islands within straits.

In the delimitation of territorial waters two groups of interests need to be taken into consideration: (1) navigation; and (2) fishing. The interests of navigation require a minimum of interference on the part of a coastal state, and the maximum of simplicity in the principles and rules for the delimitation of territorial waters. Interest in fishing rights is restricted to certain coasts and is of two sorts: (1) the interest of the coastal state in territorial waters as the zone in which its nationals have an exclusive right to fish; and (2) the interest of all countries whose fishermen visit the fishing banks to protect small fry and thus insure good fishing in the future.

Because it is an accepted rule of international law that only the nationals of the coastal state may fish in its territorial waters, there is a tendency, on the part of states whose coastal waters are good for fishing purposes, to delimit their own territorial waters in such a way as to acquire the largest possible area of territorial sea. In the present unsettled state of things a country sometimes attempts to apply the rules for delimiting territorial

<sup>2</sup> The nautical mile was defined by the Technical Subcommittee (appointed by the Commission on Territorial Waters) as the equivalent of one minute of latitude at the particular latitude concerned—varying about 19 meters between the equator and the poles. The American delegation recommended the adoption of 1852 meters as the invariable length of the nautical mile—the definition adopted by the International Hydrographic Conference at Monaco, in April, 1929, and already accepted by at least half a dozen countries.

<sup>3</sup> The Technical Subcommittee of the Commission on Territorial Waters defined the base-line as follows:

Subject to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the line of low-water mark along the entire coast.

For the purposes of this Convention, the line of low-water mark is that indicated on the charts officially used by the Coastal State, provided the latter line does not appreciably depart from the line of mean low-water spring tides.

waters on its own coasts in a manner which it finds objectionable when applied by another country for the purpose of excluding foreign fishermen.

Any general convention relating to the territorial sea will necessarily take into account existing treaty and other arrangements, and existing situations in "historic waters." These arrangements and situations are believed to affect only the landward base-line from which territorial waters are delimited. There appear to be no agreements or understandings which affect the manner or method of drawing the boundary line between the high sea and the territorial sea.

If the territorial sea is to be delimited in a manner to occasion the least possible interference with navigation, it will be necessary to *assume the viewpoint of one who is on the sea* and who wishes to know where territorial waters begin. The viewpoint of a man on land who wishes to know where territorial waters end is of no more than theoretical importance except as it may be said to coincide with the fishermen's interest in those limited areas in which fishing is profitable. The difficulties hitherto encountered in delimiting portions of the territorial sea have arisen, however, largely from the fact that the problem has generally been considered from the viewpoint of a man on the land rather than the viewpoint of the navigator. This is particularly true with reference to bays, the discussion of which will be found in a later section.

#### THE GENERAL RULE FOR DELIMITATION

The literature on territorial waters frequently states that the three-mile belt is to be measured "following the sinuosities of the coast." But it is not clear how the sinuosities of the coast are to be followed.

Three different methods of drawing the line of the exterior limit of territorial waters have at different times been proposed:

(1) A line parallel to the general trend of the coast, following the sinuosities thereof;

(2) A series of straight lines, parallel to straight lines drawn from point to point along the coast and from island to island; and

(3) A line all points of which are precisely three miles (or any other distance) from the nearest point on the coast.

The first method (see Fig. 1-a),<sup>4</sup> that of a line following the sinuosities of the coast and drawn parallel to the general trend of the coast, is occasionally suggested in the literature. It is utterly impracticable, however, and was not proposed at the Hague Conference.

The second method is really a combination of two methods. The distinctive feature is that on concave coasts it follows a series of straight lines arbitrarily drawn. Several of the countries which signed the North Seas Fisheries Convention of 1882 interpret the ten-mile bay provision of that

<sup>4</sup> These figures will be found on pages 546-547, *infra*.

convention as entitling them to draw lines up to ten nautical miles in length in almost any indentation of the coast, however shallow it may be and however much it may exceed ten miles in breadth between the headlands. Thus there may be a series of ten-mile lines within a single wide bay with smoothly curved shores, drawn between points arbitrarily chosen. But along convex coasts straight lines are impracticable and here the second method coincides with that which is next explained. (See Figure 1-b, which is an actual case, copied from an unpublished foreign chart.)

But it does not seem altogether reasonable to use one method where the land penetrates into the sea, and another method where the sea penetrates into the land. Practically it presents considerable difficulties, because convexities and concavities of the coast are of all degrees and sizes, and grade off insensibly into one another. Since the straight lines must be drawn arbitrarily, it imposes upon the coastal state the burden of deciding where they shall be drawn, and the navigator cannot know where territorial waters begin unless the coastal state publishes the lines on charts.

The third method (see Fig. 1-c) is intended to meet the actual requirements of the navigator. It is a line every point of which is precisely three nautical miles from the nearest point on the coast.

This general principle, in the language of the American amendment presented at the Hague Conference, reads as follows:

Except as otherwise provided in this Convention, the seaward limit of the territorial waters is the envelope of all arcs of circles having a radius of three nautical miles drawn from all points on the coast (at whatever line of sea level is adopted in the charts of the coastal State), or from the seaward limit of those interior waters which are contiguous with the territorial waters.

*One and only one such line may be drawn in front of any coast.*

The practicability of the third method is shown as follows. Finding his position at sea, and locating it on his chart, the navigator describes a circle of three-mile radius; if it cuts land or national waters<sup>5</sup> he knows that he is in territorial waters; if it barely touches land (or national waters) he knows that he is exactly on the boundary line between the territorial sea and the high sea; if it does not touch at all he knows that he is on the high sea. (See Fig. 2 for illustration of all three positions.) Because only one such line can be drawn no line needs to be drawn at all on the chart.

If the line is drawn, however, it will invariably be found to be the envelope of the arcs of circles of three-mile radius drawn from all points on the coastline and from the exterior limit of national waters. Although it takes due account of every point on even the most complex coast, it should be noted

<sup>5</sup> "National waters" are also called "inland waters" and "interior waters." These latter terms, although commonly employed, are somewhat inapt when applied to the waters of a bay or estuary which is contiguous with the territorial sea.

that the envelope of the arcs of circles constitutes a relatively simple line in all cases.<sup>6</sup>

The three methods coincide in results obtained in front of perfectly straight coast-lines.

All three systems are geometrical in character. *In fact any system for delimiting territorial waters must be derived geometrically from the coast-line.* No non-geometrical line limiting territorial waters is conceivable, except a line which bears no relation whatever to the coast, and such a line would be inconceivable as a practical solution of the problem.

In order to present a complete picture of the problems involved in delimiting territorial waters it must be observed that although, by the principle of drawing the envelope of the arcs of circles, there is one and only one such line which can be drawn in front of any coast, it does not follow that there is only one coast-line from which any line representing the limit of territorial waters can be drawn. In fact any boundary line between the territorial sea and the high sea which is derived by the "envelope" method may be derived from any one of a number of coast-lines of almost infinite variety and character. Figure 3 is designed to illustrate this fact. If the critical points (A, B, C, etc., on the diagram) from which the "envelope" arcs are drawn should coincide, on any two coasts, in their relative distance and direction from one another, the "envelopes" would be identical, and one could be superposed upon the other. An appreciation of this fact is essential to a thorough understanding of the problems of delimiting the territorial sea.

Since coast-lines are of infinite variety, any single rule, no matter how simple, must operate to produce some stretches of territorial sea boundary which will be found unsatisfactory to navigators, to fishermen, or to both. In attempting to avoid or eliminate such undesirable features there are but two alternatives:

(1) A series of rules or principles, each of which is adapted to a particular type of coast;

(2) A single rule, such as the envelope of the arcs of circles, with provision for the elimination of occasional impracticable results.

The first method appears to have been in the back of the minds of the majority of those who have hitherto made studies regarding the delimitation of the territorial sea. This accounts for the proposal to draw straight lines in front of concave coasts, while drawing arcs of circles in front of convex coasts. It accounts also for the efforts which were made by the preparatory committee for the Hague Conference, and at the Conference, to provide still different methods for the delimitation of the territorial sea around the islands of an

<sup>6</sup> In Figure 1-c, note that although the arcs of circles of three-mile radius are drawn from all points on the coast, a small number of the arcs drawn from the outermost points on the coast extend out beyond all the others, and the outer portions of these constitute the "envelope." In the diagram these are the arcs which are swung from points A to L inclusive. The arcs described from all the intermediate points, for example from M, nowhere touch the "envelope."

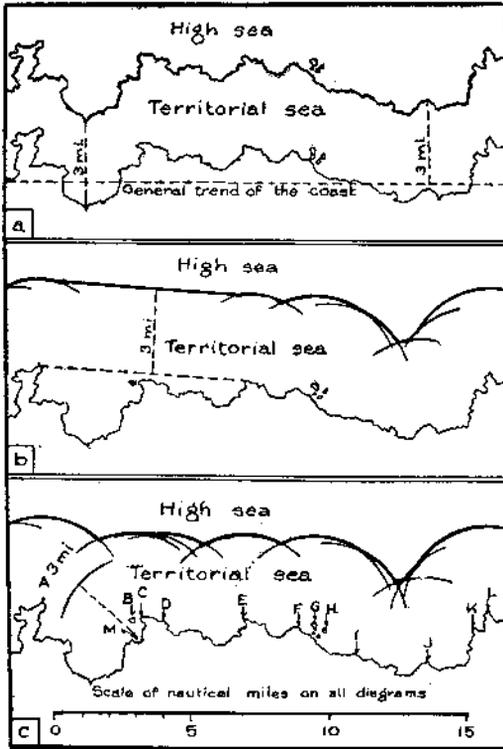


FIG. 1. Suggested methods of delimiting the territorial sea. (a) Lines following the sinuosities of the coast, drawn parallel to the general trend of the coast. A vague and impracticable idea.

(b) Straight lines parallel to straight lines, drawn between selected points on a concave coast (with the arcs of circles elsewhere). This illustration is copied from an unpublished foreign chart.

(c) The American proposal: a line every point of which is exactly three nautical miles from the nearest point on the coast, described as the envelope of the arcs of circles of three-mile radius drawn from all points on the coast.

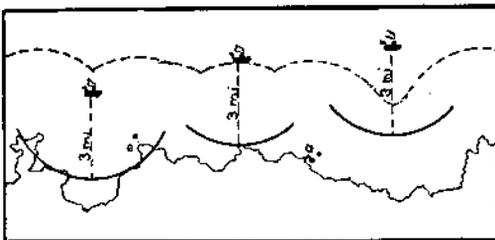


FIG. 2. The navigator's method of ascertaining whether he is in territorial waters or on the high sea, if the limit is defined as the "envelope of the arcs of circles of three-mile radius." It is evident that the limit of the territorial sea need not be indicated on the chart.

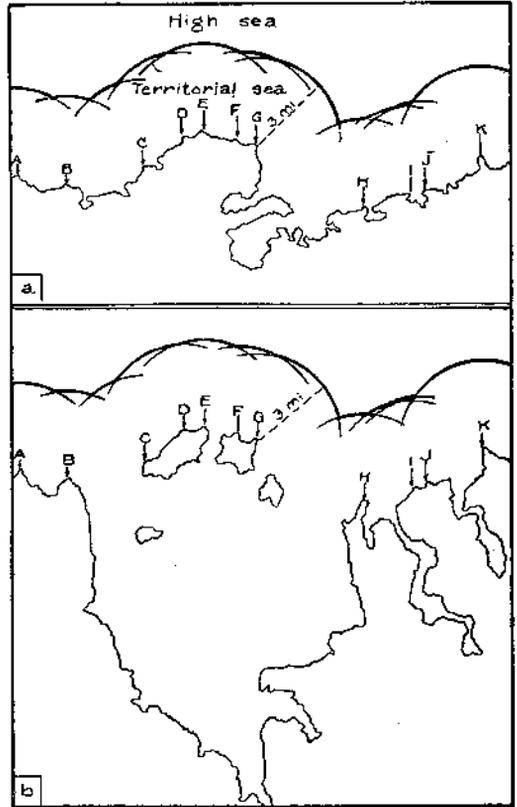


FIG. 3. Two dissimilar coasts the limits of whose territorial waters are identical in form. The points from which the envelopes of the arcs of circles are developed (A, B, C, etc.) have exactly the same relative positions on the two coasts.

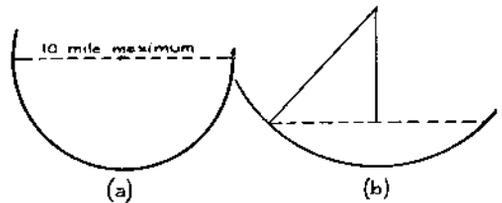


FIG. 4. Proposals for minimum "bays."

(a) The American proposal.

(b) The French proposal.

The proposal may be said to have been, in each instance, that when the bay is larger than the minimum a straight line shall be drawn between headlands, or where the bay first narrows to ten miles in width, and that the three-mile limit will be measured out from the straight line. With both proposals, where the bay has less indentation, the territorial sea limit will follow the "envelopes of the arcs of circles" drawn from all points on the coast inside the bay.

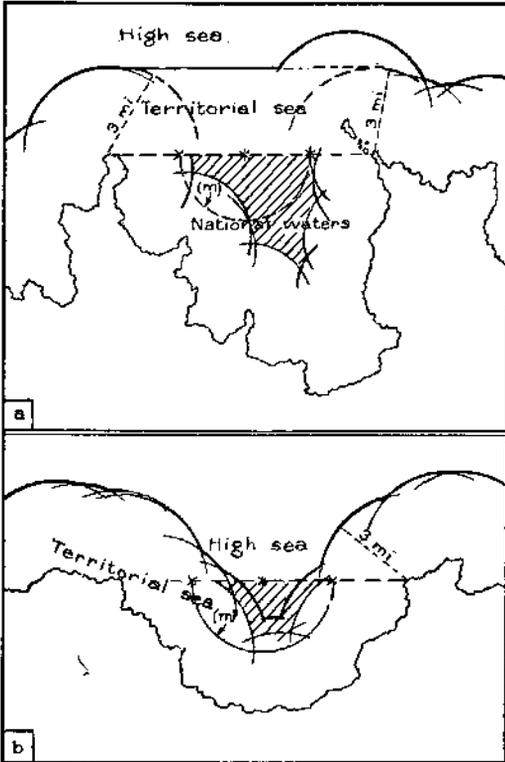


FIG. 5. The American proposal regarding bays and estuaries. (a) Since the area between the envelopes of the arcs of circles and the straight headland-to-headland line (shaded in the diagram) exceeds the area of the semi-circle (marked "m"), the waters of the bay are interior or national waters, and the straight line becomes the landward boundary of the territorial sea. (b) Since the area between the envelopes of the arcs of circles and the straight headland-to-headland line (shaded) is less than the area of the semi-circle (marked "m"), the waters of the bay are not interior waters, and the territorial sea is delimited by means of the envelope of the arcs of circles of three-mile radius drawn from all points on the coast.

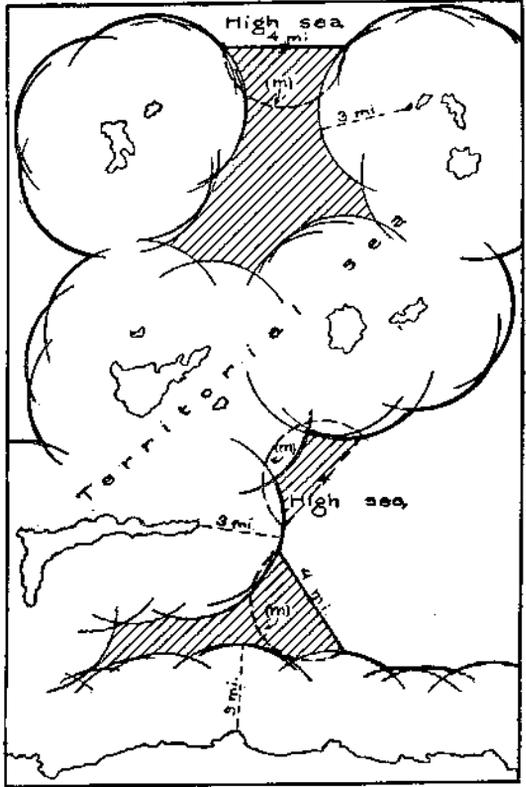


FIG. 6. The American proposal for the elimination of objectionable pockets of the high sea. The envelope of the arcs of circles of three-mile radius is first drawn from all coasts, both mainland and islands. Where there is a pronounced pocket of high sea which may be wholly enclosed by drawing a single straight line not more than four miles long, such a line is drawn where the entrance first narrows to four miles. If the area between the straight line and the "envelope" (the three shaded areas in the diagram) exceeds the area of a semi-circle drawn on the four-mile line (as in the upper and lower shaded areas), the pocket of high sea may be assimilated to the territorial sea. If the area is less than that of the semi-circle (as in the middle shaded area) the pocket remains a portion of the high sea.

archipelago. It involves, however, the definition of such terms as "bay" and "group of islands," and the classification of coast-lines into discrete types. This is exceedingly difficult, if not impossible, and almost futile when it is remembered that coast-lines of very dissimilar types may have territorial sea boundaries which are strikingly similar if not identical.

The alternative method is the result of studying all aspects of the problem with relation to each other, keeping in mind particularly the point of view of the man on the sea, especially the navigator. This method is to derive the limit of territorial waters from all points of the coast-line by a single, simple geometrical procedure, and then to eliminate any impracticable portions of the line by an equally simple and impartial geometrical principle.

It will be found that nearly all of these impracticable results really belong to a single type, namely, small pockets of the high sea which are almost wholly surrounded by territorial waters. The occurrence of such pockets of high sea in bays has been the occasion of much difficulty and serious study. The similarity of the problems created by the occurrence of such pockets of high sea in the vicinity of islands appears not to have been noted.

It has been remarked that there is quite general agreement on the principle of the "envelopes of the arcs of circles" in delimiting territorial waters in front of convex coasts, and that difficulties arise only with respect to concave and highly complicated coast-lines. These difficulties relate chiefly to the interior or landward base-lines from which the envelopes of the arcs of circles should be drawn.

Assuming the "envelope" method as the general rule of delimiting the territorial sea, two questions arise, both of which relate to the base-line from which the three-mile belt is to be measured on certain types of coasts:

(1) What is to be regarded as "land," having a coast-line from which to measure at low-water mark, in the case of rocks and shoals awash only at low tide and therefore not constituting *bona fide* islands?

(2) What are the boundaries between national or inland waters and the territorial sea, which are to be followed in lieu of the coast-line in front of pronounced indentations of the coast, such as bays and estuaries?

The first question is one of definition only. The answer does not affect the *method* of delimiting territorial waters. It matters not whether an "island" is defined as being capable or incapable of use, or as exposed at all stages of the tide or only at low tide. Any such definition simply determines what "land" is to be disregarded altogether in the delimitation of territorial waters. Discussion of this question is omitted from the present study.

The second question involves, in a sense, both definition and delimitation. It is discussed below under the heading "Bays and Estuaries."

#### BAYS AND ESTUARIES

There is no other aspect of the problem of delimiting territorial waters which has occasioned as much difficulty as the determination of the particular

indentations of the coast—whether called bays, gulfs, estuaries, or anything else—whose waters constitute national or interior waters rather than territorial waters. The North Atlantic Fisheries Arbitration Tribunal, for example, decided that

In case of bays, the three marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay.<sup>7</sup>

There is as yet, however, no established rule by which to determine what bodies of water “have the configuration and characteristics of a bay.” It is admitted that when an indentation of the coast is regarded as a *bona fide* bay, it ceases to have the configuration of a bay at its outer headlands.

Assuming that an indentation of the coast constitutes a true bay, there is a question as to its size. In the case of a large gulf the boundary of territorial waters is measured from the sinuosities of the coast. The waters of a small bay, which does not exceed six nautical miles in width, are automatically enclosed by the three-mile rule. A ten-mile width has been frequently accepted, however. The reasons for the ten-mile rule have been well stated by Judge John Bassett Moore:<sup>8</sup>

Since you observe [he wrote to Mr. Barclay], that there does not appear to be any convincing reason to prefer the ten-mile line in such a case to that of double three miles, I may say that there have been supposed to exist reasons both of convenience and of safety. The ten-mile line has been adopted in the cases referred to, as I understand them, as a practical rule. The transgression of an encroachment upon territorial waters by fishing vessels is generally a grave offence, involving in many instances the forfeiture of the offending vessel and it is obvious that the narrower the space in which it is permissible to fish the more likely the offence is to be committed. In order therefore that fishing may be both practicable and safe and not constantly attended with the risk of violating territorial waters, it has been thought to be expedient not to allow it where the extent of free waters, between the three-mile line drawn on each side of the bay, is less than four miles. This is the reason of the ten-mile line. Its intention is not to hamper or restrict the right to fish, but to render its exercise practicable and safe. When fishermen fall in with a shoal of fish, the impulse to follow it is so strong as to make the possibility of transgression very serious within narrow limits of free water. Hence it has been deemed wiser to exclude them from spaces less than four miles each way from the forbidden lines. In spaces less than this, operations are not only hazardous, but so circumscribed as to render them of little practical value.

The report of the Commission on Territorial Waters, at the recent Hague Conference, contains the following statement regarding the ten-mile rule:

<sup>7</sup> I Proceedings, p. 97.

<sup>8</sup> In a letter quoted in 13 (1894-95) *Annuaire de l'Institut de Droit Int.*, p. 146: quoted in Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, p. 356.

"Most Delegations agreed to a width of ten miles, provided a system were simultaneously adopted under which slight indentations would not be treated as bays" (p. 12).

Several attempts were made to define the characteristic configuration of a bay whose waters should be regarded as national or interior waters. The German delegation, for example, proposed measuring the maximum depth of a bay in proportion to its breadth from headland to headland. The British delegation proposed taking into account the ratio between average depth and breadth by measuring the area. Subsequently the British and German delegations withheld their amendments and voted for the American proposal.

The American proposal avoids the definition of such words as "bay" and "estuary" in a geographical sense. It simply undertakes to determine when an indentation of the coast is sufficiently great to regard the waters within the indentation as national waters, which are to be separated from territorial waters by a straight line drawn across the entrance.

The border-line case between an open bay whose waters are territorial waters, and a closed bay whose waters are national or interior waters, is assumed to be a semi-circle whose diameter does not exceed ten miles (see Fig. 4). Because of the frequent irregularity of bays, instead of reckoning the simple or the average depth in proportion to the width of the entrance, it is proposed to take the general shape into account.

Since bays frequently have minor indentations which should be ignored for practical purposes, and since in the case of estuaries it would be difficult to determine how far up the river to go in measuring the area, the American proposal is to use a method inside the indentations which is exactly similar to the drawing of the arcs of circles from all points along the coast (see Fig. 5). It is drawn, however, not with a radius of three miles but with a radius which is proportionate to the width of the entrance. A comparison is then made between the area enclosed by the envelope of the arcs of circles and the straight line across the entrance (the shaded areas in the diagrams), and the area of a semi-circle whose diameter is proportionate to the width of the entrance. When the area of the special "envelope" inside the bay exceeds the area of the semi-circle, the waters inside the straight line are national waters, and the three-mile limit is measured from the straight line. Otherwise the limit is measured from all points on the coast.

In addition to the distinct advantage of being equally applicable to estuaries and bays, this expedient has the further advantage of both exaggerating and simplifying the characteristic shape of the bay or estuary. It is much easier to take into consideration the area enclosed within the envelope of the arcs of circles than it would be to take account of the area of the entire bay or estuary following all the sinuosities of the coast.

The American proposal with reference to bays and estuaries was submitted to the Hague Conference in the following language:

Subject to the provisions of Article . . . with reference to bays and other bodies of water which have been under the jurisdiction of the Coastal State, in the case of a bay or estuary the coasts of which belong to a single State, or to two or more States which have agreed upon a division of the waters thereof, the determination of the status of the waters of the bay or estuary, as interior waters or high sea, shall be made in the following manner:

(1) On a chart or map a straight line not to exceed ten nautical miles in length shall be drawn across the bay or estuary as follows: The line shall be drawn between two headlands or pronounced convexities of the coast which embrace the pronounced indentation or concavity comprising the bay or estuary if the distance between the two headlands does not exceed ten nautical miles; otherwise the line shall be drawn through the point nearest to the entrance at which the width does not exceed ten nautical miles;

(2) The envelope of all arcs of circles having a radius equal to one-fourth the length of the straight line across the bay or estuary shall then be drawn from all points on the coast of the mainland (at whatever line of sea level is adopted on the charts of the coastal State) but such arcs of circles shall not be drawn around islands in connection with the process which is next described;

(3) If the area enclosed within the straight line and the envelope of the arcs of circles exceeds the area of a semi-circle whose diameter is equal to one-half the length of the straight line across the bay or estuary, the waters of the bay or estuary inside of the straight line shall be regarded, for the purposes of this convention, as interior waters; otherwise they shall not be so regarded.

When the determination of the status of the waters of a bay or estuary has been made in the manner described above, the delimitation of the territorial waters shall be made as follows: (1) if the waters of the bay or estuary are found to be interior waters the straight line across the entrance or across the bay or estuary shall be regarded as the boundary between interior waters and territorial waters, and the three-mile belt of territorial waters shall be measured outward from that line in the same manner as if it were a portion of the coast; (2) otherwise the belt of territorial waters shall be measured outward from all points on the coast line; (3) in either case arcs of circles of three-mile radius shall be drawn around the coasts of islands (if there be any) in accordance with provisions for delimiting territorial waters around islands as prescribed in Article . . .

The reason for using a radius which is a given fractional part of the breadth of the bay between headlands, or where it first narrows to ten miles, is that it takes full account of the shape of both small and relatively large bays.

It may be found that a radius equal to one-fourth the length of the straight line across the bay may prove to be too large a fractional part, in that it may generalize the shape of the bay too much and not take sufficient account of minor indentations. It might be modified, for example, by using a radius equal to one-fifth of the length of the straight line in describing the arcs of circles within the bay, and then comparing the area within the envelope of

the arcs with a semi-circle whose diameter is equal to three-fifths of the length of the straight line across the bay. It will be necessary to try out the method on many bays, of different types, in which different countries are interested, before the acceptability of the American proposal with reference to bays and estuaries, and the desirability of modifying it, will be known.

The reason for ignoring islands in the process suggested in the American amendment is that it is impossible to take account of islands in or near the mouth of a bay and at the same time consider the real shape of the bay itself. Islands of all sizes and shapes are found in and near bays and it is believed to be impracticable to treat some of them as if they were mainland when some islands, because of their small size and position, would necessarily be ignored. The existence of islands in bays is taken into account quite independently in the American proposal for the elimination of anomalous pockets of high sea.

#### ASSIMILATION OF OBJECTIONABLE POCKETS OF HIGH SEA

If the general rule of describing the arcs of circles is generally accepted, and if an impartial rule is adopted for the classification of bays and estuaries as interior waters or high sea, it might seem that there would be no actual need of further elaboration of the method of delimiting territorial waters.

Nevertheless, it will be found that when the arcs of circles of three-mile radius have been drawn from all points on the coast-line of both mainland and islands, and when it has been determined what indentations of the coast have the configuration of closed bays whose waters are interior or national waters, there will remain small pockets of the high sea deeply indenting territorial waters. These pockets appear only where there are islands. They may be occasioned by the presence of one or more islands near the mainland, or of any number of islands at any distance from the mainland. Because the coast-line, and the groupings of islands, are of infinite variety, there is no conceivable general rule for delimiting territorial waters which will not result in these anomalies on the chart when the three-mile limit is drawn.

It was rather generally admitted, however, that these anomalous pockets of high sea should be eliminated in some simple fashion. From the viewpoints of both the navigator and the fisherman simplification is desirable.

The reasons for assimilating pockets are similar to the reasons for enclosing deep bays and other indentations in the mainland, namely, that they constitute no useful portion of the high sea from the viewpoint of navigation, and that they do not provide sufficient space in which the nationals of a foreign State may fish without encroaching upon territorial waters. The American proposal is to permit the assimilation of these pockets to the status of territorial waters (not interior waters) when a single straight line not to exceed four miles in length would enclose a pocket larger in area than a certain minimum (see Fig. 6).

The text of the American proposal submitted at the Hague Conference reads as follows:

(1) Where the delimitation of territorial waters would result in leaving a small area of high sea totally surrounded by territorial waters of one or more States, the area is assimilated to the territorial waters of such State or States.

(2) Where the delimitation of territorial waters, as prescribed in the foregoing articles, results in a pronounced concavity such that a single straight line, not more than four nautical miles in length, drawn from the envelope of the arcs of circles on one side to the envelope of the arcs of circles on the other side entirely closes an indentation, the coastal State may regard the body of water enclosed within the envelope of the arcs of circles and said straight line as an extension of its territorial waters if the area exceeds the area of a semi-circle whose diameter is equal to the length of the straight line; if the coastal State chooses to assimilate these waters it shall notify the nations which may be interested therein.

#### THE AMERICAN PROPOSAL VIEWED AS A WHOLE

The system of delimiting territorial waters, as proposed by the American delegation at The Hague, should be regarded as a whole. Essentially it provides for three steps:

(1) Describing the envelopes of the arcs of circles of three nautical mile radius along all coasts, including islands;

(2) Determining whether the waters of bays and estuaries are national waters or not, and thus ascertaining whether the three-mile limit is to be measured from the sinuosities of the coast or from a straight line enclosing interior waters;

(3) Eliminating undesirable and anomalous pockets of high sea occasioned by the presence of islands.

This system is an attempt to apply to all coasts of whatever character, in a scientific and impartial manner, the method of drawing the envelopes of the arcs of circles—the method which is used by nearly all countries on convex coasts, and by many countries on concave coasts as well. By providing a simple and impartial method of determining the status of waters of bays and estuaries it proposes to solve this hitherto baffling problem. The provision for the assimilation of pockets completes the system of delimiting territorial waters by methods derived directly from the configuration of the coasts, and reduces to the very minimum the anomalies which are inevitable under any conceivable system.

It should be remembered that a very small fraction of the territorial waters of the world have been delimited on charts according to any scheme whatever. The question of the *method* of delimitation is therefore of primary importance, whether for the use of the coastal state in preparing charts showing the limits of the territorial waters, or for the use of navigators and fishermen in the absence of published charts showing such limits. The amendments submitted by the American delegation embodied an attempt to supply a method of universal applicability.

In order to ascertain the workability of the proposed system, the delegates of various countries brought to the American delegation the charts of their own coasts, showing unpublished lines representing the limits of the territorial sea as they have been defining them, and asking that the results by the American method be worked out for comparison. In most cases the American method would deprive the coastal state of very small portions of territorial sea, frequently negligible in size; in several cases the results were identical with those obtained by the diverse and necessarily arbitrary methods employed by the coastal state in the absence of a general method. It would have been enlightening to reproduce a number of such typical comparisons on charts if there were space.

At the Hague Conference considerable time was given to the consideration of several aspects of delimitation which have been touched upon only lightly in the preceding paragraphs. These include the question of bays whose waters are bordered by two or more countries, various questions relating to straits and to roadsteads, and the question of whether a special scheme should be applied to island groups. On all of the questions, except that relating to groups of islands, the American delegation attempted to make a direct contribution.

Efforts of the conference to define a group of islands, in terms of numbers, size, and relative position of islands, did not produce practical results. The real reason for making a special case of islands is that the three-mile envelope leaves undesirable pockets. It is the American viewpoint that the only practicable way to eliminate these pockets is to consider the pockets as pockets, rather than to consider the islands as islands. It is believed that the general proposal for the assimilation of anomalous pockets of high sea by a geometrical means avoids the definition of a "group of islands," just as the geometrical solution of the proposal relating to bays avoids the definition of "bays," and that in both cases the desired results are obtained in an entirely satisfactory manner.

It may be noted, somewhat parenthetically, that, regardless of what definition may be adopted for the term "island" as applying to small rocks, shoals, and shifting bars, some of which are awash only at low tide, and many of which constitute nothing but an obstacle to navigation, a large portion of the coast of Norway will present a unique problem. Much of the fjorded western coast of Norway is fringed with almost countless islands and rocks, and it is exceedingly difficult to indicate exactly which of these meet the requirements of any definition of the term "island" for delimitation purposes, and which rocks do not meet such requirements. Therefore, a navigator could not swing his arc of three-mile radius from the point on the chart indicating his position and readily ascertain whether or not he was in territorial waters or on the high sea. To describe the arcs of circles around all the technical "islands" along the Norwegian "skjaergård" would result in a series of arcs of circles of unusual complexity. For that exceptional coast it

would appear that the Norwegian system of indicating arbitrary straight lines as the boundary between the territorial sea and the high sea is not only justified, but practically inevitable, and the further fact that these are rather commonly accepted as "historic" waters tends to eliminate this coast from the operation of the system proposed in the American amendment for general application.

The system of delimiting territorial waters, as proposed in the American amendment, reduces to a minimum the necessity of indicating lines on charts, or of defining them in "sailing directions" and "pilot books." No lines need be indicated or defined except, perhaps, where there are interior waters contiguous with territorial waters which should be delimited, or where there are small pockets to be assimilated to the status of territorial waters. Many of these apparent exceptions can be readily described in the "sailing directions" and need not be indicated on published charts.

As already suggested, the problems involved in delimiting territorial waters should be studied objectively, from every practical aspect and especially that of the navigator, with a view to simplicity, impartiality of results, and economy in publication. The American proposal is to be regarded as a first attempt in that direction, and it is to be hoped that it may serve, when improved by constructive criticism, as the basis of a definite system which may be found capable of general application.