

Mandates - "Territorial Waters"

DEPARTMENT OF STATE
THE LEGAL ADVISER

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RMB

January 2, 1945

MEMORANDUM

TO: DA -- Mr. James F. Green

FROM: Le -- Leonard C. Meeker

Attached are two copies of a memorandum on the extent of territorial waters around the former Japanese mandated islands in the Pacific. It is understood that this memorandum is desired for inclusion in the book of documentation on the U. S. proposal for trusteeship over these islands. Like the other memoranda which we have submitted to you for this book of documentation, this one remains subject to final clearance by Mr. Fahy.

FN 8940145/1-247

Enclosures (2)

Le:LCMeeker:rc

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*(Copy also to:
Mr. Harward
Opinion file*

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TO: Le -- Mr. Fahy

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This is a memorandum which John Howard and I are sending to DA for inclusion in the black book of documentation for the U. S. trusteeship proposal concerning the former Japanese mandated islands.

We have submitted two other legal memoranda to DA on Method of Congressional Approval for a Trusteeship Agreement and on the Legal Rights of the U. S. in the Former Mandated Islands. I believe you still have those memoranda. This one also is being submitted to you for your approval. All three memoranda in the book of documentation are stated to be subject to final clearance.

Enclosure

Le:LCMeeker:rc

FW 894.0143/1-2-47

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RMR

January 2, 1948

MEMORANDUM

Territorial Waters of Former Japanese Mandated Islands

(1) The Question

What is the extent of the territorial waters of the islands formerly under Japanese mandate?

The question has been raised whether in the case of a geographical group of islands under unitary administration -- such as the Marshalls, the Carolines, or the Marianas -- the territorial waters are limited to a band of fixed width around each island, or may be held to include all the waters enclosed by the group.

(2) Conclusions

It would seem that, with possible minor exceptions, the territorial waters of islands however situated comprise a band three miles wide around each individual island. Thus the treatment of islands and groups of islands, with respect to territorial waters, is approximately the same as the treatment of larger land masses such as continents.

The state which has jurisdiction over land has the same authority over the adjacent territorial waters as over the land. Beyond the limit of the territorial waters that state does not have such plenary authority. However, the state may take certain

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measures on the high seas to protect its interests. This rule has application to the high seas adjacent to the territorial waters of islands as well as to the high seas adjacent to the territorial waters of continents.

(3) Discussion

The Three-mile Limit. The proposition was enunciated early in the eighteenth century that the extent of the area of territorial waters should be measured by the power of the state to control it from the adjacent land, and that the test of that power was the range of cannon. By the end of the eighteenth century this distance came to be regarded as three marine miles or one marine league. The United States early asserted that the band of territorial waters was three miles wide. In time there was general agreement among states that a maritime power exercised sovereignty over a three-mile width of adjacent sea.

Attempts were made later by several states to enlarge their territorial waters beyond three miles. But no general international agreement has ever been reached on broadening the territorial waters, although proposals for laying down a new rule to accord with changed modern conditions have occasionally been made. See Hyde, International Law (1945) § 145; I Hackworth, Digest of International Law (1940) § 92. The United States has been prominent in its repeated support of the three-mile extent of territorial waters over which the adjacent maritime power exercises sovereign authority.

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Protection beyond the Marginal Sea. ^(B) Although there is no general agreement that sovereignty goes beyond the three-mile limit, there is recognition in international law that a maritime state may take certain measures beyond three miles, on the high seas, to protect the state. Execution of the "heaving" laws of Great Britain and the United States gives an example of such action. Pursuant to such laws, the United States has interfered with ships off the American coast, beyond three miles, where interference was believed necessary to prevent imminent violations of United States laws, such as smuggling. Similar interference has been undertaken by neutral states in time of war to prevent the acts of belligerents off their coasts from endangering their neutrality. However, such interference beyond the three-mile limit is not the assertion of sovereignty over a wider band.]

Islands. The principles and rules discussed above are generally held to be applicable in the case of islands as in the case of continents. See Hyde, op. cit. supra, § 149 A; I Hackworth, op. cit. supra, § 95. An exception may exist in the case of islands close to the mainland, where the maritime state has long adhered to the practice of regarding interjacent waters as territorial, though not all of these waters lay within three miles of the mainland or of an island.

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This exception does not have relevance to the case of islands in the Pacific, far from the continental United States.

The usual rules would seem to apply to groups of islands as well as to single islands, although in 1930 at the Hague a subcommittee of the Preparatory Committee for the Conference for the Codification of International Law stated in its report:

A ["GROUPS OF ISLANDS.

"Observations.

"With regard to a group of islands (archipelago) and islands situated along the coast, the majority of the Sub-Committee was of opinion that a distance of 10 miles should be adopted as a basis for measuring the territorial sea outward in the direction of the high sea. Owing to the lack of technical details, however, the idea of drafting a definite text on this subject had to be abandoned. The Sub-Committee did not express any opinion with regard to the nature of the waters included within the group."

The United States had proposed a geometrical solution for eliminating pockets of high seas in the waters included within an archipelago. See Hyde, op. cit. supra, §149 A (g).

Examination of charts of the former Japanese mandated islands in the Pacific shows that this geometric solution, if adopted, would have only very limited and local application there, since in general the inter-island distances among the Marshalls, Carolines,

- 5 -

or Marianas are very large in relation to the distance contemplated and dealt with by the American proposal. —

— An order in council of August 13, 1877 for the Regulation of British Jurisdiction in the Western Pacific Islands shows that Great Britain regarded the territorial waters of these islands as comprising only a three-mile band around each. See Crocker, The Extent of the Marginal Sea (1919) 567.

The Kingdom of Hawaii, on the other hand, indicated through a neutrality proclamation of King Kamehameha III on May 16, 1854 that the kingdom's territorial waters included the straits between islands, though such straits might be wider than six miles. See id. at 596.]

Le:LCMeeker:re

January 2, 1946

[1947]

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