

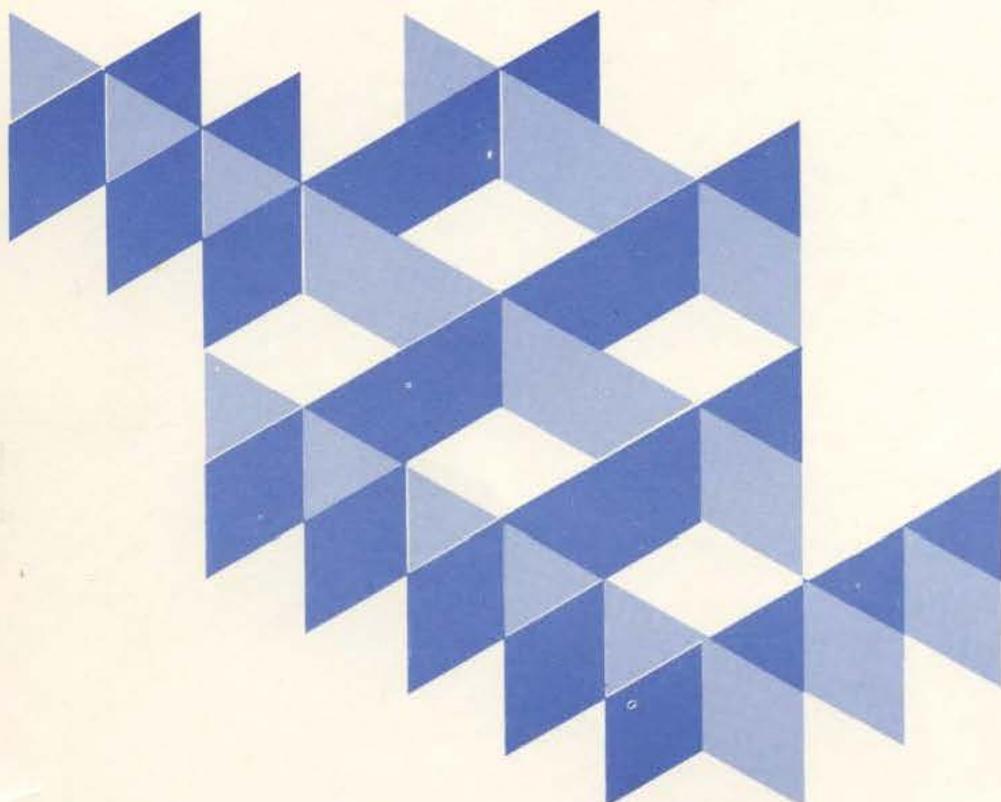
United States Department of State
*Bureau of Oceans and International
Environmental and Scientific Affairs*



Limits in the Seas

No. 112

United States Responses to
Excessive National Maritime Claims



This paper is one of a series issued by the Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs in the Department of State. The aim of the series is to provide information on national maritime claims by coastal States. It is intended for background use only. This paper reflects the position of the United States towards excessive claims by coastal States which are inconsistent with international law.

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maximum 24-mile closing line rule was agreed to in the 1958 Convention on the Territorial Sea and the Contiguous Zone. Several bodies of water previously claimed by the U.S. as historic now met the requirements of a juridical bay: Chesapeake Bay (with a 12-mile entrance); and, Delaware Bay (with a 10-mile mouth). Similarly, the Gulf of Amatique, which Guatemala claimed as historic waters in 1940, now qualifies as a juridical bay, as do Samana and Neiba Bays claimed by the Dominican Republic as historic in 1952.

Foreign Waters Considered Not to be Historic

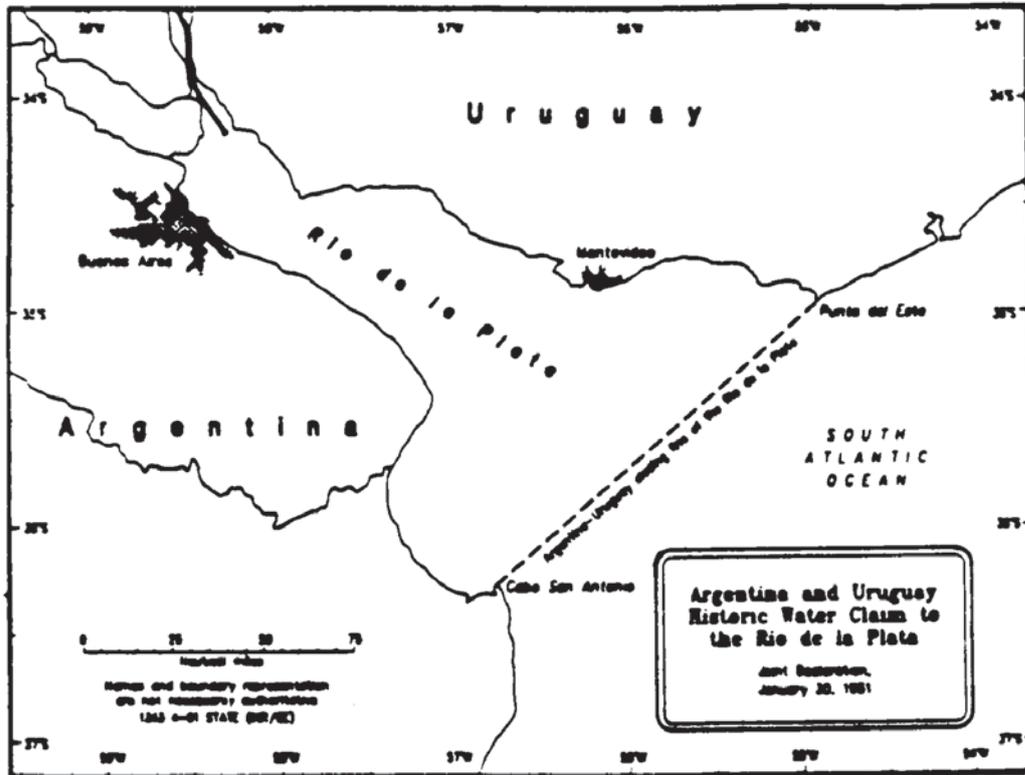
Table 1 lists known claims to historic waters and actions taken by the United States. The following is a description of several claims made to historic waters that have been protested by the United States.

Argentina and Uruguay - Rio de la Plata:

Some authorities have stated that the Rio de la Plata estuary is an historic bay (see Map 1).¹³ However, in drawing a straight line across the mouth of the estuary, the joint Declaration of the Governments of Uruguay and Argentina of 30 January 1961 did not assert an historic claim to the Rio de la Plata. Rather the declaration took into account the provisions of Article 13 of the 1958 Convention on the Territorial Sea and the contiguous Zone regarding river closing lines.

Map 1

¹³ See, for example, the 1910 dissenting opinion of Luis M. Drago in the North Atlantic Coast Fisheries Case (U.K. v. U.S.), reprinted in Scott, The Hague Court Reports 199-200 (1916); Gidel, Le Droit International Public de la mer, v. III, pp. 653-54 (1934); "Historic Bays," UN Doc. A/Conf. 13/1, para. 43, reprinted in UN Conference on the Law of the Sea, Official Records, Vol. 1, p. 8, UN Doc. A/Conf. 13/37.



**TABLE 1
CLAIMS MADE TO HISTORIC BAYS**

State	Body of Water	Law & Date of Claim	U.S. Protest	U.S. Assertion of Rights
Argentina	Rio de la Plata	Joint declaration w/ Uruguay, Jan. 30, 1961	1963	
Australia	Anxious, Rivoli, Encounter, Lacedede Bays	Proclamation March 31, 1987	1991	
Cambodia	Part of Gulf of Thailand	Agreement w/ Vietnam July 7, 1982	1987	yes
Canada	Hudson Bay	Amendment to Fisheries Act July 13, 1906	1906	
Dominican Republic	Samana, * Ocoa, * Neiba * Bays Escocesa & Santo Domingo Bays	Law No. 3342, July 1952		yes

Egypt	Bay of el Arab#	Embassy Note June 4, 1951	1951	
El Salvador	Gulf of Fonseca&	Const. Amend. 1946. Art. 3: Const. Art. 84, Dec. 13, 1983		yes
Honduras		Constitution of 1982, art.10		
India	Gulf of Nammar, Palk Bay	Law No. 41, June 1, 1979; Agreement w/ Sri Lanka, June 28, 1974	1983	
Italy	Gulf of Taranto	Presidential Decree No. 816 April 26, 1977	1984+	
Kenya	Ungwana Bay	Territorial Waters Act. May 16, 1972		
Libya	Gulf of Sidra	Foreign Ministry Note Verbale; MQ/40/5/1/3325, Oct. 11, 1973	1974+	yes
Panama	Gulf of Panama	Law No. 9, Jan 30, 1956	1956+	yes
Portugal	Taus, Sado and associated bays	Decree Law 47,771; June 27, 1967		
Soviet Union	Peter the Great Bay, Laptav, Demitri, Sannikov Straits	Decree July 20, 1957; Aide Memoire July 21, 1964	1957 +; 1965	yes
Sri Lanka	Palk Bay, Balk Bay, Balk Strait, Gulf of Mannar	Agreement w/ India June 28, 1974; Proclamation Jan. 15, 1977		
Thailand	Part of Gulf of Thailand	Decree, Sept. 22, 1959	1963	
Uruguay	Rio de la Plata	Joint declaration w/ Argentina Jan. 30, 1961	1987	

The United States protested on January 23, 1963, on the grounds that article 13 "relates to rivers which flow directly into the sea which is not the situation of the River Plate which flows into an estuary or bay".¹⁴ Also protesting this claim were the United Kingdom (On December 26, 1961), and the Netherlands (on June 26, 1962).¹⁵

Cambodia and Vietnam - Gulf of Thailand:

On July 7, 1982, Cambodia and Vietnam signed an agreement which, *inter alia*, made claim to a part of the Gulf of Thailand as historic waters.¹⁶ The United States protested this claim in a note to the UN Secretary General, as follows:¹⁷

Under the terms of this agreement the parties purportedly claim as historic certain waters in the Gulf of Thailand extending from the mainland to Tho Chu and Poulo Wai Islands.

As is well known under longstanding standards of customary international law and State practice, historic waters are recognized as valid only if the following prerequisites are satisfied: (a) the State asserting claims thereto has done so openly and notoriously; (b) the State has effectively exercised its authority over a long and continuous period; and (c) other States have acquiesced therein.

In the case of the historic waters claim made by the parties to the above agreement, the claim was first made internationally no earlier than July 7, 1982, less than five years ago, notwithstanding the assertion in the agreement that the waters "have for a very long time belonged to Vietnam and Kampuchea [Cambodia] due to their special geographical conditions and their important significance towards each country's national defense and economy."

The brief period of time since the claim's promulgation is insufficient to meet the second criterion for establishing a claim to historic waters, and there is no evidence of effective exercise of authority over the claimed waters by either country before or after the date of the agreement. Moreover, without commenting on the substantive merits or lack thereof attaching to the "special geographical conditions" of the waters in question and their "important significance towards each country's defense and economy," such considerations do not fulfill any of the stated customary international legal prerequisites of a valid claim to historic waters.

Finally, the United States has not acquiesced in this claim, nor can the community of States be said to have done so. Given the nature of the claim first promulgated in 1982, such a brief period of time would not permit sufficient acquiescence to mature.

¹⁴ 57 American Journal of International Law, 403-04 (1963); 4 Whiteman, Digest of International Law, 342-43.

¹⁵ 4 Whiteman, Digest of International Law, 343.

¹⁶ The text of this agreement can be found in FBIS Asia & Pacific, July 9, 1982, vol. IV, No. 132, pp. K3-K4.

¹⁷ United States Mission to the United Nations at New York note dated June 17, 1987; reprinted in UN Law of the Sea Bulletin No. 10, November 1987, p. 23.