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Historic Bays: Memorandum by the Secretariat of the United Nations

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HISTORIC BAYS

MEMORANDUM BY THE SECRETARIAT OF THE UNITED NATIONS

(Preparatory document No. 1)

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CONTENTS

Introduction

I. *Object of the present study*

1. This study is intended for the United Nations Conference on the Law of the Sea, to be held in pursuance of General Assembly resolution 1105 (XI) of 21 February 1957.[1]

2. By the terms of that resolution, the General Assembly has referred to the Conference, as the basis for its proceedings, the draft articles concerning the law of the sea adopted by the International Law Commission at its eighth session. The Commission's draft article 7 deals with bays and reads as follows:

"1. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 17* (A/3572), p. 54.

more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle drawn on the mouth of that indentation. If a bay has more than one mouth, this semi-circle shall be drawn on a line as long as the sum total of the length of the different mouths. Islands within a bay shall be included as if they were part of the water area of the bay.

"2. The waters within a bay, the coasts of which belong to a single State, shall be considered internal waters if the line drawn across the mouth does not exceed fifteen miles measured from the low-water line.

"3. Where the mouth of a bay exceeds fifteen miles, a closing line of such length shall be drawn within the bay. When different lines of such length can be drawn that line shall be chosen which encloses the maximum water area within the bay.

"4. The foregoing provisions shall not apply to so-called 'historic' bays or in any cases where the straight baseline system provided for in article 5 is applied." [2]

3. As will be gathered from the provisions above, the Commission excluded the so-called "historic" bays from the scope of its general rules concerning ordinary bays. The question of this class of bays was, therefore, reserved by the Commission.

4. The object of this memorandum, prepared by the Secretariat of the United Nations, is to provide the Conference with material relating to "historic bays".

5. Part I describes the practice of States by reference to a few examples of bays which are considered to be historic or are claimed as such by the States concerned. Part I then proceeds to cite the various draft codifications which established the theory of "historic bays", and the opinions of learned authors and of Governments on this theory. Part II discusses the theory itself, inquiring into the legal status of the waters of bays regarded as historic bays, and setting forth the factors which have been relied on for the purpose of claiming bays as historic. The final section is intended to show that the theory does not apply to bays only but is more general in scope.

II. *Definition of the subject*

A. *Bays and gulfs*

6. Dictionaries differentiate between the terms "bay" and "gulf", applying the former to a small indentation of the coast and the latter to a much larger indentation; in other words, a bay would be a small gulf. The distinction is not, however, reflected in geography. A cursory glance at an atlas will show that certain maritime areas are designated as bays although they are of considerable size, while other relatively much smaller areas are described as gulfs. For example, despite its name, Hudson Bay is vast, whereas the Gulf of St. Tropez is not more than four kilometres across at its entrance.

7. This paper deals with both bays and gulfs, geographical terms being immaterial to the subject. The pages which follow contain numerous references to penetrations of the sea inland, variously designated as bays and as gulfs without regard to their size. The usage of geographical nomenclature will be respected. In cases, however, where the text is not concerned with specific penetrations, the word "bay" will be used to denote both bays and gulfs.

B. *"Historic bays" and "historic waters"*

8. As indicated in part II of this paper, the theory of historic bays is of general scope. Historic rights are claimed not only in respect of bays, but also in respect of maritime areas which do not constitute bays, such as the waters of archipelagos and the water area lying between an archipelago and the neighbouring mainland; historic rights are also claimed in respect of straits, estuaries and other similar bodies of water. There is a growing tendency to describe these areas as "historic waters", not as "historic bays". The present memorandum will leave out of account historic waters which are not also bays. It will, however, deal with certain maritime areas which, though not bays *stricto sensu*, are of particular interest in this context by reason of their special position or by reason of the discussion or decisions to which they have given rise.[3]

III. *Origin and justification of the theory of historic bays*

9. The origin of this theory is traceable to the efforts made in the nineteenth century to determine, in bays, the baseline of the territorial sea. In view of the intimate relationship between bays and their surrounding land formations and in the light of the provisions of municipal law and of conventions governing the subject, proposals were made the object of which was to advance the starting line of the territorial sea towards the opening of bays. The intention was that, in bays, the territorial sea should not be measured from the shore — the method proposed in the case of more or less straight coasts — but should, rather, be reckoned as from a line drawn further to seaward. On this point agreement was virtually unanimous, though the exact location of the line from which the territorial sea was to be reckoned continued to be the subject of controversy. According to various proposals put forward, the territorial sea was to be measured from a straight line drawn across the bay at a point at which its two coasts were a specified distance apart (six miles, ten miles, twelve miles, etc.); the waters lying to landward of that line would be part of the internal waters of the coastal State.

10. This attempt to restrict, in respect of bays, the maritime area claimable by the coastal State as part of its internal waters conflicted with existing situations. There were bays of considerable size the waters of which

[2] *Ibid., Supplement No. 9* (A/3159) p. 15.

[3] A case in point is that of the maritime areas created by the application of the "straight baselines" method which, as regards the Norwegian coast, was approved by the International Court of Justice in the Anglo-Norwegian Fisheries case (see *infra*, especially paras. 50-72) and which is the subject of article 5 of the draft articles concerning the law of the sea adopted by the International Law Commission at its eighth session (see *infra*, especially paras. 104-108).

were wholly the property of the coastal States concerned —the territorial sea being accordingly reckoned, in these cases, from the opening of the bay in question towards the sea. Hence, for the purposes of codification, the choice lay between two possible courses, *viz.* allowing for these cases by means of an exception to the general rule to be formulated; and ignoring them by making the rule apply to all bays, regardless of their *de facto* status. The second course was felt to be arbitrary, and capable, if applied in practice, of causing international difficulties. Most of the draft codifications which dealt with bays endorsed the first solution. There remained, however, and there still remains, the question which bays are covered by the exception. The mere fact that a State claims the ownership of a bay which is not already territorial by virtue of the general rule does not *per se* ensure acceptance of the claim. The claim would have to be substantiated by reference to a specific criterion. And, according to the theory as originally conceived, this criterion was to be essentially historic. The modern view, however, has gone beyond this conception. According to one school of thought (which is more particularly discussed elsewhere in this paper), the proprietary title may be founded either on considerations connected with history or else on considerations of necessity, in which latter case the historical element might be lacking altogether.

PART I

The practice of States; draft international codifications of the rules relating to bays; opinions of learned authors

I. THE PRACTICE OF STATES: SOME EXAMPLES OF HISTORIC BAYS

11. The undermentioned bays, which are cited for the purpose of illustration, are regarded as historic bays or are claimed as such by the States concerned. They are grouped under two headings, namely, bays the coasts of which belong to a single State, and bays the coasts of which belong to two or more States.

A. *Bays the coasts of which belong to a single State*

Sea of Azov

12. The Sea of Azov is ten miles across at its entrance. It is situated entirely within the southern part of the territory of the Union of Soviet Socialist Republics and extends a considerable distance inland, its dimensions being approximately 230 by 110 miles. De Cussy[4] mentions the Sea of Azov among the gulfs "which may be regarded as part of the territorial sea". P. C. Jessup[5] states that this contention "seems reasonable and any such Russian claim would not be contested". A. N. Nikolaev regards the Sea of Azov as part of the "internal waters of the USSR" (see *infra*, para. 92). Gidel[6] is of the opinion that certain maritime areas — of which the Sea of Azov is one — should not be treated as falling within the category of historic waters "because, pursuant to the rules of the ordinary international law of the sea, these areas are in any case internal waters" (see *infra*, paras. 32-34).

Bay of Cancale (or Granville Bay)

13. This bay (in the north-western part of France) is about seventeen miles across at its entrance. In its reply to the inquiries advanced to Governments by the Preparatory Committee of the Conference on the Codification of International Law, 1930, the French Government stated that "Granville Bay is recognized to consist of territorial waters by the Fisheries Convention of 2 August 1839, concluded with Great Britain (article 1) and by article 2 of the Fisheries Regulations concluded on 24 May 1843 with Great Britain."[7] Gidel[8] states that "the waters of Granville Bay are recognized as French [territorial waters], even though the bay is about seventeen miles across at its entrance". According to Jessup,[9] the bay "seems to be claimed by France without objection. This may be due to the practical appropriation of the bay through the exploitation of its oyster fisheries over a long period. By treaties of 1839 and 1867 Great Britain recognized the exclusive French fisheries in those waters".

Bay of Chaleur

14. This bay (between the Provinces of Quebec and New Brunswick in Canada) does not exceed twelve miles in width; it is about 100 miles long. Its entrance into the Gulf of St. Lawrence is sixteen miles across. In its decision concerning the status of the bay, given in the case of *Mowat v. McFee* (1880), the Supreme Court of Canada held that the Bay of Chaleur was included in its entirety "within the present boundaries of the Provinces of *Quebec* and *New Brunswick*, and within the Dominion of Canada".[10]

15. "The arbitral award in the North Atlantic Fisheries case, 1910, upheld the British contention concerning the Bay of Chaleur".[11] In that award, the tribunal appointed by the Permanent Court of Arbitration recommended that the limit of the bay should be constituted by "the line from the light at Birch Point on Miscou Island to Macquereau Point

[4] *Phases et causes célèbres du Droit maritime des Nations*, 1856, pp. 97-98: In addition to the Sea of Azov the writer mentions "among the gulfs ... which may be regarded as part of the territorial sea, subject to the jurisdiction and control of the State by virtue of the right of self-preservation inherent in its independence" the Sea of Marmara, the Zuyder Zee and the Dollart, the Gulfs of Bothnia and Finland, the Gulf of St. Lawrence in North America, part of the Gulf of Mexico (to the extent indicated in respect of each of the coastal States of that Gulf), the innermost part of the Adriatic Gulf in the vicinity of Venice, Trieste, Rijeka (Fiume), etc., the Gulf of Naples, Salerno, Taranto, Cagliari, Thérmai (Salonica), Coron, Lepanto, etc.

[5] *The Law of Territorial Waters and Maritime Jurisdiction*, 1927, p. 383.

[6] *Droit international public de la Mer*, 1930-1934, vol. III, p. 663.

[7] Ser. L.o.N.P. 1929, v. 2, p. 160.

[8] *Op. cit.*, p. 657.

[9] *Op. cit.*, pp. 385-386.

[10] Reports of the Supreme Court of Canada, vol. 5 (1880), p. 66.

[11] Gidel, *op. cit.*, p. 659.

Gidel (1930-1934): [112]

"The theory of 'historic waters', whatever name it is given, is a necessary theory; in the delimitation of maritime areas, it acts as a sort of safety valve; its rejection would mean the end of all possibility of devising general rules concerning this branch of the public international law of the sea."

G. Scelle (1946-1947): [113]

"Without rejecting the automatic system altogether, Governments have always made a reservation regarding 'historic bays', which are the widest and of the greatest importance to their interests. They contend that these maritime areas which they have always claimed as reserved for their exclusive use and which are, in fact, closed to common traffic by an immemorial usage accepted by other States should be regarded not only as territorial waters but as internal waters. According to this view, then, the claim rests on a form of prescription.

"We believe that there are valid grounds for recognizing prescription as a mode of acquiring rights in international law. Indeed, we think that in the international system prescription is even more fundamental than in municipal systems, inasmuch as it is very generally recognized that prolonged possession of control produces effects in law. In this, as in all primitive legal systems, it is the *occupation* that lies at the root of the title. The essential difference between international law and municipal law in this respect is that in the former the period of prescription is indeterminate and is governed in each case by the test of 'reasonableness'. In any event, the onus is on the claimant State to prove its claim by showing 'immemorial' usage and 'acceptance', at least by implication, as well as the absence of any suspension or interruption."

Pitt-Cobbett (1947): [114]

"Gulfs and bays running into the territory of a single State are also commonly regarded as 'territorial waters' and hence as subject to the sovereignty and jurisdiction of the territorial Power. It is universally admitted that this is so, if the width of the gulf or bay at its point of actual junction with the open sea does not exceed six miles. The North Sea Convention of 1882, already considered, extends this to ten miles. There are, however, territorial bays and gulfs whose entrance largely exceeds this limit. Thus, as we have seen, Conception Bay, with an entrance twenty miles wide, was held to be part of British territory, and Hudson Bay, with an entrance of fifty miles, is also claimed as territorial water by Great Britain. So, too, the United States include in their 'territorial waters' Chesapeake Bay, the entrance to which is twelve miles from headland to headland; Delaware Bay, which is eighteen miles wide; and Cape Cod Bay, which is thirty-two miles wide; as well as other inlets of a similar kind. France, for special reasons, claims the Bay of Cancale, the entrance to which is seventeen miles in width. Norway claims the Varanger Fjord, with an entrance of thirty-two miles, as territorial waters. Such claims would probably be admitted by other States, subject to the body of water in question exhibiting a well marked configuration as a gulf or bay; and perhaps subject also to such claims being confirmed by prescription and acquiescence. But it would not extend to a long curvature of the coast with an open face; or to claims such as those formerly made by the Crown in England as regards the 'Kings Chambers'; or to a claim such as that put forward by the United States in the Behring Sea controversy. So far as such bodies of water are rightly regarded as territorial, they will be subject alike to the sovereignty and jurisdiction of the territorial Power to the same extent and for the same purposes as those already indicated in the case of the littoral or marginal sea."

Higgins and Colombos (1952): [115]

"... The best rule appears to be that in the case of bays bounded by the territory of one and the same State, the ordinary distance of territorial waters should be generally applied and therefore a limit of six marine miles should be recognized to the littoral State. This rule is subject to the exception that on historical or prescriptive grounds, or for reasons based on the special characteristics of a bay, the territorial State is entitled to claim a wider belt of marginal waters, provided that it can show affirmatively that such a claim has been accepted expressly or tacitly by the great majority of other nations."

M. Bourquin (1952): [116]

"... But we should note immediately that it would never be possible to accept it [the ten-mile rule] without qualifying it by important exceptions. Its rigid application would so seriously upset the existing situation that it cannot even be contemplated. The number of bays the opening of which exceeds ten miles and which are nevertheless wholly within the internal waters of the coastal State is considerable. Unless we wish to accuse the States to which they belong of infringing the rules of international law, we must therefore validate their claims by recognizing and exceptional rule."

A. N. Nikolaev (1954): [117]

"In areas containing internal maritime waters or other national waters, the territorial sea is measured from the outer limit of those waters. The internal waters of the USSR include the Sea of Azov, the Gulf of Riga, the White Sea (to the south of a straight line drawn from Cape Svyatoy Nos to Cape Kanin Nos) and Cheskaya Bay (south of a line going from Cape Mikulino to Cape Svyatoy Nos).

"The author of this work is in full agreement with the Soviet scholars who regard as 'historic' and subject to the régime of the internal waters of the USSR the seas which form bays in the Siberian coast: the Sea of Kara, the Laptev Sea, the East Siberian Sea and the Chukchi Sea. Many centuries were required by Russian navigators to establish mastery over these seas, which now constitute a national waterway of the Soviet State. Through these seas passes the northern maritime route from Murmansk and Archangel to Vladivostok, which was only opened through the prodigious efforts of our heroic Soviet people. In this connexion, we should also recall the judgement delivered on 18 December 1951 by the International Court of Justice in the dispute between the United Kingdom and Norway: this judgement recognizes that the maritime route of Indreleia, which follows the Norwegian coast and was only rendered navigable by special work executed by Norway, forms part of Norwegian internal waters."

Oppenheim (1955): [118]

"Such gulfs and bays as are enclosed by the land of one and the same littoral State and have an entrance from the sea not

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[112] *Op. cit.*, p. 651.

[113] *Droit international public*, 2nd ed., Paris, 1946-47, pp. 435-436.

[114] *Cases on International Law*, 6th ed., 1947, p. 158.

[115] Higgins and Colombos, *The International Law of the Sea*, London, 1943, p. 112. (French text published in 1952.)

[116] *Les baies historiques, Mélanges Georges Sauser-Hall*, 1952, p. 38.

[117] *Problema territorialnykh vod v mezhdunarodnom prave* (1954) pp. 207-208.

[118] *International Law*, 8th ed., 1955, pp. 505-508.

answer on this point. In the case of such bays, the territorial waters are measured from a base line passing across the bay at the place recognized as forming the limits of the national territory."

Japan:[126]

"In the case of a bay or gulf the whole of which is regarded, by time-honoured and generally accepted usage, as belonging to the coastal State in spite of the fact that the distance between the two coasts exceeds ten nautical miles, the territorial waters extend seawards at right angles from a straight line drawn across the bay or gulf at the entrance."

Norway:[127]

"There is no rule in Norway regarding the maximum distance between the starting-points of the base lines from which the breadth of the territorial waters is calculated. In choosing the places which, according to the Decree of 1812, are to be regarded as the extreme points, the particular circumstances of each part of the coast have to be taken into account. There may be historical, economic or geographical factors, such as a traditional conception of territorial limits, the undisturbed possession of the right of fishing, exercised by the coastal population since time immemorial and necessary for its subsistence, and also the natural limits of fishing-grounds.

...

"In this connexion, it should also be observed that all fjords, bays and coastal inlets have always been claimed as part of the Norwegian maritime territory, whatever the width at their mouth and no matter whether they are formed by the mainland or by developments of the '*Skjaergaard*'. In determining the starting-points for calculating the breadth of territorial waters, the base line chosen is the lowest-water mark."

Netherlands:[128]

"The Netherlands see no reason to object to the recognition of historic rights in respect of certain bays; such rights would, however, have to be precisely defined in the proposed Convention."

Poland:[129]

"...Regard should also be had to established usage. If a State exercises sovereignty over a bay and no objection has been raised by other States, the waters of the bay should be regarded as territorial waters."

Portugal:[130]

"There are, however, bays with a breadth largely exceeding the limits previously suggested which nevertheless are regarded in their entirety as part of the national territory of the States to which their shores belong. These are what are known as *historic* bays. This exception is founded on the domestic legislation of the various States, their higher interests and necessities, and long-established usages and customs. Moreover, the special position of these bays has been recognized both in judgements of the courts and in certain treaties. From a variety of circumstances, the State to which the bay belongs finds it necessary to exercise full sovereignty over it without restriction or hindrance. The considerations which justify their claim are the security and defence of the land territory and ports, and the well-being and even the existence of the State.

"In addition, these bays are in some cases recognized spawning- and breeding-grounds of certain species of fish of high commercial and industrial value. These species would tend to disappear if no restrictions were placed on the methods of fishing. Again, such bays may be very productive fishing-grounds, and for that reason it is absolutely essential that the industry there should be regulated and controlled. As was previously stated, this would only be feasible if the sovereignty of the bays was assigned to the State owning its shores.

"It should be specially pointed out that regulation and control of this kind would also be advantageous to other States as, owing to the well-known fact of the dispersion of species, the open sea would be abundantly stocked with fish.

"Moreover, the population on the shores of certain bays enjoy the exclusive right of fishing through immemorial and unbroken usage, and fishing is their best and most remunerative occupation. The retention of this exclusive right is a matter of supreme importance for such populations.

"In the case of any bay possessing some or all of the characteristics mentioned above, no limitation is or can be placed on its breadth reckoned along the lines joining the outermost headlands. These bays belong wholly to the States concerned and form an integral part of their territory, the base line for calculating the belt of territorial waters being the line uniting the outermost points of the bay.

"In this way Portugal regards as part of her European continental territory the bays formed by the estuaries of the rivers Tagus and Sado, comprising the areas included between Cape Razo and Cape Espichel and between Cape Espichel and Cape Sines respectively."

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[126] *Ibid.*, p. 168.

[127] *Ibid.*, p. 174.

[128] *Ibid.*, p. 177.

[129] *Ibid.*, p. 182.

[130] *Ibid.*, p. 184.

PART II

The theory of historic bays: an analysis

I. LEGAL STATUS OF THE WATERS OF BAYS REGARDED AS HISTORIC BAYS

94. Are the waters of a bay which is regarded as a historic bay part of the "territorial sea", or are they assimilated to "internal waters"? This question is very important, for different rules govern the two parts of the sea, particularly as regards one point of vital interest in international law: the innocent passage of foreign vessels. As a general rule, States are not bound under international law, to allow such passage in their internal waters.

95. For the purpose of determining the legal status of historic bays, two distinct situations have to be considered: (*a*) historic bays bordering on the shores of a single State; and (*b*) those bordering on the shores of two or more States.

A. *Historic bays the coasts of which belong to a single State*

96. The distinction between the waters within historic bays surrounded by the territory of a single State and the territorial sea seems to be a well established fact. Nevertheless, the distinction has not always been formulated with all the desirable clarity. For example, the

note addressed by the Norwegian Minister of the Interior to the Norwegian Minister of Foreign Affairs concerning the Vestfjord, states that the fjord in question "is considered to form part of the territorial sea of Norway" (*supra,* para. 38). In its reply to questionnaire No. 2 prepared in 1926 by the Committee of Experts for the Progressive Codification of International Law, the Norwegian Government stated that "Norwegian bays and fjords have always been regarded and claimed by Norway as forming part of the territory of the Kingdom". In the same paragraph, however, the Norwegian Government added that "Norwegian law has always held from most ancient times that these bays and fjords are *in their entirety* an integral part of Norwegian territorial waters" (*supra,* para. 35).

97. In its reply to the list of points prepared by the Preparatory Committee of the Codification Conference, 1930, the French Government stated that "Granville Bay is recognized to consist of territorial waters" (*supra,* para. 93). Similarly the Polish Government stated that "if a State exercises sovereignty over a bay and no objection has been raised by other States, the waters of the bay should be regarded as territorial waters" (*supra,* para. 93). The Egyptian Government said that "according to Egyptian public law, the breadth of the territorial waters is..., except as regards the Bay of El Arab, the whole of which is, owing to its geographical configuration, regarded as territorial waters."[131]

98. Some of the authorities also seem — at least, that is the impression one obtains from the language they use — to confuse the waters of historic bays with the territorial sea. For example, De Cussy regards certain maritime areas such as the Sea of Azov, the Zuyder Zee and the Gulf of Bothnia, as part of the territorial sea (*supra,* para. 12). It may well be that the confusion is often due to the looseness of the terminology employed rather than to differences of opinion on the actual principle.

99. Westlake states that many gulfs are "recognized by immemorial usage as territorial sea of the States into which they penetrate". Yet in citing certain examples, he goes on to say: "The Bay of Conception... which is wholly British... Chesapeake and Delaware Bays, which belong to the United States, and the Bay of Cancale... which belongs to France" (*supra,* para. 92).

100. Similarly, Pitt-Cobbett states that Conception Bay "was held to be a part of British Territory"; that Hudson Bay "is also claimed as territorial water by Great Britain"; that the United States "include in their territorial waters" Chesapeake Bay, Delaware Bay and others; that France "claims" the Bay of Cancale; and that Norway claims Varangorfjord "as territorial waters" (*supra,* para. 92).

101. The terms in which these opinions are expressed would hardly justify the conclusion that their authors necessarily assimilate the waters of historic bays to the territorial sea. The distinction between these two classes of maritime area is often obscured by defective terminology. Areas normally regarded as "internal waters" are variously referred to as "territorial waters", "national waters" or "waters forming part of the territory". The International Law Commission has now put an end to this terminological chaos by giving each of the three parts of the sea a distinct designation: "the high seas", "the territorial sea" and "internal waters".

102. The distinction between the waters of historic bays and the territorial sea is always clearly drawn in draft codes. According to the draft codes, whether prepared by learned societies or under the auspices of the League of Nations — all of which use more or less the same formula regarding the delimitation of the territorial sea in bays — the line from which the territorial sea is to be measured in a bay is a straight line drawn across the mouth at the point nearest to the sea where the width of the bay does not exceed a given distance (ten miles, twelve miles, etc.).[132] The fact that the territorial sea does not begin, in a bay, until a fictitious line drawn in the sea at a certain distance from the coast clearly implies that the waters situated to landward of that line are not part of the territorial sea. The same applies, therefore, to the waters of historic bays, the status of which is recognized by these draft codes as an exception (or as a possible exception) to the general rule applicable to ordinary bays. The draft convention amended by Mr. Schücking in consequence of the discussion in the Committee of Experts (*supra,* para. 86) even states expressly, in article 4, that the waters of the bays defined in that article are to be assimilated to internal waters; and the bays defined in that article are those which are bordered by the territory of a single State and in which the territorial sea is measured from a straight line drawn across the bay at the part nearest the opening towards the sea where the distance does not exceed ten miles "unless a greater distance has been established by continuous and immemorial usage".

103. The draft articles prepared by the International Law Commission[133] also draw a clear distinction between the waters of bays and the territorial sea. The Commission's draft assimilates the waters of ordinary bays, which it defines and for which it lays down the

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[131] *Ibid.,* p. 125; see also *supra,* para. 24.

[132] The same procedure for delimiting the territorial sea in bays is prescribed in many treaties and national statutes; e.g. Treaty of 2 August 1939 between Great Britain and France, article 9 (de Martens, *Nouveau recueil général de traités,* vol. XVI, p. 254); Convention of 6 May 1882 between Germany, Belgium, Denmark, France, Great Britain and the Netherlands, article 2 (*Ibid.,* 2nd series, vol. XIX, p. 510); Treaty of 27 March 1893 between Portugal and Spain, article 2 (*British and Foreign State Papers,* vol. 85, p. 416); Treaty of 31 December 1932 between Denmark and Sweden, article 2 (*League of Nations Treaty Series,* vol. 139, p. 215).

National statutes: Brazil, Decree No. 5796 of 11 June 1940, article 17 (1) (*Collecçao das leis,* 1940, vol. VI); Italy, Navigation Code of 30 March 1942, article 2 (*Gazzetta Ufficiale* No. 75, 1942).

A number of statutes classify as internal waters all bays bordering on the country's shores; some of these specify limits, others do not. See for example, the Yugoslav Act of 1 December 1948 (*Sluzbeni List,* vol. 4, No. 106, 8 December 1948, item 875, p. 1739).

[133] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9* (A/3159).