U.S. Territorial Sea Extension: Jurisdiction and International Environmental Protection

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Abstract

This Note focuses on the United States’ reluctance to extend its sovereignty over its “territorial sea.” Part I of this Note discusses the history and current status of UNCLOS III, the territorial sea, the contiguous zone, the exclusive economic zone, and the 1988 Proclamation. Part II examines the ongoing controversy in the U.S. Congress concerning federal versus state jurisdiction over the expanded territorial sea zone and refers to proposed legislation that demonstrates both positions of the debate. Part III examines the effects of domestic enactment of the Proclamation on the international community by analyzing several U.S. statutes that would require amendment from Congress if Congress extended the U.S. territorial sea to twelve miles.
U.S. TERRITORIAL SEA EXTENSION: JURISDICTION AND INTERNATIONAL ENVIRONMENTAL PROTECTION

INTRODUCTION

One of the major anomalies in recent international law has been the United States' reluctance to extend its sovereignty over its "territorial sea" beyond three miles from its shore. The 1982 United Nations Convention on the Law of the Sea ("UNCLOS III" or the "Convention"), suggests that every nation endorse a twelve-mile territorial sea limit. Fifty-six nations have signed UNCLOS III as of August 1993, with sixty signatories necessary to bring UNCLOS III into effect. To


3. UNCLOS III, supra note 1, art. 3, 21 I.L.M. at 1272. The breadth of the territorial sea was finally established at a maximum of 12 nautical miles in UNCLOS III after unsuccessful attempts to specify a limit at the first and second conferences on the law of the sea. LUC CUVER, OCEAN USES AND THEIR REGULATION 154 (1984). A 12-mile limit is not required of UNCLOS III signatories, but by far the largest majority of nations have a 12-mile limit. EDWARD DUNCAN BROWN & ROBIN ROLF CHURCHILL, THE U.N. CONVENTION ON THE LAW OF THE SEA: IMPACT AND IMPLEMENTATION 606 (1988). In December 1983, of 133 reporting coastal states, 82% had limits of 12 miles or less and 62% had limits of exactly 12 miles. UN OFFICE FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, LAW OF THE SEA BULLETIN No. 2, Dec. 1983. Eighteen percent of reporting coastal states had limits greater than 12 miles, with 10% claiming 200-mile limits. Id. Thus, a maximum of 12 miles was a compromise among the various nations, without forcing any one nation to acquire sovereignty over more maritime territory than it desired. CUVER, supra note 3, at 154.


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date, 114 nations have adopted a twelve-mile limit.\textsuperscript{5} Therefore, a twelve-mile territorial sea limit arguably represents customary international law as it is recognized by both UNCLOS III and a majority of nations.\textsuperscript{6} Although, the United States has not yet ratified UNCLOS III,\textsuperscript{7} in 1988 President Ronald Reagan proclaimed that the U.S. territorial sea would be extended from three nautical miles\textsuperscript{8} to twelve nautical miles.\textsuperscript{9}

\textsuperscript{5} Id.

\textsuperscript{6} Shabtai Rosenne, Practice and Methods of International Law 14, 55-58 (1984) [hereinafter Rosenne]. Customary, as opposed to conventional international law, is that part of international law not resting on a treaty basis. \textit{Id}. It is considered by the International Court of Justice as "international custom, [and] evidence of a general practice accepted as law." Statute of the International Court of Justice, June 26, 1945, art. 38, § 1(b), 59 Stat. 1055, 1060, § Bevans 1179, 1187. The principal element of customary international law is the actual conduct of states in their international relations. \textit{Rosenne, supra}, at 55. A principle or rule of customary international law may be embodied in bipartite or multipartite agreements that have conventional force for those nations that are parties to such agreement. \textit{Id}. Customary international law however may continue to be binding as a principle even to non-parties. \textit{Id}.

\textsuperscript{7} Nandon Speech, \textit{supra} note 4.

\textsuperscript{8} D.C. Kapoor & Adam J. Kerr, A Guide to Maritime Boundary Delimitation 21 (1986). UNCLOS III uses the nautical mile as the unit of distance and length measurement without defining this expression in linear terms. \textit{Id}. The International Hydrographic Conference of 1929 approved the value of 1852 meters for the "international nautical mile," which has been adopted by most maritime States and the International Bureau of Weights and Measures. \textit{Id}.

\textsuperscript{9} Proclamation No. 5928, 3 C.F.R. 547, 43 U.S.C. § 1331 (1988) [hereinafter Proclamation or 1988 Proclamation]. The Proclamation provides that

\begin{itemize}
  \item International law recognizes that coastal nations may exercise sovereignty and jurisdiction over their territorial seas.
  \item The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extend to the airspace over the territorial sea, as well as to its bed and subsoil.
  \item Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.
\end{itemize}

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution of the United States of America, and in accordance with international law, do hereby proclaim the extension of the territorial sea of the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty.

The territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law.

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within
Since 1988, the U.S. Congress has considered various proposals to enact the Presidential Proclamation No. 5928 ("Proclamation or 1988 Proclamation") into domestic law. Many of the proposed bills would, in addition to extending the territorial sea to twelve miles, extend the contiguous zone, a zone adjacent to the territorial sea, from twelve to twenty-four miles. Domestic enactment of the 1988 Proclamation would also affect approximately seventy-five federal statutes. Many of these statutes impact the international community by affecting non-U.S. vessels. These U.S. regulations concern fishing, importation, maritime safety, and environmental protection in the twelve-mile zone. In addition to amending U.S. federal regulations, the ships of all countries enjoy the right of innocent passage and the ships and aircraft of all countries enjoy the right of transit passage through international straits.

Nothing in this Proclamation:
(a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom; or
(b) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the independence of the United States of America the two hundred and thirteenth.

Id.

10. ANNE R. ASHMORE, PRESIDENTIAL PROCLAMATIONS CONCERNING PUBLIC LANDS 1-2 (1981). No law defines a Presidential Proclamation. Id. In 1957, the House of Representatives Committee on Government Operations concluded that "[e]xecutive orders and proclamations are directives or actions by the President. When they are founded on the authority of the President derived from the Constitution or statute, they may have the force and effect of law." Id. (quoting STAFF OF HOUSE COMM. ON GOVT. OPERATIONS, 85TH CONG., 1ST SESS., EXECUTIVE ORDERS AND PROCLAMATIONS: A STUDY OF A USE OF PRESIDENTIAL POWERS 1 (Comm. Print 1957)). Proclamations generally concern matters of widespread interest that directly affect private individuals, and thus can have the force of law if constitutional or statutory authority is cited. Id. at 2.


12. UNCLOS III, supra note 1, art. 33, ¶ 1(a), 21 I.L.M. at 1276. The contiguous zone is a maritime zone adjacent to the territorial sea within which a nation can prevent infringement of its customs, fiscal, immigration, and sanitary laws. Id. Within this zone, a coastal state has the power to punish infringement of the above laws and regulations committed within its territory or territorial sea. Id. art. 33, ¶ 1(b).

13. See supra note 11 (citing several congressional bills proposing expansion of both territorial sea and contiguous zone).


15. Id.

16. Id. Examples of federal statutes concerning fisheries, vessel safety and oper-
statutes concerning the shipping industry, a congressional extension of the territorial sea would also decide whether the federal or state governments should have jurisdiction over the expanded three-to-twelve-mile zone. The issue of federal versus state control over the newly acquired territorial sea is one of the major controversies raised by the most recent legislative proposals.17

A solution to the conflict between federal versus state control over the expanded territorial sea may be found through recognition of the United States' duty to uniformly protect its coastal waters from marine pollution. The U.N. Convention on the High Seas ("High Seas Convention"), ratified by the United States in 1963, imposes a specific duty on every signatory to promulgate regulations to prevent pollution of the seas by exploitation of the seabed and subsoil.18 Moreover, UNCLOS III requires that every nation protect and preserve the marine environment from any polluting source, and that nations endeavor to harmonize their policies in this regard.19


every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

High Seas Convention, supra, 13 U.S.T. at 2318, 450 U.N.T.S. at 98.

19. UNCLOS III, supra note 1, arts. 192, 194(1), 21 I.L.M. at 1308. Article 194(1) states that

[states shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this pur-
The majority of provisions in UNCLOS III are considered by many scholars to reflect customary international law. Under this interpretation, the United States, although a non-adherent to UNCLOS III, has the same duty to protect the marine environment as do other nations that have ratified the Convention.

Part I of this Note discusses the history and current status of UNCLOS III, the territorial sea, the contiguous zone, the exclusive economic zone, and the 1988 Proclamation. Part II examines the ongoing controversy in the U.S. Congress concerning federal versus state jurisdiction over the expanded territorial sea zone and refers to proposed legislation that demonstrates both positions of the debate. Part III examines the effects of domestic enactment of the Proclamation on the international community by analyzing several U.S. statutes that would require amendment if Congress extended the U.S. territorial sea to twelve miles. Part III argues that the U.S. federal government, not the individual states, should retain property rights to the expanded territorial sea to allow the United States to comply with its obligations to protect the marine environment imposed by customary international law, and suggested under UNCLOS III. This Note concludes that a Congressional expansion of the territorial sea would be advantageous for the United States because it would permit enforcement of U.S. laws within a wider area of the ocean space surrounding U.S. coasts. This Note also concludes that complete federal jurisdiction over the newly acquired three-to-twelve-mile zone is necessary to foster uniform marine protection, and harmonization of U.S. policies with other UNCLOS III signatories' marine protection standards.

20. GERARD J. MAGONE, LAW FOR THE WORLD OCEAN 40 (1981); see supra note 6 and accompanying text (defining customary international law).

21. See supra note 6 and accompanying text (defining customary international law).

The history of the territorial sea and other ocean zones parallels the history of nations’ desire to control their marine resources and coastal waters. Since 1793, the territorial sea of the United States has been delimited at three miles from the shores of coastal states. In 1988, President Ronald Reagan extended the territorial sea to twelve miles for the purpose of national security, in accordance with the limits outlined in UNCLOS III. Control over the territorial sea zone essentially entails complete sovereignty over its resources and absolute rights to explore and exploit the waters and ocean floor within that zone. Coupled with this sovereignty is responsibility to protect and to prevent pollution of the marine environment within the territorial sea.

A. History and Status of UNCLOS III

Prior to UNCLOS III, the United Nations attempted to codify a territorial sea limit at Geneva in 1958 ("UNCLOS I") and again in 1960 ("UNCLOS II"). Both attempts

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22. Letter from Secretary of State Thomas Jefferson to British Minister Mr. Hammond (Nov. 8, 1793), reprinted in 1 J. Moore, Digest of International Law 702-03 (1906). Mr. Jefferson reported that

23. Proclamation, supra note 9. President Reagan’s purpose in extending the territorial sea was to “advance the national security and other significant interests of the United States.” Id.

24. UNCLOS III, supra note 1, arts. 2-4, 21 I.L.M. at 1272.

25. Id. art. 192, 21 I.L.M. at 1308.


failed to produce a multilateral agreement on the limits of the territorial sea. UNCLOS I resulted in four treaties dealing with the law of the sea that did not resolve the problem of the territorial sea limit: the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the Continental Shelf, the Convention on the High Seas, and the Convention on Fishing and Conservation of the Living Resources of the High Seas. Unfortunately, none of these treaties resolved the territorial sea limit issue. UNCLOS III is the result of twelve years of U.N. conferences and codifies much of what participating nations consider to be customary international law of the sea. A uniform boundary for the territorial sea was finally agreed upon in UNCLOS III, which provides that coastal nations may exercise sovereignty over a territorial sea of up to twelve miles, but that nations must always preserve the right of "innocent passage" for non-national ships. UNCLOS III defines a passage as "innocent" as long as it does not prejudice the peace, good order, and security of the coastal state. UNCLOS III, however, specifically excludes submarines and aircraft from this right of passage.
UNCLOS III is also a comprehensive legal work that includes directives for international cooperation regarding conservation and management of living resources,\textsuperscript{37} prevention of pollution,\textsuperscript{38} and comprehensive international environmental law.\textsuperscript{39} Under UNCLOS III, nations have the obligation to protect and to preserve the marine environment\textsuperscript{40} and can be held liable for failure to fulfill their obligations.\textsuperscript{41} Nations are also obliged to take measures to reduce pollution from all sources to the fullest extent possible, including land-based sources, sea-bed activities, dumping, and pollution to the atmosphere or from vessels.\textsuperscript{42} Furthermore, nations must outline plans designed to prevent marine collisions and deal with emergencies that may occur during the operation of vessels, installations and other devices used for exploration.\textsuperscript{43}

Under the High Seas Convention of 1958, ratified by the United States, there is a duty to create laws to protect against marine pollution from seabed exploration.\textsuperscript{44} Of the general regional treaties that exist concerning the marine environment, a major focus is on the pollution resulting from ships\textsuperscript{45} and from dumping.\textsuperscript{46} Under UNCLOS III, every nation has a

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37. UNCLOS III, supra note 1, art. 242, 21 I.L.M. at 1316.
38. \textit{Id.} arts. 275-277, 21 I.L.M. at 1321.
40. \textit{Id.} art. 192, 21 I.L.M. at 1308.
41. UNCLOS III, supra note 1, art. 235, ¶ 1, 21 I.L.M. at 1315. The obligation to prevent marine pollution includes areas even beyond a nation’s official sovereign jurisdiction. UNCLOS III, supra note 1, art. 194, ¶ 2, and art. 195, 21 I.L.M. at 1308.
42. UNCLOS III, supra note 1, pt. XII, § 5-6, arts. 207-22, 21 I.L.M. at 310-14.
43. UNCLOS III, supra note 1, art. 194, ¶ 3, 21 I.L.M. at 1308.
44. High Seas Convention, supra note 18, art. 24, 13 U.S.T. at 2318, 450 U.N.T.S. at 96.
45. \textit{See International Convention for the Prevention of Pollution from Ships [hereinafter MARPOL] reprinted in 12 I.L.M. 1319 (1973) (requiring new tankers over 70,000 deadweight tons to segregate ballast tankers so that oil and water will never mix in such vessels and also setting maximum standards for discharge of oil by tankers). MARPOL is intended to apply to the discharge of most “harmful substances” from vessels. Id. at 1319. Not included in the definition of discharge is the release of harmful substances resulting from the extraction and processing of seabed mineral resources, and the release of harmful substances in relation to scientific research into pollution control. Id. at 1320-21.}
duty to harmonize their marine pollution policies with other signatories.\textsuperscript{47} Thus, a standardized multilateral marine environmental protection policy is the ultimate goal of UNCLOS III and its signatories.\textsuperscript{48}

The United States was among the nations that voted against adoption of UNCLOS III but confined its objection to the Deep Seabed Mining provisions of the Convention.\textsuperscript{49} The same subject signed in Oslo, 1972, forbidding dumping of certain toxic substances, like mercury, cadmium, DDT, or PCB's, into sea.


\textsuperscript{47} UNCLOS III, \textit{supra} note 1, arts. 192, 194(1), 21 I.L.M. at 1308.

\textsuperscript{48} Id.


The deep seabed is technically called 'The Area' and defined in UNCLOS III as the "seabed and ocean floor and subsoil thereof beyond the limits of national juris-
developing countries' unilateral economic interests in the Deep Seabed Mining Provisions of UNCLOS III caused the United States and other industrialized democracies to reject the Convention when it was opened for signature in December of 1982. The United States did not sign UNCLOS III because the sea-bed provisions of the Convention were perceived as fundamentally contrary to the economic and political philosophy of Western capitalistic democracies. 50

Despite this controversy, one commentator argues that there is an emerging concept that UNCLOS III is, in principle, two treaties. 51 The first treaty is the Law of the Sea, comprised of the provisions of UNCLOS III that involve sea-fishing, navigation, shipping, pollution control, marine research, and the like. 52 These provisions generally are non-controversial and

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50. Oxman, supra note 36, at 6. Certain provisions called for mandatory technology transfer from developed countries to developing countries, and an equitable allocation of property claims of discovered resources among all signatories, both rich and poor. Id. at 6. Critics opposed to the Deep Seabed Mining provisions contend that the internationalist ideology of the "common heritage" is founded on wishful thinking, Third World avarice, and a serious philosophical misunderstanding of property rights and of the true common heritage of humanity. Id. at 59-75. Critics of the U.S. opposition to the Convention argue that the goals of international equity and community were compromised by the egocentric, nationalistic demands of powerful, capitalistic countries like the United States. Id. at 13-25.

51. Oxman, supra note 36, at 59-75.

52. Id.
accepted by all nations, including the United States. The other treaty is the Law of the Seabed, which consists of the Deep Seabed Mining provisions at issue. The view of UNCLOS III as two treaties found support when President Reagan announced that the United States would not sign the Convention, but stressed that most of the provisions concerning "Law of the Sea" were consistent with U.S. interests and the interests of all nations and that the United States would observe them, reciprocally, in a bi-lateral context with other nations. Furthermore, the United States treats UNCLOS III as a restatement of customary international law except for the provisions on deep seabed mining. Currently, fifty-six nations have ratified UNCLOS III, with only four additional signatures needed for the Convention to come into effect.

B. Maritime Zones

A significant part of UNCLOS III dealt with the limitation and extension of maritime zones. Although land areas and

53. Schoenbaum, supra note 27, at 23.
54. Oxman, supra note 36, at 59-75.
55. Id. at 61.
57. Telephone interview with the United Nations, supra note 4. One hundred and seventeen nations signed the convention at Montego Bay, Jamaica on December 10, 1982. Oxman, supra note 36, at 7. The great majority of these signatories were developing countries, however, Australia, Canada, Denmark, France, Greece, Ireland, the Netherlands, Norway, Sweden, the Soviet Union, and China were also original signatories. Id. at 7. Belgium, the Federal Republic of Germany, Italy and the United Kingdom joined the United States in not signing the convention because of concerns over the deep seabed mining provisions. Id. Japan has since ratified the Convention. Id. Sixty signatories are necessary to bring UNCLOS III into effect. Nandon Speech, supra note 5. Fifty-six nations have signed UNCLOS III as of August 1993, leaving only four more ratifications necessary. Telephone interview with the United Nations, supra note 4.

On July 9, 1982 President Reagan announced that the United States would not sign the Convention. 18 Weekly Comp. Pres. Doc. 887 (July 9, 1982); Arnd Bernaert, Bernaert's Guide to the Law of the Sea 12 (1988). The key concern of the United States, Great Britain, West Germany, and France was to ensure the access of their nationals to deep sea mining, to avoid any deterrence to mining, and to prevent the monopolization of the resources by the Sea-Bed Authority authorized under UNCLOS III. UNCLOS III, supra note 1, art. 150, 21 I.L.M. at 1295. Later, certain problem fields such as tuna fishing, under art. 64, and the compulsory transfer of deep sea mining technology under Annex III, were also criticized. Bernaert's Guide to the Law of the Sea, supra at 12.

58. UNCLOS III, supra note 1 at arts. 2-4, 33, 21 I.L.M. at 1280, 1294.
the airspace above them are primarily under the complete and unconditional sovereignty of individual nations, the oceans of the world are under varying levels of sovereignty.\textsuperscript{59} In the sea, a number of zones exist over which states exercise varying degrees of jurisdiction.\textsuperscript{60} The territorial sea, the contiguous zone, and the exclusive economic zone are all defined in UNCLOS III with suggested boundary delimitations.\textsuperscript{61}

1. The Territorial Sea

The relationship between the territorial sea zone,\textsuperscript{62} under the complete sovereignty of a state and the "high seas,"\textsuperscript{63} the ocean beyond the jurisdiction of a particular state, has concerned coastal nations throughout history.\textsuperscript{64} Thomas Jefferson, as Secretary of State to George Washington, first expressed the United States' adoption of a three-mile limitation

\textsuperscript{59} Kamal Hossain & Subrata R. Chowdhury, Permanent Sovereignty Over Natural Resources in International Law ix (1984). The principle of permanent sovereignty over natural resources is a fundamental concept in contemporary international law. \textit{Id.} It is extensively utilized by nations in support of actions concerning the exploitation of natural resources in their territory. \textit{Id.} The natural wealth and resources located within the territory of a nation belongs to the community, and no other outside nation. \textit{Id.}

\textsuperscript{60} See Kapoor, supra note 8, at 25-27 (listing various zones referred to in articles of UNCLOS III).

\textsuperscript{61} UNCLOS III, supra note 1, arts. 2-4, 33, 56, 21 I.L.M. at 1280, 1294, 1286.

\textsuperscript{62} See supra note 1 (defining territorial sea).

\textsuperscript{63} UNCLOS III, supra note 1, pt. VII, 21 I.L.M. at 1286-92. The high seas are the ocean spaces beyond the jurisdiction of coastal states, the waters adjacent to the sea-bed, the ocean surface, and the atmosphere above. \textit{Id.} This zone covers almost half the planet's surface. \textit{Id.}

\textsuperscript{64} D.P. O'Connell, International Law of the Sea 9-10 (1982). The distinction between ocean space under a nation's sovereign power and ocean-waters beyond any such control is found as early as the third century B.C. in the Roman law concept of \textit{mare liberum} ("free sea"). \textit{Id.} Gradually, the doctrine of \textit{mare clausum} ("closed sea") developed as certain maritime nations unilaterally asserted jurisdiction over areas of the sea in an attempt to protect their developing commercial interests. \textit{Id.} at 1-20.

Few nations questioned the right of a coastal state to defend itself and to exercise dominion over some portion of the sea adjacent to its coastal shores. \textit{Id.} Cornelius van Bynkershock, in his 1703 treatise, \textit{De Domino Mariis Disertatio}, suggested that the distance a cannon shot would travel from shore was an appropriate measure of the coastal state's jurisdiction over the sea. Philip C. Jessup, The Law of Territorial Waters and Maritime Jurisdiction 5-6 (1927). The cannon-shot measure, calculated at a marine league, the equivalent to three geographical miles from shore by the Italian jurist Galiani in 1782, gained support until it was universally accepted as the maximum distance over which a coastal state could claim sovereignty. \textit{Id.}
in a 1793 letter. Over 100 years later, Jefferson's letter influenced the U.S. Supreme Court to adopt the three-mile limit for the U.S. territorial sea. The United States relied upon such delimitation for almost 200 years until President Reagan's 1988 decision to expand the U.S. territorial sea to twelve miles.

Attempts to define the limits of the territorial sea failed at The Hague in a League of Nations sponsored effort in 1930 and at the United Nations' First and Second Geneva Conventions in 1958 and 1960 respectively. Consequently, the territorial sea remained at three nautical miles for the United States. Actual national practice, however, had already begun to diverge from this limit. The inability to reach an international consensus on the territorial sea limit did not mean that the three-mile limit remained customary international law. Some European nations always asserted six or nine miles territorial seas. By 1960, at UNCLOS II, many nations unilaterally claimed a twelve-mile limit. Other nations, like Argentina, Peru, and Chile, claimed sovereignty over coastal waters out to 200 miles shortly after 1945 having been spurred into this by the United States' Continental Shelf Proclamation. This how-

65. See supra note 22 (quoting Thomas Jefferson's letter regarding adoption of marine league).
67. Proclamation, supra note 9; see Ocean Boundary Expands: U.S. Policy, L.A. TIMES, Dec. 28, 1988, at 1,[hereinafter L.A. TIMES] (citing reasons for Proclamation that were given by Assistant White House Press Secretary Robert Hall).
68. Acts of the Conference for the Codification of International Law, 1 LEAGUE NATIONS O.J. 123-37, 165-69 (1930). In 1930, the League of Nations discussed the three-mile territorial sea limits at the Conference for the Codification of International Law at The Hague. Cuyvers, supra note 3, at 148. The Conference was unsuccessful in its attempt to codify the law of the sea, but served a useful function in identifying and defining many issues that were to grow in importance in international law. Id.
70. UNCLOS II, supra note 27.
72. Arruda, supra note 2, at 709.
73. DEPT. OF STATE, 1988 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW, ch.7, § 3 [hereinafter DIGEST].
74. Arruda, supra note 2, at 709.
ever, had no effect on the territorial sea. Even the United States began to view the three-mile ocean area as inadequate to protect the quality of the seas in which the United States had an interest. Many nations felt that the three-mile limit was inadequate because there was simply not enough fish, oil, or gas to be allocated authoritatively within such a relatively small limit. Thus, the three-mile territorial sea delimitation, previously considered customary law by most nations, actually was highly suspect by the time of UNCLOS I's entry into force in 1963.

2. The Contiguous Zone

The contiguous zone is derived from the long-established concept that coastal states have the right to take additional measures of control over ocean space beyond the territorial sea. A U.S. contiguous zone has been recognized for customs purposes since the late eighteenth century. According

75. Id.
76. Id. at 704-05. In accordance with the 1954 Oil Pollution Convention, Congress extended the area covered by the 1924 Oil Pollution Act from three to fifty miles and prohibited tankers from discharging oil or wastes in that area. Oil Pollution Act, Pub. L. No. 87-167, 75 Stat. 402, 404 (1961). The United States, in 1966, expanded its fishing zone from three to twelve miles to protect against non-U.S. fishing in U.S. waters. Act of Oct 14, 1966, Pub. L. No. 89-658, § 2, 80 Stat. 908 (1967). In 1976 Congress extended its controls over coastal fisheries to 200 miles, supposedly in conformity with the 200 mile Exclusive Economic Zone of UNCLOS III. The Fishery Conservation and Management Act of 1976, Pub. L. No. 94-265, § 402(a), 90 Stat. 331, 360. These measures, however, do not provide the broad powers allowable in the territorial sea. Arruda, supra note 2, at 705. Within the territorial sea, states may regulate matters including fisheries, coastal trade, police, pilotage, and usage of channels. Id.
78. Arruda, supra note 2, at 704-06.
79. BERNAERT'S GUIDE TO THE LAW OF THE SEA, supra note 57, at 112. Smuggling was one of the earliest concerns of eighteenth century nations with powerful naval forces. Id. In 1736, Great Britain implemented an act against smuggling, claiming jurisdiction in such cases for a distance of up to 24 nautical miles. Id. The United States, in 1935, established a customs enforcement area of fifty nautical miles to enforce its liquor legislation. Id. The concept of a contiguous zone emerged at the 1958 UNCLOS I Convention in an attempt to provide protection for states that wanted additional jurisdiction for national security reasons. Id.
80. UNCLOS I, supra note 26, 15 U.S.T. 1606, 516 U.N.T.S. 205. Eighty-six nations participated in this convention and codified much of the traditional law of the sea, which had developed as customary law over the centuries. CUYVER'S, supra note 3, at 149-50. UNCLOS I divided the oceans into various zones including the territorial sea, the contiguous zone, and new concepts such as the continental shelf, which
to UNCLOS III, a coastal state may claim as its contiguous zone a zone adjacent to the territorial sea extending to a maximum of twenty-four miles from the baseline, which is an artificial line from which all marine zones are measured. The breadth of the contiguous zone itself depends on the distance proclaimed for a nation's territorial sea. Currently, the U.S. contiguous zone stands between the three and twelve mile mark because the 1988 Proclamation does not extend the contiguous zone nor has Congress enacted legislation extending this zone to date.

A coastal nation exercises rights of "prevention" in the contiguous zone, to prevent infringements of customs, fiscal, immigration, or sanitary laws in the territorial sea. To prevent such infringements, a coastal nation may authorize boarding and searching, and even prohibit foreign or domestic vessels from entering the territorial sea, subject to a right of innocent passage. Rights of "extended power" that apply to a nation's criminal law come into effect if there has been an infringement of any of the laws listed above within the territory

were all codified in international treaty law. UNCLOS I, supra, arts. 1-3, 16, 24, 15 U.S.T. at 1608, 1611-13, 516 U.N.T.S. at 206-08, 216, 220. Currently, the continental shelf of a coastal nation is the natural extension of seabed and subsoil of the submerged areas that extends beyond its territorial sea to a depth of 200 meters unless the technology will permit a greater length. UNCLOS III, supra note 1, art. 76, 21 I.L.M. at 1285. The coastal nation may exercise sovereign rights over the natural resources and other nations may not exploit the shelf without the express consent of the coastal nation. UNCLOS III, supra note 1, art. 77, 21 I.L.M. at 1285. The 1958 Conference however failed to resolve the controversies over the breadth of the territorial sea and the exclusive fishing zones. CUYVERS, supra note 3, at 150.

81. UNCLOS III, supra note 1, art. 33, ¶ 2, 21 I.L.M. at 1276. The coastal state must determine its own baseline, normally the low-water line along the coast, or in the case of an island or atoll, the seaward low-water line of any reef. BERNÆRT, supra note 57, at 26.

82. UNCLOS III, supra note 1, art. 33, 21 I.L.M. at 1276.

83. See supra note 9 and accompanying text (reflecting 1988 Proclamation's claim of territorial sea expansion without, however, mentioning the contiguous zone).

84. UNCLOS III, supra note 1, art. 33, ¶ 1(a), 21 I.L.M. at 1276. The author of this Note uses the term "prevention" to describe the right to stop vessels or persons within the contiguous zone from entering the territorial sea zone that would otherwise be violating U.S. customs, immigration, fiscal and sanitary laws. Though "prevention" may prove burdensome, the practice ultimately prevents infringements of U.S. laws.

85. Id. The concept of innocent passage in the territorial sea has been considerably altered in UNCLOS III by a long list of activities which are non-innocent during territorial sea passage. See id. art. 19, 21 I.L.M. at 1274.
or territorial sea of the coastal nation. Thus, a coastal nation may have the right to pursue an offending vessel into the contiguous zone and enforce its national criminal law for a crime committed within the territorial sea zone.

3. The Exclusive Economic Zone

The need for a contiguous zone has become questionable in recent years due to an emerging concept called the exclusive economic zone ("EEZ"). The EEZ is a zone beyond and adjacent to the territorial sea, in which the coastal state possesses sovereign rights to explore, exploit, conserve, and manage its

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86. UNCLOS III, supra note 1, art. 33, ¶ 1(b), 21 I.L.M. at 1276. The author of this Note uses the term "extended" power to define the expansion, or enlargement of a nation's right to enforce its national laws on any party within the contiguous zone whenever the latter has violated any of the laws listed in UNCLOS III and the violation occurs within the nation's territory or territorial sea zone.

87. UNCLOS III, supra note 1, art. 111, 21 I.L.M. at 1210. The rights of non-nationals in the contiguous zone of a state are affected by coastal states' formal proclamation to the international community that a contiguous zone is established. Id.

Full navigation rights are retained if compatible with UNCLOS III, supra note 1, arts. 58, 87-115, 21 I.L.M. at 1279, 1286-90. Navigation rights are restricted under art. 33, which permits a coastal nation to board and search a vessel only to prevent and punish infringement of specific coastal state laws. UNCLOS III, supra note 1, art. 33, 21 I.L.M. at 1276. Navigation of non-national vessels is also limited in this zone by requiring the approval of the coastal state for removal of historical and archaeological objects. Id. art. 303, ¶ 2, 21 I.L.M. at 1326.

Under art. 33, non-nationals must observe sanitary laws of the coastal state and pollution laws applicable in the exclusive economic zone [hereinafter EEZ]. Id. art. 194-196, 21 I.L.M. at 1308.

The contiguous zone also denies non-nationals any mining rights (art. 76 ¶ 3) and fishing rights (exceptions are found in art. 62, ¶ 2) in these waters. Id. art. 246, 21 I.L.M. at 1317. In addition, the coastal state's consent is required for scientific research when an EEZ has been established. Id. art. 246, 21 I.L.M. at 1317.

88. UNCLOS III, supra note 1, arts. 55-75, 21 I.L.M. at 1274-85. The concept of the exclusive economic zone [hereinafter EEZ] provided for in UNCLOS III was not present in UNCLOS I or UNCLOS II. ODA, supra note 49 at xiii. The term "EEZ" first appeared in a proposal by the Government of Kenya at the Asian-African Legal Consultative Committee annual meeting in 1972. Id. (citing Asian-African Legal Consultative Committee, Report of the Thirteen Session, 1972, at 155, held in Lagos, Nigeria from January 18th to 25th 1972). The initial concept of an EEZ suggested placing fisheries within 200 miles from a coastal state in that nation's exclusive jurisdiction. Id. The idea was quickly codified in UNCLOS III, with initial strong reservations from certain geographically disadvantaged nations which did not have broad fishery zones. ODA, supra note 49 at xx; Proclamation No. 5050, 48 Fed. Reg. 10,605 (1983) [hereinafter EEZ Proclamation]. President Reagan issued a proclamation in 1983 establishing a 200-mile exclusive economic zone. Id. In the EEZ, a coastal nation may "assert certain sovereign rights over natural resources and related jurisdiction." Id.
natural resources, whether living or non-living, of the seabed, subsoil, and superadjacent waters. A coastal state also has powers related to artificial installations, marine scientific research, and marine environment protection. UNCLOS III gives coastal states the right to establish an EEZ of 200 nautical miles from the baseline of that state by proclamation.

The EEZ, which emerged from UNCLOS III, is an established institution of international law. Yet the EEZ remains ambiguous in interpretation, and gives rise to problems in its application. For example, it is still unclear whether a nation must assert affirmatively the creation of an EEZ or whether an EEZ exists automatically by mere operation of law.

Many of the same rights granted in the contiguous zone, including jurisdiction with respect to customs, fiscal, health, safety, and immigration laws, are granted in the EEZ. The contiguous zone has independent legal status as long as the coastal state has not declared any exclusive economic zone that exceeds the outer limits of the contiguous zone. If an exclusive economic zone is established, it begins beyond and adjacent to the territorial sea. Thus, the contiguous zone is part of the exclusive economic zone, and all provisions that apply to the latter also apply completely in the contiguous zone.

89. UNCLOS III, supra note 1, art. 56 ¶ 1, 21 I.L.M. at 1279.
90. Id.
91. Id. arts. 5-16, 57, 21 I.L.M. at 1272-73, 1280. Note that depending on the structure of the continent, it is possible that the coastal state area may extend to 350 miles from the baseline.
93. Id.
95. Oxman, supra note 36, at 153-54. The rights of a coastal state in the EEZ include the exclusive sovereign rights to explore, exploit, conserve, and manage the living and nonliving natural resources of the waters, seabed and subsoil; the exclusive sovereign rights to control other activities for the economic exploration of the zone, such as the production of energy from the water, wind, and currents; the exclusive sovereign rights to control the construction and use of all artificial islands or installations such as oil rigs or offshore tanker depots; the right to be informed, approve of, and participate in scientific marine research; the right to control dumping of wastes; and the right to board, inspect and arrest a merchant ship suspected of illegally discharging pollutants in the contiguous zone under certain circumstances. Id. at 153-54.
96. UNCLOS III, supra note 1, art. 57, 21 I.L.M. at 1280.
97. Oxman, supra note 36 at 154.
98. UNCLOS III, supra note 1, art. 55, 21 I.L.M. at 1279. The principle of free-
President Reagan, in 1983, signed Proclamation No. 5030, which claimed that the United States had a sovereign right to control exploitation over a 200-mile EEZ. The United States is one of ten countries that has gained the largest EEZ because of its geography. Currently, over 60 nations, including the United States claim an EEZ equal to 200 nautical miles. Although the EEZ is one of the most important aspects of UNCLOS III, the concept is still somewhat controversial. The U.S. Congress, however, fully recognizes the EEZ Proclamation as establishing a U.S. EEZ of 200 nautical miles.

C. The 1988 Proclamation: Effects on U.S. Sovereignty and U.S. Statutes Untouched by the Proclamation

1. The 1988 Proclamation and Constitutional Issues

In 1988, President Reagan, acting under his constitutional authority as Commander-in-Chief of the Armed Forces and in accordance with international law, extended the territorial sea to twelve nautical miles under Proclamation No. 5928. President Reagan claimed that the expansion of the territorial sea was necessary to advance national security and other interests of the United States. It also allowed the United States to join the overwhelming number of other nations claiming the twelve-mile limit, and to comply with the suggestion of UN-
CLOS III that all nations conform to the twelve-mile limit.\textsuperscript{107}

The 1988 Proclamation distinguished between an international boundary where U.S. sovereignty ends and a boundary that determines property rights between the U.S. federal and state governments.\textsuperscript{108} State property boundaries are presently at the three-mile mark for most U.S. states under the 1953 Submerged Lands Act (the "SLA").\textsuperscript{109} The 1953 SLA grants ownership to U.S. coastal states over the submerged lands from the shoreline out to three nautical miles for all U.S. coastal states except Texas, Louisiana, and the gulf coast of Florida where the boundaries are nine miles.\textsuperscript{110}

The 1988 Proclamation did not amend or alter the SLA, but did extend the U.S. sovereignty boundary from three to twelve miles for international purposes.\textsuperscript{111} The 1988 Proclamation grants the United States complete sovereignty twelve miles from its coast, against any other nation.\textsuperscript{112} This sovereignty includes jurisdiction over the airspace, sea, seabed, and subsoil.\textsuperscript{113}

The Justice Department has questioned the legality of the President's power to claim territory without the consent of Congress.\textsuperscript{114} Under art. IV, § 3(2) of the U.S. Constitution, the United States at that time, retained a three-mile territorial sea. \textit{Id}. Six nations claimed a breadth of more than three but less than 12 miles, and 22 claimed territorial sea limits ranging from 15 to 200 miles. \textit{Id}. In addition, 40 nations claimed contiguous zones beyond their territorial seas, 37 of which were beyond 12 miles. \textit{Id}. Only two of the 37 states claimed contiguous zones exceeding 24 nautical miles. \textit{Id}; \textit{see supra} notes 79 to 87 and accompanying text (defining contiguous zone).

\textit{Id}. See \textit{L.A. Times}, \textit{supra} note 67 (citing reasons for 1988 Proclamation that were given by Assistant White House Press Secretary Bob Hall).

\textit{Id}. 1988 Proclamation, \textit{supra} note 9. The 1988 Proclamation states that "[n]othing in this Proclamation: (a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom[]." \textit{Id}.

\textit{Id}.

\textit{Id}; \textit{see supra} note 59 and accompanying text (defining sovereignty).

\textit{Id}.; \textit{see supra} note 9.

\textit{H.R. REP. No. 102-843, pt.(I), 102d Cong., 2d Sess., at 9-10 (1991).} In 1991, the Committee on Merchant Marine and Fisheries reported that the President alone may not have the power to acquire new territory for the United States. \textit{Id}. "The most extensive acquisitions of territory by the United States have been accom-
Congress has the power to make all laws concerning the territory belonging to the United States. A legal opinion from the Justice Department indicated that the President’s constitutional authority to assert sovereignty over an area, an act that international law would define as acquisition of territory, was open to some question under art. IV, § 3(2) of the U.S. Constitution. To resolve these constitutional questions, various bills attempting to enact the 1988 Proclamation into U.S. federal law have been presented before Congress.

There are many differences between the 1988 Proclamation extending the territorial sea to twelve miles and a congressional enactment that does the same. In contrast to a congressional enactment, the 1988 Proclamation does not affect existing federal or state laws because the President’s constitutional authority to expand the territorial sea is based solely on his role as Commander-in-Chief of the Armed Forces. Therefore, national security is the only permissible basis for the 1988 Proclamation’s expansion of the territorial sea.

Over seventy-five federal statutes contain the term “territorial sea” established through the use of the treaty-making power. By treaty, the United States acquired the Louisiana Purchase, the Gadsden Purchase, the Oregon Territory, California, Alaska, the Panama Canal Zone, and the Virgin Islands. In all these instances, the Senate had to give its advice and consent. The only instance in which the President, acting alone, acquired new territory for the United States were the acquisitions of a few small islands in the Pacific Ocean.

115. U.S. Const. art. IV, § 3(2). Article IV, § 3(2) states that “[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.” Id.

116. H.R. Rep. No. 102-843, pt.(l), 102d Cong., 2d Sess., at 9-10 (1991). In modern international law, there is a key difference between assertion of sovereignty, and assertion of jurisdiction. Assertion of sovereignty transforms the territorial sea into part of the actual territory of the United States as much as a piece of land. Id. at 9 n.1.

Assertion of jurisdiction, on the other hand, concerns the United States’ inherent power to enforce its laws within that specific area of the sea. See id.

117. See supra note 11 and accompanying text (listing several proposed bills struck down in Congress since 1988).

118. U.S. Const. art. II, § 2(1). The U.S. Constitution states that “[t]he President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States[,]” Id. In addition, “[t]he United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion[,]” U.S. Const. art. IV, § 4.

119. Id.
torial sea’ or rely on the concept of a territorial sea zone. The geographical definition of the territorial sea is essential to determine at what point federal statutes apply to any party or vessel entering the territorial sea zone. Only if a congressional bill is passed defining the territorial sea as twelve miles will any U.S. statute be applicable out to the twelve-mile boundary.

2. U.S. Federal Statutes Involving the Territorial Sea Untouched by the 1988 Proclamation

Numerous examples of federal statutes that would be affected by a congressional expansion of the territorial sea zone exist and incorporate various subjects such as marine preservation and protection, vessel operations, and litigation of admiralty claims. Currently, the status of the territorial sea for the purposes of these federal statutes still remains at three miles because the 1988 Proclamation did not automatically amend the breadth of the territorial sea for U.S. domestic statutes.

Federal statutes concerning marine environmental protection are plentiful. The Act to Prevent Pollution from Ships (‘‘APPS’’) concerns the disposal of garbage into ocean waters. Under the APPS, certain restrictions apply to the discharge at sea of garbage generated during the operation of vessels. This statute, among many others, applies to waters under U.S. sovereignty and therefore applies to waters within the U.S. territorial sea zone. The Shore Protection Act of

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122. 1988 Proclamation, supra note 9; see supra note 108 (quoting 1988 Proclamation).
124. H.R. Rep. No. 102-843, pt.(I), 102d Cong., 2d Sess., at 17 (1991). All discharges of plastic are prohibited. Id. at 19. Dunnage and similar packing materials may be discharged, but not closer than twenty-five nautical miles from the nearest land. Id. In addition, food wastes and paper products may be discharged, but not closer than twelve miles from the nearest land. Id. Food waste that has been finely ground however, may be disposed of three miles outward from land. Id.
1988 is another statute involving marine environmental protection affected by the definition of the territorial sea.\footnote{126} The Shore Protection Act protects against illegal discharges of garbage from all vessels operating in U.S. coastal waters.\footnote{127} Also, the Oil Pollution Act of 1990 protects U.S. territorial waters from oil spills caused by vessels or facilities containing oil.\footnote{128}

An example of a federal statute concerning vessel operations that would be amended by a congressional expansion of the territorial sea is the Prohibitions of Foreign Vessels Act.\footnote{129} This statute excludes non-U.S. vessels from conducting wrecking operations within the territorial waters of the United States unless given specific permission by the U.S. government.\footnote{130} Moreover, any collision damage to U.S. and non-U.S. vessels within the territorial sea is subject to U.S. Coast Guard administrative hearings.\footnote{131} This statute applies in U.S. waters only,
and is enforceable solely within the territorial sea, as defined by Congress.

In the maritime litigation area, Rule E(3)(a) of the Supplemental Rules for Certain Admiralty and Maritime Claims would also be affected by a congressional expansion of the U.S. territorial sea.\(^\text{132}\) This rule provides that process \textit{in rem}\(^\text{133}\) and maritime attachment\(^\text{134}\) shall be served only within the federal district that the vessel is in, which can extend only as far as U.S. sovereignty extends.\(^\text{135}\) Until recently, service of process has generally been upheld when it is made within the three mile zone. The three mile zone is the property boundary of the state in which the federal district court is located.\(^\text{136}\) Thus, it is unclear whether service of process will now extend out to twelve miles, or remain at the three mile zone.\(^\text{137}\) These statutes all exemplify federal acts that depend on a concept of “the territorial sea,” which will be amended if a congressional expansion of the territorial sea is passed.\(^\text{138}\)


\(^{133}\) NICHOLAS J. HEALY AND DAVID J. SHARPE, ADMIRALTY CASES AND MATERIALS, 118 (2d ed. 1986). An action \textit{in rem} connotes that a ship can be named as sole defendant in a complaint. \textit{Id.}\(^\text{139}\) In essence, a vessel takes on a personification itself. \textit{Id.}\(^\text{140}\) Thus, the ship is arrested by a U.S. marshal, defaulted, tried, found at fault, and sold at auction to cover damages all without the active participation of the shipowner \textit{in personam}. \textit{Id.}\(^\text{141}\)

\(^{134}\) \textit{Id.} at 856. Attachment occurs when a defendant cannot be found within the district for personal service of process consisting of complaint and summons under Fed.R.Civ.P. 4. \textit{Id.}\(^\text{142}\) A U.S. marshall executes a process of maritime attachment upon property of the defendant in the possession of the defendant or in the custody of defendant’s agent within the district, and brings the property into the custody of the district court. \textit{Id.}\(^\text{143}\)

\(^{135}\) See \textit{supra} note 59 and accompanying text (setting forth powers of nations within their sovereign territory).

\(^{136}\) Rules, \textit{supra} note 132; SLA, \textit{supra} note 109.

\(^{137}\) See Rules, \textit{supra} note 132 (setting forth that service of process must be within federal district in which suit in admiralty is commenced).

\(^{138}\) See \textit{supra} notes 123-92 and accompanying text (discussing federal statutes that use the term “territorial sea”).
3. Federal Versus State Conflict Over Property Rights of Submerged Lands Unresolved by the 1988 Proclamation

Because the 1988 Proclamation did not address the issue of property ownership rights of the newly expanded zone between three and twelve miles, a congressional bill redefining the term "territorial sea" for U.S. domestic law must resolve this issue. The struggle between the U.S. federal government and individual states for ownership of oil, gas, and mineral rights located in coastal ocean floors has a long and formidable history. Following World War II, President Harry S. Truman issued a Proclamation claiming, on behalf of the U.S. federal government, the natural resources of the continental shelf. The continental shelf was defined at the time as that part of the ocean floor that promises to be exploitable now or in the future. Thus, originally the United States, instead of its individual states, claimed jurisdiction over the submerged lands that were thought to be rich in mineral resources, and shallow enough to be exploitable by present-day and future technology.

139. See 1988 Proclamation, supra note 9 (stating Proclamation does not amend existing federal or state law). The issue carries major fiscal concerns. Glass, supra note 17. The U.S. Minerals Management Service estimated that 25 percent of U.S. unleased oil resources, or about 2-4 billion barrels, and 20 percent of unleased gas resources, or 9-18 trillion cubic feet, lie in the 3-12 mile portion of the proposed territorial sea. The transfer of those lands to the states would cause the federal government to incur losses of $2-4 billion in cash bonuses, $8-16 billion in royalties, and $58-116 billion in gross market value of oil and gas leases. Id.


143. Id.
In the wake of the Truman Proclamation, the state and federal governments increasingly disagreed over the ownership of the submerged lands.\textsuperscript{144} States pushed for broader jurisdiction to explore the resource-rich ocean area adjacent to their coasts.\textsuperscript{145} The U.S. Supreme Court, beginning in 1947, handed down a series of decisions ruling that the federal government, rather than the individual states, had paramount rights in the resources of the seabed and over the territorial sea.\textsuperscript{146}

Congress responded to these decisions with two significant pieces of legislation that were signed into law in 1953.\textsuperscript{147} The first legislation, the Submerged Lands Act ("SLA")\textsuperscript{148} vested in the states the ownership of the submerged land within the boundaries of the respective states, limited to three geographical miles into the Atlantic and Pacific Oceans and nine geographical miles into the Gulf of Mexico.\textsuperscript{149} Congress’ second enactment, The Outer Continental Shelf Lands Act ("OCSLA"),\textsuperscript{150} reaffirmed the Truman Proclamation of 1945, asserting federal supremacy over the seabed and subsoil of the remainder of the continental shelf.\textsuperscript{151}

In 1954, the U.S. Supreme Court upheld the SLA and emphasized that the federal government had “paramount rights,” equivalent to property rights, over offshore submerged

\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} United States v. California, 332 U.S. 19 (1947). The first jurisdictional conflict occurred in the United States when the U.S. government brought suit against the state of California, challenging California’s assertion of title to off-shore lands beyond the low-water mark. Id. The U.S. Supreme Court, focusing on the international aspects of the conflict, declared that the federal government’s sovereign interests in navigation, national defense, international relations, and commerce established paramount rights over the submerged lands. Id. at 29. One aspect of these paramount rights was dominion over the resources located in the submerged lands. Id. at 29-41. The U.S. Supreme Court’s decision was historically inaccurate and confused property rights, which were determined by domestic law, with sovereignty, which was determined by international law. Id. at 43-44 (Frankfurter, J., dissenting). See United States v. Texas, 339 U.S. 707 (1950) and United States v. Louisiana, 339 U.S. 699 (1950)(adopting paramount rights rationale).
\textsuperscript{147} Oda, supra note 49, at 147.
\textsuperscript{148} SLA, supra note 109.
\textsuperscript{149} Id.
\textsuperscript{151} Id.; see Robert B. Krueger, The Background of the Doctrine of the Continental Shelf and the Outer Continental Shelf Lands Act, 10 Nat. Resources J. 442 (1970).
lands.\textsuperscript{152} Congress could relinquish to the states the federal government’s property rights over the submerged lands without interfering with U.S. national sovereign interests.\textsuperscript{153} The Supreme Court held that jurisdiction over offshore lands was a domestic dispute over the congressional disposition of property.\textsuperscript{154} Most importantly, the Court recognized that private property rights and national sovereignty could be separated.\textsuperscript{155} Thus, property rights over offshore submerged lands was a completely separate issue from the federal government’s sovereignty and right to claim the lands as U.S. territory against the rest of the world.\textsuperscript{156}

In the mid-1960s, property rights over this area became a growing concern within the United States because technological achievements in the United States reached a level where prospects for exploration of off-shore oil fields began to generate wide-spread interest.\textsuperscript{157} At the same time, the United States also was involved in a controversy with the states over the extent of U.S. fishery rights in its coastal waters.\textsuperscript{158} The 1988 Reagan Proclamation made no mention of ownership over the newly expanded three to twelve mile zone, leaving this critical issue for Congress to resolve.\textsuperscript{159}

Since the Proclamation’s enactment, certain states that currently have control over oil and gas rights within the three mile mark have argued for an expansion of these rights out to the twelve mile mark.\textsuperscript{160} The authority that has jurisdiction over the territorial sea zone, whether it be the U.S. federal gov-

\textsuperscript{153} Id. at 274.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} ODA, supra note 49, at 147.
\textsuperscript{158} Id. at 40. Fishing rights concern a coastal nation’s exclusive right to fish in a given area. Id. at 40-55. Approximately 90 percent of all fishing zones, “fisheries”, come under national jurisdiction, many of them extending to 200 miles from shore. Id. at 50. The enclosure of exclusive fishing areas does not necessarily result in optimal exploitation or equitable allocation of the ocean’s food resources. Id.
\textsuperscript{159} Proclamation, supra note 9. The Congress alone has the power to dispose of and make all regulations respecting the territory or property belonging to the United States. U.S. Const. art. IV, § 3, cl. 2.
\textsuperscript{160} Glass, supra note 17. California, Florida, Louisiana, Mississippi, Alabama, and Texas are among those states with an interest in expanding state jurisdiction out to twelve miles. Id.
ernment or the individual states, is also obligated to protect
that portion of the sea against marine pollution. If state
control is extended, individual U.S. states would be financially
and legally responsible for pollution control and clean up
within their specific state boundaries to twelve miles, which
could logically result in varying degrees of marine protection
throughout the United States. UNCLOS III, however, em-
phasizes the need for harmony and uniformity among nations
in their environmental legislation.

II. FEDERAL VERSUS STATE CONTROVERSY OVER
PROPERTY RIGHTS OF SUBMERGED LANDS

By July 1988, months before the 1988 Proclamation ex-
tending the territorial sea was issued, the twelve-mile limit had
gained a great deal of support in the U.S. Congress. Since
1988, in an attempt to address questions concerning President
Reagan’s authority to proclaim a U.S. territorial sea limit of
twelve miles, Congress has sought to affirm the Presidential
Proclamation by codifying the extension of the territorial sea
to twelve miles in U.S. federal statutes. Supporters of fed-
eral jurisdiction over the expanded area have introduced legis-
lation that would not amend the Submerged Lands Act,
thereby preserving federal control over this area. This type

161. UNCLOS III, supra note 1, arts. 275-277, 21 I.L.M. at 1321.
162. See High Seas Convention, supra note 18 (setting forth responsibility of na-
tions to protect against pollution of marine environment).
163. UNCLOS III, supra note 1, art. 194, 21 I.L.M. at 1308. UNCLOS III states
that nations shall take all measures necessary to prevent, reduce, and control pollu-
tion of the marine environment from any source, and shall endeavor to harmonize
their policies in this connection. Id.
164. H.R. 5069, 100th Cong., 2d Sess. (1988). This bill attempted to extend the
territorial sea out to 12 miles. Id. Although H.R. 5069 died in the Senate, it received
enough votes to pass the House of Representatives. Arruda, supra note 2, at 713.
introduced into Congress, which would not only have affirmed the President’s
twelve-mile territorial sea proclamation, but also would have established that the
authority of any federal agency and the legal rights or authority of the states would not
be extended beyond their previous geographical limits by the extension of the U.S.
territorial sea. Id. This bill was not passed. Arruda, supra note 2, at 707.
166. Territorial Sea and Contiguous Zone Act [hereinafter the “Jones Bill”],
H.R. 3842, 102d Cong., 1st Sess. (1991). The Jones Bill is an example of a recent
proposal in the 102nd Congress and was introduced by the late Representative Wal-
ter Jones of North Carolina. Id. By the end of the 102nd Congress, the Jones bill
was not yet voted on, therefore requiring reintroduction in the 103rd Congress. Bill
of legislation would amend approximately seventy-five existing federal statutes, extend the U.S. territorial sea to twelve miles, expand the U.S. contiguous zone from twelve to twenty-four nautical miles, and maintain federal jurisdiction over the three to twelve mile zone. Some states, however, do not agree that the federal government should control the three to twelve mile zone. These states support legislation that will amend the SLA in order to grant individual states complete property rights over the area extending out twelve miles from the coastline.


168. See, e.g., Jones Bill, supra note 166 (maintaining federal jurisdiction).

169. See supra note 160.

170. Coastal States Extension Act of 1991, H.R. 536, 102d Cong., 1st Sess. (1991) [hereinafter the "Bennett Bill"]. This act would have amended the Submerged Lands Act to extend from three miles to twelve miles the territorial sea boundaries of the coastal states, the Great Lakes states, and the Gulf of Mexico states. Id. By the end of the 102nd Congress, the Bennett Bill was not voted on, thereby requiring a reintroduction in the 103rd Congress. Bill Tracking Report, H.R. 536, 102d Cong. 1st Sess. (1991) available in LEXIS, BLTRK file.
A. Endorsement of Federal Jurisdiction Over the Three to Twelve Mile Zone

Presently, under the OCSLA\textsuperscript{171} and the Exclusive Economic Zone, the U.S. government has complete control and jurisdiction over the submerged lands and the ocean space from the three-nautical miles boundary out to 200-nautical miles for the purposes of artificial installations, marine scientific research, and marine environment protection.\textsuperscript{172} The U.S. federal government, under the Bush administration, strongly supported complete federal control over the submerged lands between three and twelve miles from shore, primarily because of the estimated US$136 billion in potential revenue from oil and gas exploitation.\textsuperscript{173} In addition, supporters of federal jurisdiction believe that enactment of legislation supporting state control, rather than federal control, would change existing and carefully balanced federal-state responsibilities for resource management.\textsuperscript{174}

The Jones Bill, introduced on November 22, 1991 by Representative Walter Jones of North Carolina and not enacted by the end of the 102nd Congressional Session, exemplified the Bush administration’s position.\textsuperscript{175} The bill would have extended the territorial sea from three to twelve miles, extended the contiguous zone from twelve to twenty-four miles, and maintained federal control over the new area.\textsuperscript{176} As this bill did not amend the SLA, which supplies individual states with control over the first three miles from the coastline, individual states would have retained control over the first three miles out from shore.\textsuperscript{177} The Jones Bill, backed by the Bush admin-

\textsuperscript{171} Outer Continental Shelf Lands Act, supra note 150.
\textsuperscript{172} See Brown supra note 3, at 133-52 (discussing EEZ).
\textsuperscript{173} Glass, supra note 17.
\textsuperscript{174} Id. The dividing line between the states and federal government with the extended territorial sea would remain intact through the Submerged Lands Act. 43 U.S.C. §§ 1301-1303, 1311-1315 (1988 & Supp. III 1991). With the exception of Texas and the gulf coast of Florida and Louisiana, which have a 3-marine league or 9-mile seaward boundary, all states have a 3-mile limit. Id. Within this limit, the states own and regulate offshore resources, including oil, gas and fish. Id. Beyond this boundary, the federal government, under the SLA, has exclusive jurisdiction and management responsibility. Id.
\textsuperscript{175} Jones Bill, supra note 166.
\textsuperscript{176} Id.
\textsuperscript{177} Id.
istration, triggered a dispute in the U.S. Congress over the control of mineral rights and oil leasing rights for the expanded area. The House Committee on Merchant Marine and Fisheries issued a report on August 12, 1992 favoring adoption of the Jones Bill with various amendments. Under the proposed amendments, a congressional enactment of the 1988 Proclamation would have extended federal powers of enforcement concerning numerous federal statutes by redefining the terms "territorial sea" and "high seas" in light of the new boundary line of twelve miles. Consequently, any federal statute listed in the Jones Bill that included the phrase "territorial seas," or that concerned the importation of goods into the "jurisdiction of the United States" would have been redefined to acknowledge the extension of the territorial sea. By the

178. Glass, supra note 17.
180. H.R. REP. No. 102-843, pt. (I), 102d Cong., 2d Sess., at 1. The Merchant Marine and Fisheries Committee found it in the interest of the United States to extend its territorial sea to 12 nautical miles to protect offshore resources, to establish a contiguous zone of 24 miles for the further protection of its territory, and to apply federal law to the maritime zone between 3 and 12 nautical miles. Id. at 1.
181. See supra note 167 and accompanying text (listing major federal statutes amended through domestic enactment of Proclamation No. 5928).
182. H.R. REP. No. 102-843, pt. (I), 102d Cong., 2d Sess. (1991). Therefore, the term "import" would be defined in light of the new territorial sea extension out to twelve miles, whether or not it would be so defined by the customs laws of the United States. Id. at 3.

end of 1992, the Jones Bill had not been enacted.\textsuperscript{183} Due to the considerable support for the Jones Bill in 1992, however, a similar bill is very likely to be reintroduced during the 103rd Congress in 1993.\textsuperscript{184}

B. Endorsement of State Jurisdiction Over the Three to Twelve Mile Zone

Several states have objected to federal control over the three to twelve mile zone and instead, advocate state control over the zone.\textsuperscript{185} Since the 1988 Proclamation extending the

from outside the United States into the U.S. territorial sea or contiguous zone, if it affects the territorial sea. \textit{Id.} Under a literal reading of the ODA, the term “territorial sea” and “contiguous zone” would have been expanded to twelve and twenty-four miles respectively by the Jones’ bill. \textit{Id.} Accordingly, no person would be able to transport material, including garbage, from outside the United States into the twelve-mile territorial sea or the twenty-four mile contiguous zone and discharge it without an EPA permit. \textit{Id.} Vessels would no longer be allowed to discharge food wastes and paper products inside the contiguous zone as they are currently permitted to do. \textit{Id.}

The Merchant Marine and Fisheries Committee proposed to resolve this conflict by allowing food wastes and other material lawfully discharged under MARPOL and APPS to continue to be “dumped” inside the contiguous zone, provided the discharge is in compliance with MARPOL and APPS, and regardless of an Environmental Protection Agency permit, which is currently required under the Ocean Dumping Act. \textit{Id.} If a vessel entering U.S. waters is not fully in compliance with MARPOL and APPS and illegally discharges material in those waters, the vessel may be subject to penalties and sanctions under the Ocean Dumping Act. \textit{Id.} Under the Jones Bill, these penalties would not have been duplicative of those assessed under APPS, because the penalties assessed pursuant to APPS would control in the event that both Acts apply. \textit{Id.}


\textsuperscript{185} Sheryl Morris, \textit{House Legislation Revives Debate Over States’ Offshore Jurisdiction},
territorial sea to twelve miles for "sovereignty" purposes, several states have shown great interest in amending the SLA to extend state property rights from three to twelve miles. California and Alaska protested soon after the 1988 Proclamation because they believed that individual state authority should be extended to the new twelve-mile boundary. Many of the states desiring to extend property rights out to twelve miles are environmentally protective of their coastal waters and have criticized the Bush administration for emphasizing oil and gas drilling, rather than increasing conservation and attempts at renewable and alternative energy sources. States have also cited state expertise in ocean resource management as a reason to allow them control over and beyond the territorial sea. Moreover, certain states have become increasingly strident about protecting their shores, while other states are more open to leasing their submerged lands to oil and gas de-

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186. See supra note 9 and accompanying text (setting forth Proclamation); see also note 59 and accompanying text (defining sovereignty).
188. Id.
189. Sheryl Morris, Interior's New OCS Plan Draws Mostly Criticism from Coastal States, INSIDE ENERGY/WITH FEDERAL LANDS, May 6, 1991 at 9, available in LEXIS, Nexis Library, INERGY file. States like California and Florida vigorously oppose most federal plans for oil development off its beaches and want adequate environmental studies done before any development takes place. Id.
North Carolina Governor James Martin criticized the Bush administration for not choosing North Carolina as an "environmentally sensitive area" for special studies and protection when President Bush decided in 1990 to defer some sales and leasing of several coastal states' submerged lands. Id.
Louisiana criticizes the federal government's control over offshore leasing activities because it requires Louisiana to share the risk of offshore pollution, while allowing an "unjust distribution" of offshore development when compared with other states. Id.
Ten of the 23 lease sales scheduled in a 1991 federal government plan are in the Western and Central Gulf of Mexico. Id. Despite Louisiana's criticism of the federal government, it is a state more open to leasing, along with Mississippi, Alabama, and Texas. Id.
The case of the Great Lakes states is an example of state competence. Id. Great Lakes states have successfully and exclusively managed the aquatic resources over water areas ranging from twenty-one to more than seventy-two miles of state territorial water boundaries. Id.
Thus, if a congressional expansion of the territorial sea occurs, ownership of the submerged lands will be of vital importance to the federal and state governments as well as the U.S. oil and gas industry.

The Bennett Bill, introduced on January 16, 1991 by Representative Charles Bennett of Florida and not enacted by the end of the 102nd Congressional Session, is representative of the position supporting individual state jurisdiction for the newly extended territorial sea area between the three and twelve mile boundary lines. The Bennett Bill proposed the exact opposite of the Jones Bill on the state sovereignty issue. Instead of preserving federal jurisdiction over the expanded zone, the Bennett Bill would have added nine miles to most state jurisdictions, thereby extending state sovereignty to twelve miles. Extending state sovereignty in this area, as the Bennett bill proposed, would result in a shift of control of oil and gas development and revenues from the federal government to the individual states.

The Bush administration vigorously opposed the Bennett Bill because of its proposed sweeping changes to established federal-state boundaries, with far-reaching financial, energy, and national security ramifications. The Bush administration believed that any attempt by coastal states to extend their jurisdiction would affect offshore oil leasing, drilling and development. Although the Bennett Bill was not enacted by the close of the 102nd Congress, the issue continues to be of great concern to the oil and gas industries.

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191. Morris, supra note 185, at 14.
192. Id.
194. Id.
195. Id. The Bennett Bill would have amended the Submerged Lands Act to extend the territorial sea boundaries of the coastal states, the Great Lake states, and the Gulf of Mexico states from three nautical miles to twelve nautical miles. Id. at 3-4.
196. Id.
197. Id.
198. See supra note 139 and accompanying text (setting forth financial estimates of up to U.S. $136 billion in losses to federal government if submerged lands were transferred to states by amending SLA).
199. Id.

Congressional legislation extending the territorial sea is necessary to allow the United States to enforce federal statutes within its own territory. A congressional extension of the territorial sea to twelve miles, however, will directly impact a multitude of statutes regulating marine preservation, vessel safety, and vessel operations of both U.S. and non-U.S. flag vessels. This U.S. legislation should also resolve the controversy surrounding control of the submerged lands between three and twelve miles from shore and should codify federal control over the area.

A. Proclamation No. 5928 Extended U.S. Sovereignty but Does Not Address Property Rights of Submerged Lands

The effects of a U.S. territorial sea extension on the international community are two-fold. First, the primary purpose of the Proclamation is to claim U.S. sovereignty and jurisdiction over its coastal waters to twelve miles as against the rest of the world. The 1988 Proclamation, in effect, advances U.S. national security. It protects U.S. coastlines by keeping non-U.S. submarines, aircraft, and military ships further away from the coast. Moreover, a congressional bill extending the territorial sea would, in essence, redefine the meaning of “territorial sea,” “navigable waters,” and “high seas” in every federal statute cited in that congressional bill.

The 1988 Proclamation’s authority is based solely on the President’s executive power derived from the U.S. Constitution...
tion and extends U.S. sovereignty to twelve nautical miles from U.S. coastlines as against all other nations of the world. Although the official reason given for the twelve-mile Proclamation was to “advance national security,” President Reagan did not specifically state how the new twelve-mile limit would advance national security. Certain nations believe that a twelve-mile limit better protects the coastline of a nation by keeping foreign submarines, ships, and aircraft farther out from shore than the three-mile limit.

The 1988 Proclamation assures to non-U.S. ships a right of “innocent passage” through the United States’ territorial sea as stated in UNCLOS III. Thus, although the 1988 Proclamation extends U.S. sovereignty to twelve miles, the international shipping industry is not affected because merchant ships come under the “innocent passage” exception. UNCLOS III states that passage of a foreign ship in a nation’s territorial waters will be innocent as long as its activity is directly related to passage. UNCLOS III specifically excludes from “innocent passage” submerged submarines, non-U.S. military aircraft, foreign-flag fishing, intelligence gathering and weapons practice. Therefore, the essential effect of the 1988 Proclamation is the extension of U.S. enforcement powers for national security reasons.

The 1988 Proclamation, however, has no effect on property rights between the federal and state government, which is reserved for Congress to address. The 1988 Proclamation does not require a redefinition of the term “territorial sea” in any U.S. federal or state statute. To extend the territorial sea for domestic purposes, Congress must enact legislation

206. See supra note 10 and accompanying text (defining authority of Presidential Proclamations and Executive Orders).
207. 1988 Proclamation, supra note 9.
208. See supra note 23 and accompanying text (citing national security as primary reason for 1988 Proclamation).
209. S. SWARZTRAUBER, THE THREE-MILE LIMIT OF THE TERRITORIAL SEA, 192-94 (1974). The former Soviet Union had defended the twelve-mile limit on those grounds. Id. Russia under the Tsars asserted a twelve-mile territorial sea. Id.
210. UNCLOS III, supra note 1, art. 19, 21 I.L.M. at 1274; Oxman, supra note 36, at 150-51; 1988 Proclamation, supra note 9.
211. UNCLOS III, supra note 1, art. 19, 21 I.L.M. at 1274.
212. UNCLOS III, supra note 1, arts. 19-21, 21 I.L.M. at 1274.
213. U.S. Const. art. IV, § 3[2].
214. See supra note 108 and accompanying text (stating that nothing in 1988
specifically redefining "territorial sea" to denote twelve miles from the coast, instead of the current "three mile" definition in U.S. domestic law. \(^{215}\)

B. A Congressional Expansion of the Territorial Sea Will Augment the U.S. Government's Power to Enforce Statutes Against Non-U.S. Parties

Domestic legislation enacting the 1988 Proclamation must be passed to address the constitutional problems arising from the extension of U.S. territory nine additional miles from shore. \(^{216}\) Although a congressional extension of the territorial sea will impact the international community, the United States would benefit from a congressional territorial sea extension by enforcing its federal statutes twelve miles from its shore rather than the current three miles. The United States has waited long enough to join the other 114 nations presently claiming a twelve-mile territorial sea. \(^{217}\) Although the United States had claimed a 200-mile EEZ, which gave it exclusive rights to develop and use all maritime resources, U.S. reluctance to claim an extension of its territorial sea weakened its traditional role as a leader, advocate, and follower of customary international law of the sea. \(^{218}\) The United States, by extending its territorial sea to twelve miles in its federal statutes, will recoup its role as a forerunner in customary international law.

Extending the contiguous zone to twenty-four miles as most U.S. bills propose, will not dramatically change the authority of the U.S. government to enforce immigration laws, customs laws, and drug interdiction. \(^{219}\) Congress has already

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\(^{216}\) See supra notes 114-15 and accompanying text (discussing opinion of Justice Department and history of U.S. territorial acquisition).

\(^{217}\) See supra note 106 and accompanying text (giving status of 144 reporting nations and their territorial sea limit).


given the Coast Guard and the President the power to search and seize vessels upon the high seas and zones over which the United States has jurisdiction to prevent, detect, and suppress violations of U.S. laws.\textsuperscript{220} Congress also permits the President to declare by statute portions of the high seas as customs-enforcement areas,\textsuperscript{221} and to declare exclusive rights to explore, conserve, and manage the natural resources 200 miles from shore under the EEZ.\textsuperscript{222}

Although extending the contiguous zone will not have a significant impact on the United States and its relations to the international community, congressional extension of the "territorial sea" will affect the international community by redefining the meaning of "territorial sea" in most federal statutes that use the term or rely on the concept of a territorial sea zone.\textsuperscript{223} Consequently, all of the federal statutes concerning the protection of the marine environment, vessel operations and vessel safety will be applicable to any party or vessel, domestic or foreign, entering the twelve-mile zone instead of the current three-mile zone.\textsuperscript{224} This will significantly affect the international shipping industry because any vessel within the expanded U.S. territorial sea would be subject to these statutes as the vessel would be within U.S. sovereignty.

In the area of marine environmental protection, congressional enactment of the 1988 Proclamation's twelve-mile limit would enhance the ability of the Coast Guard to enforce the Act to Prevent Pollution from Ships\textsuperscript{225} by extending U.S. sovereignty nine miles further from the current three mile boundary.\textsuperscript{226} By amending the Shore Protection Act of 1988 to apply

\textsuperscript{220} 14 U.S.C. § 89(a) (1988). "High seas" are all parts of the sea that are not included in the territorial sea, contiguous zone, or exclusive economic zone. UNCLOS III, \textit{supra} note 1, art. 86, 21 I.L.M. at 1286. The high seas are normally open to all nations, and freedom of the high seas generally includes freedom of navigation, overflight, fishing, scientific research, freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations permitted under international law. UNCLOS III, \textit{supra} note 1, art. 87, 21 I.L.M. at 1286.


\textsuperscript{222} \textit{See supra} notes 88-103 and accompanying text (discussing Exclusive Economic Zone).

\textsuperscript{223} \textit{See supra} note 167 and accompanying text (listing numerous federal statutes likely to be amended by congressional extension of territorial sea).

\textsuperscript{224} \textit{Id.}

\textsuperscript{225} APPS, \textit{supra} note 182.

\textsuperscript{226} \textit{Id.}
to the twelve mile zone, the United States would have additional protection from illegal discharges of garbage from vessels operating in U.S. coastal waters. In addition, a congressional bill would amend the Oil Pollution Act of 1990 to provide additional protection of U.S. waters from oil spills caused by foreign or domestic vessels and facilities.

In the area of vessel operation and safety, under the Prohibitions of Foreign Vessels Act, non-U.S. vessels are excluded from conducting wrecking operations within the territorial waters of the United States. A congressional bill redefining "territorial sea" would prohibit non-U.S. ships from salvage operations within the twelve-mile zone instead of the previous three miles. This change is significant because many collisions at sea occur upon approaches to port, where marine traffic is heaviest, thereby reducing the economic advantage of non-U.S. wrecking operations within the wrecking industry. By clarifying that "waters subject to the jurisdiction...

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229. See supra note 130 and accompanying text (defining wrecking operations). Prohibitions of Foreign Vessel Act, 46 U.S.C. § 316(d) (1988). Under this statute, there is a limited exception when no U.S. flag ship is available in the locality and the Commissioner of Customs authorizes use of a non-U.S. vessel. Id.

230. See supra note 130 (explaining wrecking operations).


232. See supra note 130 and accompanying text (setting forth U.S. protective policies against non-U.S. competitors in the shipping industry). Vessel operations would also be affected by congressional expansion of the territorial sea by amending § 7 of the Rivers and Harbors Appropriations Act of 1915. 33 U.S.C. § 471 (1988). By including within the term "navigable waters of the United States" all waters of the twelve-mile territorial sea, the Secretary of Transportation, acting through the Coast Guard, will have expanded authority to establish anchorage grounds for U.S. and non-U.S. vessels in all waters of the twelve-mile territorial sea, instead of the previous three mile area. Id.

In addition, vessel safety along U.S. coastlines would be reinforced because under a congressional bill extending the territorial sea to twelve miles, non-U.S. vessels entering U.S. waters at the twelve-mile mark would have to comply with the Vessel Bridge-to-Bridge Radiotelephone Act. Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C. § 1202 (1988 & Supp. II 1990). By expanding the term "territorial sea" within this statute, all non-U.S. vessels would be required to have radio telephones, thereby enhancing navigational safety. Id. In addition, the Ports and Waterways Safety Act would also expand its definition of "navigable waters of the United States" and would further expand the Coast Guard's authority to establish vessel operating requirements, including vessel traffic controls, for all U.S. and non-U.S.
tion of the United States” include all waters of the new twelve-

mile territorial sea, the authority of the Coast Guard to control and assess penalties against any vessel operating negligently in U.S. waters would be expanded as well.233 Thus all vessels, including non-U.S. flag ships, will be open to expanded criminal responsibility for negligent navigation and operation once they are within twelve miles of the U.S. coast.

The impact of a congressional territorial sea extension will also be felt by the international shipping industry. Collisions that occur within U.S. territorial waters are subject to U.S. Coast Guard investigations and administrative hearings.234 Because the majority of collisions take place within the twelve mile mark, where maritime traffic is heaviest, more parties to the collisions, including non-U.S. parties and non-U.S. witnesses will be summoned before U.S. Coast Guard hearings than previously.235

The international shipping industry will also be affected by an expanded applicability of Rule E(3)(a) of the Supplemental Rules for Certain Admiralty and Maritime Claims.236 In maritime litigation, this procedural rule provides that service of process must be within the federal district where suit is brought.237 Under the SLA, state boundaries end at three miles from the shore but under the 1988 Proclamation U.S. boundaries continue until the twelve mile mark.238 Whether service will now be permitted up to twelve miles from the shore of a given district is a question that will inevitably come


234. 33 CFR § 1.01-20 (1992). The Coast Guard has the authority to inspect vessels within the U.S. territorial waters for compliance with laws and regulations regarding the safe construction, equipment, manning and operations of any vessel, and to conduct investigations of marine casualties and accidents. Id.

235. See id.

236. Rules, supra note 152.

237. Id.; see supra notes 133-38 and accompanying text (stating that federal district for process service purposes extends to states’ boundary, which under Submerged Lands Act is three miles from shore).

238. See supra notes 108-13 and accompanying text (setting forth federal-state property boundaries at 3 mile boundary and U.S. sovereignty boundary at 12 mile mark).
before the courts.239

Through congressional extension of the territorial sea from three to twelve miles, the United States will gain an additional nine miles around its coastal shores to enforce its national laws against U.S. as well as non-U.S. parties. This expanded power to enforce national law is not only equitable and advantageous for the United States, but is also fair from an international perspective. One hundred and twenty-six out of 144 reporting nations in the world today have a territorial sea of at least twelve miles.240 Eighty-eight percent of the world's nations are currently enforcing their national laws against their citizens and non-citizens twelve miles from shore.241 In light of this trend, it is only fair to allow the United States the same rights and privileges as other nations in this respect despite the effects on non-U.S. parties entering U.S. territorial waters. Otherwise, the United States would be at a disadvantage when comparing other nation's enforcement powers.

C. Federal Jurisdiction Should Prevail Over the Extended Zone to Ensure Multilateral Harmonization of Marine Pollution Control Policies as Required by UNCLOS III

A congressional extension of the territorial sea to twelve

239. See Rules, supra note 132 (stating service of process shall be served within the federal district but not defining federal district).

Joel Glass, USA: US Coast Guard Casts Doubts on New Zones Proposed by Congress, REUTERS, Lloyds List, Feb. 11, 1992 available in LEXIS, Nexis Library, CURRNT file. Another consequence of domestic legislation expanding the territorial sea to twelve miles is the effect on non-U.S. vessel activity now permitted in the three to twelve mile zone. Id. Enactment of the Jones' bill or similar legislation may affect activities of non-U.S. vessels now permitted to support U.S. fishing vessels in the three to twelve mile zone. Id. If these activities were barred, joint ventures between U.S. and non-U.S. fish processors could be adversely affected by requiring all fish processors to be U.S.-owned. Id.

Domestic enactment may also effect U.S.-based foreign flag "cruises to nowhere" operations. Id. The ships used for "cruises to nowhere" currently travel beyond the three mile boundary from a U.S. port, and operate "legal" gambling cruises because the ship is beyond the three mile territorial sea line and therefore beyond U.S. jurisdiction. Id. Legislation extending U.S. boundaries to twelve miles will make it more difficult for these otherwise illegal gambling operations to conduct business, which is in the interest of the U.S. maritime industry because non-U.S. shipowners will no longer be reaping profits by maneuvering around U.S. anti-gambling laws. Id.

240. See supra note 106 and accompanying text (setting forth statistics of territorial sea limit of 144 nations).

241. Id.
miles should preserve U.S. federal jurisdiction over the expanded three to twelve mile zone because the federal government is more competent to uniformly sustain that area's environmental protection. Under UNCLOS I, the United States is required to promulgate regulations to prevent pollution resulting from the exploitation of the ocean's submerged lands. UNCLOS III requires that nations endeavor to standardize their marine protection policies with other signatory nations. U.S. federal control over submerged lands would allow the United States to standardize its marine pollution policies with other nations more so than individual state control would allow.

The United States ratified UNCLOS I, which requires that every nation create regulations to prevent pollution of the seas resulting from exploitation of the seabed and its subsoil. In addition, the U.S. federal government substantially agrees with the provisions of UNCLOS III, except for its Deep Seabed Mining Provisions. Extension of the U.S. territorial sea out to twelve miles gives the United States the responsibility to comply with the duty to protect and preserve its marine environment even though the United States has not yet ratified UNCLOS III.

President Reagan stated that UNCLOS III contains provisions that concern traditional uses of the oceans that generally conform to international law and practice. According to President Reagan, the United States is prepared to act in accordance with those provisions that fairly balance the interests of all nations. Thus, the United States accepts UNCLOS III's provisions concerning "traditional uses" of the sea as cus-

242. UNCLOS III, supra note 1, arts. 275-277, 21 I.L.M. at 1921.
244. UNCLOS III, supra note 1, art. 194(1), 21 I.L.M. at 1508.
248. 19 WEEKLY COMP. PRES. DOC. 383-85 (Mar. 14, 1983). The President, exercising his constitutional powers in conducting relations with foreign countries has the authority to express the will of the United States to participate in the creation of new rules of customary international law. LOUIS HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 188 (1972).
tomary international law, binding upon the United States, and therefore is obliged to protect its territorial sea through uniform measures.\textsuperscript{249} This includes the provisions calling for the harmonization of signatories' regulations to protect and preserve the marine environment, which the United States arguably accepts as customary international law.\textsuperscript{250} Therefore, the federal government is more suitable than the individual states to insure multilateral harmonization of standards for marine protection.\textsuperscript{251}

Extension of the U.S. territorial sea out to twelve miles gives the United States the responsibility to comply with the duty to protect and preserve its marine environment even though the United States has not yet ratified UNCLOS III.\textsuperscript{252} President Reagan stated that UNCLOS III contains provisions that concern traditional uses of the oceans that generally conform to international law and practice.\textsuperscript{253} According to President Reagan, the United States is prepared to observe those provisions that fairly balance the interests of all nations.\textsuperscript{254} Thus, the United States accepts UNCLOS III's provisions concerning "traditional uses" of the sea as customary international law, binding upon the United States, and therefore is obliged to protect its territorial sea through uniform measures.\textsuperscript{255}

Compliance with international conventions such as UNCLOS I and UNCLOS III, and attention to international concerns such as maritime pollution, should override any financial interest of individual U.S. states. Uniformity of marine poll-

\textsuperscript{249} Schoenbaum, \textit{supra} note 27, at 23.

\textsuperscript{250} UNCLOS III, \textit{supra} note 1, art. 275, 21 I.L.M. at 1321; Schoenbaum, \textit{supra} note 27, at 23.

\textsuperscript{251} Nandon Speech, \textit{supra} note 4.

\textsuperscript{252} See High Seas Convention, \textit{supra} note 18. Under the High Seas Convention, the United States is obliged to protect and preserve its marine environment from oil pollution as well as pollution from sea-bed exploration. \textit{Id.} art. 24, 13 U.S.T. at 2318, 450 U.N.T.S. at 98.


\textsuperscript{254} 19 \textit{Weekly Comp. Pres. Doc.} 383-85 (Mar. 14, 1983). The President, exercising his constitutional powers in conducting relations with foreign countries has the authority to express the will of the United States to participate in the creation of new rules of customary international law. Louis Henkin, \textit{Foreign Affairs and the Constitution} 188 (1972).

\textsuperscript{255} Schoenbaum, \textit{supra} note 27, at 23.
tion laws and U.S. adherence to the principles of customary international law are of utmost importance and can effectively be accomplished if administered by the federal government.\textsuperscript{256} Order, stability and predictability are the goals of UNCLOS III, including the duty of every nation to preserve and protect the marine environment.\textsuperscript{257} Although certain states like California and Florida are more apt to be environmentally protective of their offshore oceans, this fact does not guarantee uniformity throughout all of the coastal states.\textsuperscript{258} The federal government, while benefitting from the fiscal advantages of jurisdiction over the seabed, which includes rights to lease the ocean floor for oil and gas drilling, will have uniform pollution prevention standards and uniform policies regarding leasing of submerged lands.

Although Congressional extension of the territorial sea will modify many federal statutes, the Submerged Lands Act, which provides for state control over the three mile zone, should remain unchanged.\textsuperscript{259} If individual states had property rights beyond those allowed under the SLA, state leasing policies would vary according to each state’s environmental policies. Despite the desire of several states to share in the large revenues generated through the leasing of submerged lands for oil and gas drilling, the environmentally protective laws of other states would prove to be a major impediment to the U.S. oil and gas industry.\textsuperscript{260}

The oil and gas industries fear that the states with environmentally protective policies would hamper development of oil and gas exploration.\textsuperscript{261} If legislation granted property rights to the states, including rights to grant mineral leases, in the newly extended zone, those states protective of their marine environment would not grant leases for oil and gas drilling

\textsuperscript{256} See supra notes 55-56 and accompanying text (discussing that United States is obliged under certain UNCLOS III provisions to protect its marine environment).

\textsuperscript{257} Nandon Speech, \textit{supra} note 4; UNCLOS III, \textit{supra} note 1, art. 193, 21 I.L.M. at 1308.

\textsuperscript{258} See \textit{supra} note 189 (citing California, North Carolina, and Florida as environmentally protective states).

\textsuperscript{259} See \textit{e.g.}, \textit{supra} note 167 (setting forth examples of modified federal statutes); see \textit{also supra} notes 114-17 and accompanying text (explaining constitutional problems).

\textsuperscript{260} Morris, \textit{supra} note 189, at 9.

\textsuperscript{261} \textit{Id.}
while other states may grant such leases.\textsuperscript{262} If legislation is adopted that would give state jurisdiction over the three to twelve mile zone, oil companies would have to negotiate mineral exploration leases on a state by state basis.\textsuperscript{263} Consequently, these companies would obtain leases in some states, while losing contracts in others depending on the state's interest in developing oil exploration within its coastal waters.

Federal control of the three to twelve mile zone will guarantee a uniform leasing policy for the oil and gas industry, while assuring uniform standards for safeguarding against oil and gas pollution. In addition, the federal government may be more adept than the states at financing environmental protection standards uniformly and implementing the necessary safeguards to ensure protection of U.S. coastal waters against pollution caused by submerged land exploitation.

The desire to share in the large revenues derived from gas and oil leases, royalties, and rents from the Continental Shelf is the primary reason why certain U.S. states are interested in extending their jurisdictional control over the three to twelve mile zone.\textsuperscript{264} The U.S. federal government, however, should maintain control over the three to twelve mile zone to create uniform protection against pollution. Activities such as oil and gas drilling near shores create significant potential for marine pollution.\textsuperscript{265}

Seabed exploitation presents a risk for this dangerous type of pollution, especially as technological advances in the future allow exploration of the seabed at deeper levels.\textsuperscript{266} Accidents involving floating or submersible rigs that drill the seabed to force gas and oil into pipelines are universal.\textsuperscript{267} The exploita-

\textsuperscript{262} See supra note 189 (discussing California, Florida, and North Carolina as environmentally protective of their coastal waters).
\textsuperscript{263} Morris, supra note 189, at 9.\textsuperscript{264} See supra note 189 (discussing states that desire to lease seabed for oil and gas exploration).
\textsuperscript{266} Id.\textsuperscript{267} MANGONE, supra note 20, at 259. Examples of two such accidents in the United States are the Santa Barbara surge of 14,000 tons of oil into the sea in 1969, contaminating forty miles of the California coast, and the "blowout" in the Bay of
tion of petroleum in the submerged continental shelf will con-
tinue as nations grapple with a global energy crisis especially in
light of a growing international concern for our global envi-
ronment as evidenced by the 1992 Earth Summit in Rio de
Janeiro. UNCLOS III stresses every nation's duty to harmo-
nize its pollution protection policies with other nations, in or-
der to create a uniform multilateral system of marine protec-
tion.

CONCLUSION

Domestic legislation enacting the 1988 Proclamation is
imperative and should include an extension of the territorial
sea and contiguous zone because it complies with the sugges-
tions of UNCLOS III. Although the United States has not yet
ratified UNCLOS III, an extension of the territorial sea would
allow the U.S. to join the majority of nations with the twelve-
mile limit and thus comply with customary international law.
The federal versus state dispute in Congress over control of
the submerged lands between the three and twelve mile lines
should be resolved by emphasizing the role of the United
States as a world leader in marine pollution control and allow
the federal government complete jurisdiction in this respect.
This position allows the U.S. federal government to monitor
non-U.S. vessel activity within the territorial sea and simultane-
ously comply with the comprehensive protection provisions for
international cooperation on safeguarding the oceans outlined
in UNCLOS III.

Carol Elizabeth Remy*

Campeche off the Yucatan coast of Mexico in 1970, spilling 3,000 tons of oil into the
sea for days. Id. at 645.

268. Former Senator Al Gore, Symposium: Environmental Rights and International
United Nations Conference on Environment and Development ("Earth Summit"),
was held in Rio de Janeiro, Brazil, in June of 1992. The Summit laid the groundwork
for changes in policies of every nation to stop the destruction of the global ecological
system. Id. at 645.

269. UNCLOS III, supra note 1, art. 194(1), 21 I.L.M. at 1308.
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