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The Historic End of Closed Seas

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UNIVERSITY OF RHODE ISLAND

SUPERVISED WRITING

THE HISTORIC END OF CLOSED SEAS

BY

JAMES EDWARD GRISE

The contents of this paper reflect my own personal views and are not necessarily endorsed by the University of Rhode Island.

James E. Grise

SIGNATURE
15 May 1970

DATE

Abstract of
THE HISTORIC END OF CLOSED SEAS

The regime of closed seas has developed over the years until the Soviet Union is the only nation that speaks of them as a separate regime in their present international law textbooks. The Soviet Union has claimed the Black, Baltic, Caspian, White, Kara, Laptev, Bering, East Siberian, Chukotsk, Sea of Azov, Sea of Okhotsk and the Sea of Japan as closed seas. Since the ANGLO-NORWEGIAN case of 1951 it appears that the drawing of baselines and claims to large water areas based on historic use has a basis under international law. It appears that areas which were claimed as closed seas are now becoming historic waters.

The United States has for years been the strong supporter of freedom of the seas. They have tried to limit all claims to territorial waters, but have now expressed a desire to extend their territorial limits to 12 miles. In 1960 this may have been good for some form of compromise, but is now the limit of most of the nations of the world and thus practically customary international law. It is past time for the United States to consider what is happening in the Arctic area and to realize that they can easily be told not to use the Northeast or the Northwest passages. It may be that they have conceded the Northeast passage to the Soviet Union by acquiescence now.

PREFACE

Purpose. The purpose of this paper is to consider the rather vague claims to closed seas by the Soviet Union and to determine what direction these claims are taking. The first part of the paper deals with the history and development of the closed sea concept and expands it into the present day claims in this area. It attempts to show how some of the past claims have remained over the years and how some of the others have progressed to claims of historic waters. In the final section an attempt is made to show some method for resolving some of the problems that have been shown by projecting a regime which might be used to satisfy both the Soviet Union and the United States for future control of these seas and like seas of other nations.

Sources. Most of the sources used in this paper were of an international law nature. The topic under which most of them were cataloged was "Maritime Law" or "Freedom of the Seas." Under maritime law most of the information was under delimitation of inland waters, territorial waters, and high seas. The remainder is listed under "historic" bays. It was only in Soviet law textbooks that closed seas were listed as separate regimes of the sea.

Comparisons. There are a number of distances and areas given for comparison. On occasions dimensions of unrelated,

better known areas, are listed to provide for ease of comparison. The reason for this is that some of the areas listed are not generally well known and have been called by various names over the years. A sea twice the size of Texas may draw more attention than one which is only 550,000 square miles. The physical size of the problem is more significant at present than is the economic impact. Population and technology will soon overtake this difference.

War and Peace. International law of the sea is generally divided between the law during time of peace and that during time of war. For the purpose of this paper it is important to realize that only the law during time of peace is considered. The laws of war will hopefully not be needed to deal with this problem.

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THE HISTORIC END OF CLOSED SEAS

CHAPTER I

INTRODUCTION

Throughout the years the Soviet Union has been seeking a warm water entrance to the sea. This has led to some very interesting construction projects and to the expansion of the nation to desolate areas in hopes of finding some method for using the sea. At every turn they have found themselves blocked at one point or another by the geographic considerations of the water areas that bound that great nation. They became a Black Sea power in the 18th century and soon found themselves limited in exit through the straits that control this sea. When they became a Baltic power, they again found that control of the straits was most important for controlling the use of this sea. In the Pacific area they were limited by the narrow straits from the Sea of Japan and a very powerful Japanese Navy that was not going to allow the Russian fleet free use of the sea in their backyard. Their only apparent wish for control of the sea was to insure that they were allowed full use both for their merchant and warships. In addition, they wished to control the flow of nonlittoral warships to and from the area. This was apparently not an attempt to control the economics of the sea, but rather, to provide for the security of her own forces.

Now the Soviet Union has shown that they not only desire to control the sea, but that they have the technology to produce the ships both merchant and war. Along with the demonstrated technology is a long-range building program for merchant, fishing and warships. The rapid growth of their fishing fleet has been the talk of the past decade in the sea.

The Soviet Union is the largest nation in the world. Most of their coast is covered for long periods each year with ice. For this reason the Soviet Union is generally not considered to have much coastal territory; however, they presently have the largest amount of coast of any nation in the world with a total of 23,098 miles.¹ This makes Indonesia second with 19,889 miles, followed by Australia (15,091 miles), the United States (11,650 miles) and Canada (11,129 miles).² When looking at the vast coastal area it becomes apparent that the Soviet Union indeed controls a considerable amount of territorial water based upon their 12 mile limit. There is much more to this limit than meets the eye. The outer limit of internal waters must be determined before territorial waters are established.

There are 14 seas that border the Soviet Union, and of these, they consider five of them to be closed seas, six to be historic waters, two as high seas, and one to be an internal lake.³ It is not difficult to understand what is

meant by high seas and an internal lake as these are defined in Oppenheim's and Colombos' books on international law of the sea.⁴ The subject of closed seas and historic waters are not as well defined and are not even considered by many to have any basis in international law. It is these two areas that will be explored and defined. The original intent was to discuss only the area of closed seas, but as the study progressed, the two tended to overlap and even in some cases, there were periods where claims to areas were both as closed seas and historic waters.⁵

Based on the figure of 23,000 miles of coastline, it can be estimated that the Soviet Union has about 276,000 square miles of territorial seas. This is a considerable amount of territory when it is pointed out that it is much larger than the North Sea. There is approximately one and one-half million square miles of sea that is claimed as closed seas, while approximately one million square miles is claimed on a historic basis. The claims to closed seas as well as some of those to historic waters are unofficial in nature. They are written into the international law textbooks and not set down in official unilateral proclamations. Such unilateral proclamations tend to cause official protests, as was the case when the Soviet Union made official its historic claim to Peter the Great Bay.⁶ These protests in turn could terminate the historic significance that has been generated over the years.

The area which presently falls under the category of territorial seas is approximately nine times smaller than is the area which is claimed as closed seas or historic waters. The 12 mile claim to territorial seas has only been official since 1927.⁷ It was not until 26 May 1950 that the Soviet Union acknowledged that their territorial claims of 12 miles in the Baltic area were a result of the 1927 statute on state boundaries.⁸ This claim of a 12 mile territorial limit has created much controversy, and the United States and its allies have not been willing to accept it as legal under international law. The claim has been observed and allowed to gain historic and customary value under international law. Very few protests have been made to their unofficial claims to historic waters, but they also have been observed and allowed to generate great historic value.

Looking to the textbooks of the U.S.S.R., it is apparent that many of the Russian jurists have for a long period of time claimed the following as closed seas: BLACK SEA, BALTIC SEA, CASPIAN SEA, SEA OF JAPAN, and the SEA OF OKHOTSK.⁹ The Bering Sea is now claimed as high sea, but there has been a time when there was a claim of at least 100 miles in this area. This was settled about 1825.¹⁰ The KARA, LAPTEV, EAST SIBERIAN and CHUKOTSK seas are historic waters and are gaining a great deal of historic value each year.¹¹ The Barents sea is declared to be high sea,

and the reason may be to prevent others from claiming it. The U.S.S.R. may be somewhat concerned that the Norwegian claim to a sector of the Arctic is much more valid than is their historic or sector claim in that area, and thus, wants to make sure that this area remains open.¹² The U.S.S.R. has never really claimed the Arctic, but they do have a rather vague sector claim to the land to the north, both discovered and undiscovered.¹³ The word vague is used due to the possibility that they may intend to use the stationary ice definition as being the same as land. However, many explorers over the years, including Russian, have shown the polar ice to be far from stationary.¹⁴ The Sea of Azov is a bay of the Black Sea and is internal waters of the U.S.S.R., in the classic sense. There seem to be no claims to the area, but it is controlled by the U.S.S.R. and this control is undisputed. The Gulf of Riga, Cheshskaya Bay, the White Sea and Peter the Great Bay are other areas which have official claims to them.¹⁵

This takes us all the way around the largest nation in the world with the largest amount of coastline. A good percentage is not considered in theory or in practice to be high seas.

The purpose of this paper is to explore the closed seas and historic waters of the Soviet Union and attempt to determine how valid these claims are and what an acceptable regime for these areas might be.

FOOTNOTES

CHAPTER I

¹U.S. Department of States, Sovereignty of the Sea Geographic Bulletin No. 3 (Washington: U.S. Govt. Print. Off., April 1965), p. 20.

²Ibid., p. 17-19.

³William E. Butler, The Law of Soviet Territorial Waters (New York: Praeger, 1967), p. 93. Butler refers to these differently; however, using the definitions in this paper, the seas break down as indicated here.

⁴C. John Colombos, The International Law of the Sea (London: Longmans Green, 1967), p. 198-201 and Chapter II; L. Oppenheim, Oppenheim's International Law (New York: Longmans Green, 1955, v. I), p. 476 and Part II, Chapter II.

⁵Butler, p. 13.

⁶"U.S. Repeats Protest on Closing of Peter the Great Bay," U.S. Dept. of State Bulletin, 24 March 1958, p. 461-462.

⁷F.I. Kozhevnikov, ed. International Law (Moscow: Foreign Languages Publishing House, 1961), p. 213.

⁸Butler, p. 73.

⁹P.D. Barabolya, et al., Manual of International Maritime Law (Moscow: Military Publishing House of the Ministry of Defense of the U.S.S.R., 1966, 2 v.), p. 112-114.

¹⁰Thomas William Balch, "Is Hudson Bay a Closed or an Open Sea?" The American Journal of International Law, April 1912, p. 436-438.

¹¹Butler, p. 12.

¹²W. Lakhtine, "Rights Over the Arctic," The American Journal of International Law, 1930, v. 24., p. 703-717. Lakhtine presents the sector principle and establishes a regime for sovereignty over seas covered with ice.

¹³Butler, p. 97.

¹⁴ Donat Pharand, "Freedom of the Seas in the Arctic Ocean," University of Toronto Law Journal, 1969, General description of the Arctic Area.

¹⁵ Barabolya, p. 197.

CHAPTER II

HISTORY

Freedom of the seas did not become a problem for men until the 15th century. It was at this time that the long sea voyages started. Pope Alexander VI (Rodrigo Borgia) divided the undiscovered world between Spain and Portugal by a line drawn from pole to pole one hundred leagues west of the Azores. One year later, in 1494, the nations concerned agreed to shift the line to 379 leagues west of the Cape Verde Islands. This line was to prevent all commerce in the ocean except by license of the sovereigns concerned.¹ These claims seemed to pass without comment until Queen Elizabeth I replied to a 1580 Spanish protest of Drake's voyage in the Golden Hind. In her reply the Queen declared that the use of the sea and the air was free to all mankind and that no exclusive rights could be claimed.² The Dutch were soon to support this English point of view, but the English only supported the view themselves when it was in their national interest. From about the 13th century onward, even as late as 1851, the English claimed sovereignty over the North Sea and the waters adjacent to the British Isles.³ These claims generally took the form of demanding salutes from foreign ships in these waters.

The Dutch protested to the Portuguese for limiting their free trade in the East Indian Seas at the start of the 17th century. Hugo Grotius wrote an essay on this subject entitled Mare Liberum (Free Seas), which was published in 1609.⁴ This essay was written in legal form with great force and put forward one of the first great steps of the international law of the sea. John Selden followed this essay with his writing entitled Mare Clausum (Closed Seas). Selden had the upper hand in that he could counter each point that Grotius made without fear of committing himself to original thoughts. This was published by King Charles I of England who wished to justify the English claims to their adjacent waters.⁵

In his essay Grotius made the following basic points: waters of the ocean are not susceptible to effective occupation, and the sea cannot be exhausted either by navigation or by fishing.⁶ Grotius did concede a possible claim to a marginal belt. Selden countered these arguments with the thought that the ocean was an area over which there was jurisdiction without dominion.⁷ Selden did concede the right of free navigation subject to limited restrictions. Grotius had intended to provide free trade for his country while Selden was interested in security.

Other writers seemed to express themselves more clearly, if less artistically, by rattling the guns of a strong navy.

The strength of this navy had been developed to protect their foreign interests and their merchant fleet at sea. It seemed unfair that other nations should be allotted equal claim to the seas without the expense of a naval force. In the 13th century the Danes had considered it only fair to charge "sound dues" for the passage of ships into the Baltic. These charges were for services rendered in providing navigation facilities, clearing the area of pirates, and keeping the channel well marked and clear of obstacles. The United States protested these charges in 1844. The Copenhagen Conference was held in 1857. At this conference several nations agreed to pay a lump sum settlement to Denmark if they agreed to discontinue the "sound dues." A three million pound settlement was agreed upon for which England paid over half.⁸ The United States paid nothing since they claimed that they did not recognize the Danes' right to charge these fees. Settlement was made however the following year.

The Soviet Union made claim to the Bering Sea as a Mare Clausum in 1821.⁹ This claim was to establish a 100 mile area adjacent to the coast of the Soviet Union for the purpose of providing fishing zones. The United States and England protested loudly. This Claim was resolved in 1825 in an agreement with England over the boundary between Alaska and Canada. In 1886 the United States made another claim to the Bering Sea as a Mare Clausum.¹⁰ This claim was made by Secretary of State Blaine in an effort to protect the

seals. A United States warship apprehended three Canadian seal vessels 70-100 miles off the Pribilof Islands. The case was not settled until 1893 at the Paris International Tribunal of Arbitration. The United States lost the case handily. The court continued the case because they felt obligated to protect the seals from extinction. This proved that the court knew a great deal more about law than it did about seals, and it was not until 1911 that the problem of the seals was satisfactorily resolved.

There has only been one recent case where a claim has been made to Mare Clausum. The Gulf of Aqaba was claimed by the government of Saudi Arabia in 1949, and they stated at this time that it was subject to the provision of international law as to the innocent passage of vessels of other nations through the coastal sea. Egypt and Saudi Arabia declared themselves belligerents and then proceeded to blockade the area from all the traffic to the port of Elath.¹¹ There existed at this time an armistice, which according to the U.N. precluded blockade action. The U.N. further declared the area an international waterway and placed troops to insure that it was kept open.

It is with this beginning that we see various regimes of the Law of the Sea unfolded. Internal waters, territorial waters, and high seas have had their boundaries moved around in the same liquid fashion as the sea itself. A

famous Dutch jurist, Cornelius van Bynkershoek, whose fame was second only to Grotius, published this statement in 1702:

Accordingly, I should think that possession of an adjacent sea should be extended to that place up to which it can be considered as subject to the mainland; indeed, only to that point is it justly defined, even though it be not navigated upon continually and to that point, is possession sought by law, guarded; for there can be no question that one possesses continually who so possesses a thing that another is unable to possess it against his will. Wherefore, we do not concede dominion of an adjacent sea further than that distance from the land where it can be ruled.¹²

This is what may have led to the territorial limit of three miles for this was the range of the cannon of the day. But this statement contained no such hard and fast rule, nor did the Convention on the Territorial Sea and Contiguous Zone of 1958. The problem of the extent of territorial waters is still unresolved today. The problem is one of satisfying the national interests of all the nations of the world with one written statement. This statement must cover the geographic, historic and economics considerations of the world.

The history of Soviet claims to ocean areas is vague and has developed more since the end of World War II than in the time before. Prior to this time they were more involved in an internal struggle and the development of internal waterways was most important.

The strategic importance of the inland waterways became particularly evident during the reign of Peter the Great, who could not have held the

newly-gained positions on the Baltic nor have exerted pressure on the Black Sea Turks without an increasingly large-scale use of inland waterways for transporting men and materials and for the movement of warships. It is no exaggeration to say that development of inland navigation in Russia, both economically and strategically played a role in the rise of the empire similar to that which the mastery of the open seas played in the case of the great maritime nations.¹³

These internal waterways have connected most of the western seas that border the Soviet Union. These are the closed seas and the historic waters about which so little is said. The northeastern passage to the north of the U.S.S.R. may soon be a major water route. With the discovery of oil on the north edge of Alaska, our national interests may find that we are indeed concerned about this area that has been so long neglected.

FOOTNOTES

CHAPTER II

¹H.A. Smith, The Law and Custom of the Sea (London: Stevens & Sons, 1959), p. 5.

²Balch, p. 412.

³Smith, p. 57.

⁴Balch, p. 413.

⁵Ibid.

⁶Leo J. Bouchez, The Regime of Bays in International Law (Leyden: Sythoff, 1964), p. 2.

⁷Pitman B. Potter, The Freedom of the Seas in History Law and Politics (New York: Longmans Green, 1924), p. 28.

⁸Colombos, p. 199.

⁹Balch, p. 436-438.

¹⁰Ibid., p. 443.

¹¹Paul A. Porter, The Gulf of Aqaba: An International Waterway (Washington: Public Affairs Press, 1957), p. 1-7.

¹²Balch, p. 414.

¹³Andrei Lebed and Boris Yakovlev, Soviet Waterways, The Development of the Inland Navigation Systems in the U.S.S.R. (Munich: Institute for the Study of the U.S.S.R., 1956), p. 2.

CHAPTER III

DEFINITIONS AND DISCUSSION

Section 1

Definitions

Mare Clausum and the present day closed sea are not the same. Mare Clausum was originally intended to close off large portions of the ocean for economic and security purposes without regard to geography and with disregard for the needs of other states. This regime has faded over the years and no longer exists. The closest thing now to this regime is the possible future of Conservation Zones.

The present day closed sea as it is defined in the Soviet Union is as follows:

1. A closed sea is a body of water with two or more states littoral to it.
2. There are very few narrow entrances to this body of water.
3. The body of water has limited security or economic interests to nations other than those littoral.
4. There is an absence of international maritime routes through this body of water.¹

In Soviet diplomatic and contractual practice, closed seas are designated as seas for which a special regime is established, either for historical reasons or by virtue of international agreements, providing for closure of these

seas or the establishment of a restricted regime of navigation for warships and military aircraft of noncoastal states. Closed seas are generally open to the innocent passage of merchant shipping of all the nations of the world. The water area of some closed seas is subject to the internal regime of one of the coastal states while others have a territorial belt and the waters beyond that limit are open for the general use of all coastal states on an equal basis.²

Historic waters are generally not defined by anyone; however, they have evolved from the definitions of "historic" bays. There has been a trend in Soviet international law from historic bays to historic seas to historic waters. The latter of these is presently most used by Soviet jurists.³ The following is the definition to be used for historic waters:

1. A state exercises actual control over a specified water area.
2. This control has been exercised for a long period of time.
3. Other nations have acquiesced in these claims.⁴

In Soviet Law the regime of inland sea waters extends to historic waters, particularly the so-called "historic bays." An "historic bay" is a bay completely surrounded by the territory of a single state, with an entrance exceeding 24 miles in width, which, due to special geographic conditions and military significance, as well as historic

tradition, based on continuous control over its waters by the coastal state, is regarded by the latter as its own inland sea waters.⁵ They specifically state, "From the standpoint of international law, the recognition by other States of one bay or another as an 'historic bay' belonging to the coastal State is not of decisive significance."⁶

It is interesting to note the change of what various seas have been referred to in the past. In 1893, Russia claimed the White Sea as a closed sea and in 1956, the naval international law manual referred to it as an historic bay. In a 1951 international law textbook, The Kara, Laptev, East Siberian, and Chokotsk Seas were referred to as "closed seas of the bay type." In 1966 came reference to these very same sea areas as "historic waters."⁷

Section 2

Law of the Sea

The International Law Commission (ILC) had its first session in 1949. This commission had before it a memorandum from the Secretary-General of the U.N. in which he asked them to make a comprehensive study of the international law of the sea for the purpose of codifying the entire field into an integrated restatement. The Secretary-General must have remembered the Hague codification Conference of 1930 which ended in disagreement over the limit of the territorial waters

because he warned them to treat that subject carefully. The ILC completed their report in 1950.⁸ The report recommended that an international conference of government representatives should be established to examine the law of the sea. This was approved by the General Assembly and from 24 February to 27 April 1958, 86 states sat down together to discuss the matter. The conference adopted four important conventions which were in general based on the report of the ILC. Two of these conventions are of interest with regard to historic waters and closed seas. These are the Convention on the Territorial Sea and Contiguous Zone and the Convention on the High Seas. The Convention on the High Seas is only of interest in that this is the convention that suffers under the claim of closed seas and historic waters. The last part of Article 2 which states: "These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in the exercise of the freedom of the high seas."⁹ The Convention on the Territorial Sea and Contiguous Zone is the one which most nearly describes the problem of historic waters. Article 7 discusses the law of bays in general. It describes bays and the method for delimiting the bays with a closing line not to exceed 24 miles. Article 7, paragraph 6, goes on to say:

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where that straight baseline system provided for in article 4 is applied.¹⁰

The convention thus allows States to enclose bays with a 24 mile baseline or with a longer baseline if it is an "historic" bay. A resolution was adopted to study the "historic" bay concept and determine what was meant by the term. This was accomplished by the office of the Secretariat in 1962. The report was entitled "Juridical Regime of Historic Waters Including Historic Bays." It was determined in this report that claims to historic waters should be handled on a case by case basis.¹¹ Closed seas do not appear in the Convention on Territorial Sea and the Contiguous Zone. The Soviet Union attempted to include this subject in the convention but "the United States and its military allies in effect torpedoed discussion of the special status of closed seas."¹² There are a number of problems with the Convention on Territorial Sea and the Contiguous Zone, a few of which were: the right of innocent passage, passage through international straits, breadth of the territorial sea, and resolution of "historic" bays. Max Sorensen outlined the major drawbacks of the 1958 Geneva Convention, the first of which was:

The first drawback is essentially the product of political factors. The material interests involved, whether of national economy or military security, are so considerable that governments hesitate to make concessions for the sole purpose of reaching a solution. From the national point of view, uncertainty on a point of international law is often preferable to a certainty that leaves no room for unilateral action or maneuvering.¹³

It is this point of view that makes some of the weaknesses of the conventions more understandable and acceptable. The right of innocent passage, passage through international straits and resolution of "historic" bays are the primary problems to be resolved with regard to the future of historic waters and closed seas.

A misunderstanding of closed seas and historic waters between the United States and the Soviet Union may lead to serious problems in the future. The initial interpretation that one may glean from these conventions can be very confusing. Innocent passage of warships seems implied by omission, but this is hardly the case if the proceedings are used for interpretation.¹⁴ The Soviet Union in an effort to make sure that no such mistake was made, has made reservation to this and has continued to revise their local regulations concerning visits of warships so that it is very clear that they will not tolerate such passage into their territorial waters. At the same time that this is taking place, they continue to transit within the United States' territorial waters even though these claims are only one-fourth those of the Soviets.¹⁵

At the end of the 1958 Geneva Convention, the U.S.S.R. made the following reservations to the Convention on the Territorial Sea and Contiguous Zone:

To Article 20: The Government of the U.S.S.R. considers that state vessels in foreign territorial waters enjoy immunity, and therefore the application of measures mentioned in the present articles to them may occur with the consent of the state under whose flag the ship sails.

To Article 23: (Subsection D. The Rules as applied to warships) The Government of the U.S.S.R. considers that a coastal state has the right to establish an authorization procedure for the passage of foreign warships through its territorial waters.¹⁶

With the convention completed and these reservations made, it then appears that the Soviet Union decided to review their local regulations and laws to insure that they could protect their national interests satisfactorily and that the laws complied with the new conventions. Several of their laws were rewritten prior to the Convention coming into effect. The following legislation appears to be a result of the Geneva Convention based on its date and content: Statute on Protection of U.S.S.R. State Boundary (1960) and Rules for Visit by Foreign Warships to U.S.S.R. Waters (1960). The statute for protection of the state boundary is a rewrite of a 1927 law which more clearly states territorial boundaries especially with respect to territorial waters. Articles 3 and 4 of this statute are quoted in part as follows:

Article 3. Coastal sea waters, 12 nautical miles in breadth, computed from the line of lowest ebb tide both on the mainland and also around islands, or from the line of the farthest extremity of internal sea waters of the U.S.S.R. shall constitute the territorial waters of the U.S.S.R. In . . .

Article 4. Internal sea waters of the U.S.S.R. shall include: a) waters of parts of the U.S.S.R., delimited seaward by lines passing through the farthest extending points of hydrotechnical or other structures of ports seaward; b) waters of bays, inlets, coves, and estuaries, whose entire shore belongs to the U.S.S.R., up to a straight line drawn from shore to shore in a place where, seaward, one or several passages are first formed, if the breadth of each of these does not exceed 24 nautical miles; c) waters of bays, inlets, coves, and estuaries, seas and straits, historically belonging to the U.S.S.R.¹⁷

These articles are obviously intended to conform to some degree with the new convention, but with regard to historic waters, it could readily encompass almost anything.

The rules for visits by foreign warships to territorial waters sets up a system by which consent must be sought at least thirty days in advance of the intended visit. Information concerning the purpose of the visit, port of call, number, class, name, basic measurements, duration of stay, rank and name of the Commanding Officer must be provided. The number of ships may not exceed three, and they may not stay longer than seven days. The instructions and procedures as to what the ship and its crew may and may not do is rigorous.¹⁸ This reasonably well confirms that warships will not make innocent passage through Soviet waters.

Section 3

Rivers, Straits and Canals

The regime for straits, canals and rivers is important for understanding some of the problems of closed seas. The

new construction of the Volga-Don canal constitutes a notable attempt by the U.S.S.R. to rectify the Black Sea's isolation from the internal Russian river and canal systems, which linked the Baltic, Caspian and the Arctic Ocean. Considerable progress can also be recorded in the construction of the main bed of the Kara Kum Canal in Soviet Turkmenia, which was completed in 1962. A planned 300 mile extension will enable ships to pass from the Baltic by way of existing waterways to the Caspian and through the Soviet Central Asian Republics to Afghanistan and would thus provide one of the cheapest means of communications between Europe and Asia.¹⁹ The use of canals is even important for areas where at first glance they may seem unneeded. The Kiel Canal is an easy exit from the Baltic even though there are straits usable for the purpose. On the other hand, look at the results of closing the Suez Canal upon the respective importance of the Gulf of Aqaba.

The regime for straits and canals have a very prominent effect on closed seas. At the beginning of this study it became apparent that the regime for straits was the only real and viable regime for closed seas. The regime to which I am referring is the Montreux Convention which controls the entry into the Black Sea. The Geneva Convention of 1958 discusses the regime for straits and the outcome is far from satisfying in that the wording of the text of the

Convention is obviously intended to be vague to prevent further problems in the acceptance of the Convention as a whole. There was discussion concerning a regime for straits between two high seas and then discussion of a regime for straits between high seas and territorial waters. In the final draft of the Convention, these are lumped together and subject to considerable interpretation. Straits have been the most controversial item concerning the control of closed seas over the years. Canals have not caused a great deal of historic international problems over the years since it is only recently that technology has existed that would permit ocean vessels to use canals. By recently 50 to 100 years is implied. Rivers and associated canal systems have had great effect on the use of the Arctic areas of the Soviet Union. By use of the inland water system of the Soviet Union, the Baltic, Caspian, Black and the White Seas are connected. This system is only usable for about 240 days a year due to ice.²⁰ This is the result of a very large investment of labor and money to provide transportation that is taken for granted by the major sea powers of the world. This water system is a very complicated system that has been years in the making. Parts of it have been started by one government and then discontinued only to be restarted by another. Most of these waterways were originally designed for ships with a draft not to exceed 15 feet.²¹ This depth will accommodate

most barge traffic, but will only handle limited ocean and warship traffic. Needless to say, this has caused many engineering innovations for the inland shipbuilding facilities providing new construction techniques. It is through these waterways that the Soviet Union has developed.

Section 4

Soviet Investment in the Sea

The Soviet Union has placed a great deal of interest and investment toward improving its position in the sea. It will be necessary to briefly explore this investment to determine why they might be more interested in the sea and what direction they might take toward resolution of historic water and closed sea problems. By looking briefly at their naval forces, merchant fleet, fishing fleet, oceanography efforts and maritime aid we might see a trend.

In some categories of sea power, the Soviet Union has already surpassed the United States. In others, they are catching up. The Soviet Union presently has many more conventionally powered submarines, cruise-missile systems on surface ships and on submarines, and a missile-equipped fleet of patrol boats. They are gaining in POLARIS-type ballistic-missiles submarines. The Soviet Navy lags in logistic support for sustained combat operations. It is inferior in antisubmarine warfare capabilities, in the

capacity for long-range amphibious operations, and ship-based naval air power. Major efforts are underway to overcome most of these weaknesses.

The Soviet Union now can deploy modern naval forces where there had previously been no significant Soviet naval presence. Today, the Soviet Navy in conjunction with Soviet land-based air power, poses a significant political threat in the Mediterranean Sea and a minor, but increasing military threat to the U.S. Sixth Fleet. The Soviet Union has the means to send amphibious forces of modest size to more distant waters. In the Indian Ocean, the Soviet Navy is establishing a presence where there is no western counterpart, save for our small Mid-East Force in the Persian Gulf. The large Soviet submarine fleet already could present a critical threat to shipping on the major sea lanes.

In its approach to naval problems, the Soviet Union has often demonstrated remarkable technical skill, notably in missile and electronic systems. If present trends continue, within a decade the Soviet Union, as compared to the United States, will have as many or more nuclear-powered submarines, larger ballistic-missile-carrying submarine forces, new helicopter carriers and more modern cruisers, destroyers and frigates. This would provide the means to project diverse types of naval power around the globe. Even the long-standing invulnerability of our POLARIS submarines

may in time be effectively challenged and U.S. carriers will become more vulnerable.²²

The Soviet merchant fleet now ranks fifth in the world in tonnage and its rate of growth is impressive. The Soviets were in twenty-first place in 1950, with only 432 major merchant vessels totaling only 1.8 million deadweight tons (dwt). Today, they have over 1,442 ships with a total of 12 million dwt, and by 1970 they plan to have 2,600 ships, with a total of 14.8 million dwt. Comparatively, present Soviet merchant ships are already more numerous than those of the United States, though deadweight tonnage is slightly less. Qualitatively, the Soviet vessels are almost totally modern in design and vintage, which is just the reverse of the U.S. situation.

The Soviets now carry over fifty percent of their own international seaborne trade. By 1975 this figure is expected to increase to 75 percent. In the coming years, such a fleet, centrally managed and directly controlled by the government, will pose a major challenge to western trade and shipping.

Another indicator of this broad range of ambitions is the expansion of their activities. In 1950 they were conducting maritime trade with only forty-two countries. Today they trade with more than one hundred countries, most of which are noncommunist.²³

Expansion of the Soviet high-seas fishing fleet is one of their program's most dramatic achievements. Today, it is the largest fleet in tonnage in the world, some eleven times greater than that of the United States. Like its merchant counterpart, the Soviet fishing fleet is also one of the world's most modern. It includes large numbers of late-model stern-trawlers, medium trawlers, factory ships, refrigerator transports and support vessels. These far-ranging vessels regularly show a healthy profit. An added dividend is the fleet's ability to incorporate or mask the collection of intelligence information while working foreign waters.

About 1,500 more vessels are scheduled to be added to the Soviet fishing fleet during the 1966-70 Five-Year Plan.²⁴

The Soviets are now overtaking the United States in some aspects of the fundamental and critical field of oceanography. They have held the lead in polar oceanography for many years, but are now assuming first rank in fishing technology and several areas of geological exploration. Known weaknesses in marine engineering and instrumentation, basic marine-biology, data handling and laboratory facilities are being systematically overcome.²⁵

The extension of Soviet maritime aid to developing nations has reached sizable proportions and now embraces Cuba, Algeria, Egypt, Syria, Iraq, The Peoples' Republic

of Southern Yemen, India and Indonesia. The Soviet Union has concentrated on countries whose geographical position is of great strategic importance. Of the twenty-five countries receiving Soviet military aid, fifteen have received maritime assistance. Their inventory or assistance includes about three hundred naval vessels of various types including guided-missile patrol boats and submarines. Port facility development and manpower training are also provided. This program has tended to maximize Soviet influence in a number of states, at the expense of the United States and its allies.²⁶

FOOTNOTES

CHAPTER III

¹ Butler, p. 21.

² Barabolya, p. 111.

³ Bouchez, p. 192.

⁴ Porter, p. 37.

⁵ Barabolya, p. 196-197.

⁶ Ibid., p. 197.

⁷ Butler, p. 13.

⁸ Max Sorensen, "Law of the Sea," International Conciliation, November 1958, p. 195-196.

⁹ R.H. Graveson, ed., "The Law of the Sea," The International and Comparative Law Quarterly, Special Supplement, 1958, p. 12.

¹⁰ Ibid., p.6.

¹¹ Secretariat of the U.N., United Nations Secretariat Office, Juridical Regime of Historic Waters Including Historic Bays, A/CN.4/143 (New York: 1962), p. 72.

¹² Barabolya, p. 111.

¹³ Sorensen, p. 254.

¹⁴ Ibid., p. 235.

¹⁵ "U.S. Repeats Protest on Closing of Peter the Great Bay," U.S. Dept. of State Bulletin (Washington: 24 March 1958), p. 462.

¹⁶ Barabolya, p. 76.

¹⁷ Butler, p. 111-112.

¹⁸ Barabolya, p. 63-69.

¹⁹ Colombos, p. 194.

²⁰ Lebed, p. vii.

²¹ Ibid., p. 30-32.

²² The Center for Strategic and International Studies, Soviet Sea Power (Washington: Georgetown University, June, 1969, Series No. 10), p. 4-5.

²³ Ibid., p. 5-6.

²⁴ Ibid., p. 6.

²⁵ Ibid.

²⁶ Ibid.

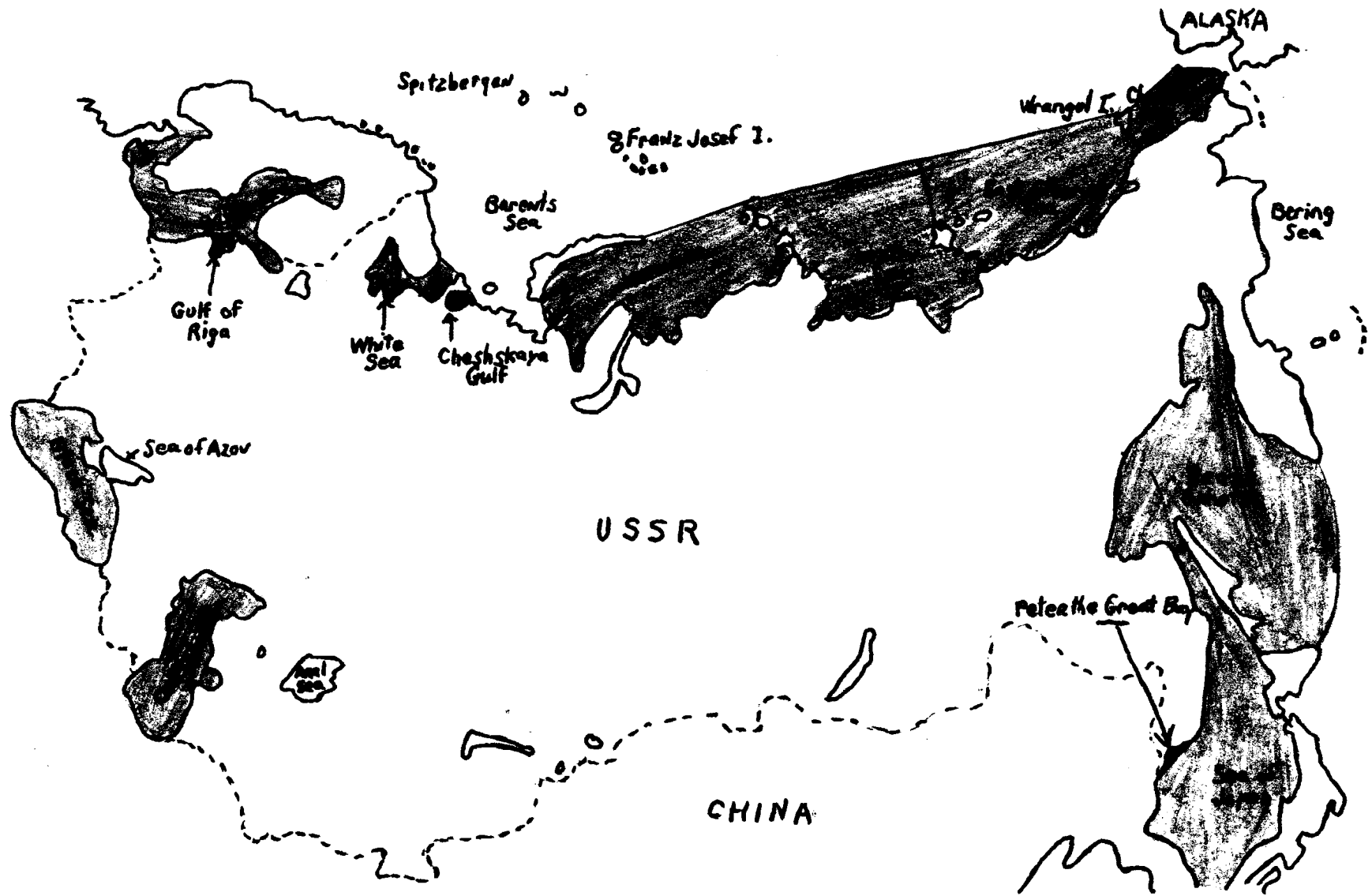


FIGURE 1

CLOSED SEAS AND HISTORIC WATERS

CHAPTER IV

SOVIET SEAS

Soviet seas will be discussed individually in two sections, closed seas and historic waters. The discussion of necessity will be brief and will cover only geographic considerations, a brief history and the present status of the sea.

All seas will not be covered since some of them have definite high seas character (Barents and Bering) while others are obviously Soviet internal waters (Sea of Azov and Aral Sea).¹

Section 1

Closed Seas

In the introduction it was indicated that the Soviet Union had made informal claims to five closed seas: the Black, Baltic, Caspian, Sea of Japan and Sea of Okhotsk. To emphasize the problem each of these will be explored briefly. Figure 1 shows the Closed Seas marked in blue.

Black Sea. The Black Sea is bounded by the U.S.S.R., Rumania, Bulgaria, and Turkey. It covers an area of 168,500 square miles or an area slightly larger than California. Entry from the Mediterranean is possible via the Bosphorus

Straits, Sea of Marmara through the Dardanelles. There are several large rivers and the Sea of Azov which provides for greater navigational possibility in the area. The Danube, Ukraine, Bug and Dnepr Rivers are the major ones with the Danube being the largest and most navigable. The others are not to be slighted in that they connect with many tributaries and the U.S.S.R. inland waterway system. The upper water of the Black Sea has a low salinity allowing some ice formation. The lower water, below about 600 feet, is brackish since it cannot flow out over the sill of the straits. Most of the fish are found in the upper 600 feet. The Black Sea is very deep to the south with a maximum depth of 7,500 feet while it is more shallow to the north.²

The Black Sea is by far the best example of a closed sea. The straits are controlled by Turkey and there has been some regime of control ever since 1774. Since then there has been at least six agreements concerning the control of the straits. The present regime is the Montreux Convention of 1936.³ This was to remain in effect until 1956 and thereafter may be terminated by two year advance notice by one of the parties. This regime provides for the complete freedom of transit and navigation, subject only to the payment of charges, and the regulation of sanitary measures as prescribed by the Convention. Turkey retains, however, the right to refuse passage to merchant ships

belonging to states with which they are presently at war. There are various limits on warships in time of peace as well as war. Passage for submarines is forbidden, except that the Black Sea Powers are given the right to bring, through the straits into the Black Sea, submarines constructed or purchased outside, and to send submarines out for repair and bring them back. All passage is subject to prior permission of Turkey.⁴

Proposals for revision of the Montreux Convention were the subject of an exchange of notes between Russia, Turkey, Great Britain and the United States in 1946. Up to the present there is little prospect of agreement. Russian demands may be summarized as follows: (1) the Straits must be kept open to merchant vessels of all nations in time of war and peace. (2) The straits must always be kept open to war vessels of Black Sea powers. (3) Except where permission is granted in special circumstances, no vessel of war belonging to non-Black Sea powers shall be allowed to pass through the Straits. (4) Authority to draw up a new regime of the Straits shall be vested in Black Sea powers alone. (5) In order to prevent the Straits from being used in a manner contrary to the interests of the Black Sea powers, the Straits should be defended by the joint action of Turkey and Russia. Turkey has expressed a willingness to accept the first three of these.⁵

Baltic Sea. The Baltic Sea is bounded by Sweden, Denmark, Germany, Poland, U.S.S.R., and Finland. It has a natural entrance to the North Sea via the Kattegat and Skagerrak. There are several straits which lead through the Danish islands, the major of which is the Oresund (the Sound). There are two major canals which are used for entry and exit from the Baltic. The Kiel Canal cuts across the northern part of Germany across the Danish Peninsula. This canal is an international waterway. The White Sea-Baltic canal connects the Gulf of Finland with the White Sea and is subject to complete control of the U.S.S.R. This canal was completed in 1933 by use of forced labor.⁶ The Baltic covers an area of 153,250 square miles or is about twice the size of Kansas. The Baltic drains four times as much land area as its own area and thus the salinity is very low. For this reason there are few fish and the area freezes over in the winter for as much as three months a year. Ice breakers can keep the area open in the south except in extreme weather.⁷

The Baltic Straits are of unusual economic and strategic importance. The Great Belt is the only section which is truly navigable by larger vessels, and it has a width of about 10 miles and depth from 21 to 180 feet. Denmark controlled these straits in an unlimited fashion for a number of years, but this Danish monopoly violated the economic and political interests of the Baltic Powers. Russia claims

to have concluded agreements in 1780 and 1800 for opening the Baltic to merchant vessels, while closing it to warships without permission to enter.⁸ The final regime was established in 1857. It abolished the "Orsund Duties" (sound dues) and opened the Baltic to passage of warships as well as merchant. During the first and second world wars, the straits were closed by Germany which directed Denmark to control the entrance by land controlled minefields. It was very effective.⁹ In 1951 Denmark issued a Royal Edict which was to regulate the passage of warships through the straits. It restricts passage of warships without notice to the Great Belt. No more than three warships are allowed in the strait at one time and then for no longer than 48 hours. There is a clause which states that NATO powers on NATO maneuvers may use Danish territorial waters. It would appear that the regulation of the straits is generally only restrictive to the U.S.S.R. and its allies.¹⁰

The Kiel Canal was constructed in 1895 for strategic purposes of Germany. It is about fifty miles long with thirty-five foot draft capability. After World War I the canal was open to all merchant and warships not at war with Germany by the Treaty of Versailles. In 1936 Germany refused to honor this part of the treaty and after World War II it fell in the British Zone of occupation. It presently belongs to the Federal Republic of Germany. Navigation

through the canal is open to all merchant vessels after payment is made and to warships with appropriate permission through diplomatic channels.¹¹

Caspian Sea. The Caspian Sea is a large inland body of water which is bordered by the U.S.S.R. to the north and Iran to the south. The sea covers an area of about 143,000 square miles or slightly smaller than Montana. This area is eighty-five feet below sea level. The Caspian Sea drains the Volga River, Terek River, Kura River, and the Ural River.¹² Over one half of the waters that enter the Caspian Sea are from the Volga River which is connected to the Sea of Azov by the Volga-Don canal and with the White Sea and the Baltic by the Soviet inland water systems.¹³ The northern reaches of this sea freezes over during the winter for one to three months each year. This has been one of the major Soviet fishing areas but has decreased in importance due to the growth of the large ocean fishing fleet, but not in quantity of fish.

The Caspian Sea is controlled by a treaty between the Soviet Union and Iran. It is regarded as a Soviet and Iranian Sea. The northern part of this sea is an integral part of the U.S.S.R., while the southern part is a part of Iran. This sea is closed to all vessels but those of the littoral states. Soviet and Iranian fishing vessels have

fishing rights throughout the length of the sea except for a ten mile coastal zone which is reserved for the exclusive use of the coastal state.¹⁴

The Sea of Japan. The Sea of Japan is bounded by Japan on the east, U.S.S.R. to the north, and North and South Korea to the west. It covers an area of 389,100 square miles or is about the size of Arizona, California, and Colorado combined. The Korean and Tsushima Straits allow entry from the south, Shimonoseki Straits link it to the Japanese Inland Sea and to the north are the Tsugara, Soya (La Perouse) and Tatar. The sea abounds with fish. The entire sea is generally free of ice providing Vladivostok as an ice free port year round.¹⁵

There is no international regime for the control of this sea or the straits that lead to it. The U.S.S.R. proposed the establishment of a regime for the straits that would guarantee the security of all powers bordering it at the San Francisco Conference of September 1951. They proposed demilitarization of straits, free passage of merchant vessels and restriction of passage of warships to only littoral states. This proposal was not adopted.¹⁶

Sea of Okhotsk. The Sea of Okhotsk is a large gulf of the Pacific Ocean which indents into the U.S.S.R. and is bounded on the east by the Kamchatka Peninsula, and Kurile

Islands and on the south by Japan. This sea covers about 590,000 square miles which is twice the size of Texas. The Tatar and Soya (La Perouse) straits connect this sea with the Sea of Japan. The sea abounds with fish, dolphin, seal, and whale. It is generally frozen over from November to April. The inflow of Pacific water causes dense fog in the Kurile Island chain throughout most of the year. The Amur River empties into this sea.¹⁷

The Sea of Okhotsk has become more of a closed sea since 1945 when the southern half of Sakhalin and the Kurile Islands were turned over to them. They have continually declared that this sea was closed to warships and overflight by aircraft of nonlittoral states.¹⁸ As recently as 1955 there have been claims and enforcement of most of the area as a "historic sea."¹⁹

Section 2

Historic Waters

A brief review of the Soviet claims, both formal and informal to sea areas as historic waters is of interest and will cover the same general information that was covered for closed seas. Areas which fall in the category of bays with a baseline of 24 miles or less will not be discussed since they have a very definite place in present international law. Historic bays and waters which may not fall into that category

will be covered. These do not have such a rigid definition, and as has been stated before, should be handled on a case by case basis.²⁰ Figure 1 shows historic waters marked in red.

Gulf of Riga. The Gulf of Riga is considered as a historic bay by the Soviet Union.²¹ It covers 7,350 square miles, about the size of New Jersey, and is bounded by the Soviet Union on all sides, and opens into the Baltic via the Gulf of Finland.²² The mouth of the bay is 28 miles wide.²³ The Soviet claim to the Gulf of Riga is based on the Treaty of Nystad of 1721 to which the Soviets state no nation has protested.²⁴

White Sea. The White Sea opens into the Barents Sea and is bounded by the Kola Peninsula and Kanin Peninsula of the U.S.S.R. It covers an area of 32,281 square miles or is about the size of Indiana. It has an average depth of 325 feet. This sea freezes over from November to May, but the port of Arkhangelsk is generally kept open by use of ice breakers. By use of the White Sea-Baltic Canal and inland water system, this sea is connected to the Baltic, Caspian and Black Seas. Fishing for herring and cod are prominent in the summer.²⁵

The White Sea was declared a historic bay in a note from the Peoples' Commissariat of Foreign Affairs of the RSFSR to the Minister of Foreign Affairs of Norway on 4 May 1920.²⁶

Cheshskaya Bay. Cheshskaya Bay has an opening about thirty miles in width and covers an area about 6,000 square miles or is about the size of Connecticut and Rhode Island combined. It opens into the Barents Sea. It is mentioned only in passing as a historic bay in the Soviet law manual.²⁷ This claim has been in force since about 1921.²⁸

Peter the Great Bay. Peter the Great Bay is a slight indentation into the Soviet coast in the northern part of the Sea of Japan. It is entirely bounded by the U.S.S.R. The major port of the area is Vladivostok. It is the major ice free port of the Soviet Union. The size of the bay depends on what line is accepted as the boundary, but it covers approximately 1,800 miles as claimed by the U.S.S.R. This is about the same size as Delaware.

Peter the Great Bay was declared a historic bay up to a line connecting the mouth of the Tumen-Ula River and with Cape Povorotnyy on 20 July 1957.²⁹ The baseline for this is 108 miles long. This was reportedly reflected in the Rules Governing Fishing in the Territorial Waters of the Amur Governor-General issued in 1901.³⁰ The United States protested the closure of the bay and the Soviet Union countered that it was a historic bay, but argued further that it was a "vital bay."³¹ They compared it to the Anglo-Norwegian Fisheries Case of 1951.³² This water area is not truly a bay as defined in the Geneva Convention. There is not a long

history of control by the Soviet Union since the Japanese fished there until 1939. There is no acquiescence since seven nations protested the closure.³³

Arctic Seas. The Kara Sea is part of the Arctic Ocean north of the U.S.S.R. between Novaya Zemlya and Svernaya Zemlya. It covers an area of 340,000 square miles. The Ob, Yenisei and Pyasina Rivers empty into this sea. The water is frozen over about nine months of the year. The major port is Dikson at the mouth of the Yenisei River.³⁴

The Laptev Sea is part of the Arctic Ocean to the north of the U.S.S.R. between Svernaya Zemlya and the New Siberian Islands. It covers an area of 250,000 square miles. It receives the waters of the Lena, Khatanga and Yana Rivers. The major port is Tiksiat at the mouth of the Lena River. The sea is frozen over eight to nine months of the year.³⁵

The Chukotsk Sea (sometimes CHUKCHI) is part of the Arctic Ocean north of the Bering Straits and east of Wrangel Island to Alaska. It is covered with ice eight months of the year.³⁶

The East Siberian Sea is part of the Arctic Ocean north of the U.S.S.R., bordered on the west by the New Siberian Islands and on the east by Wrangel Island. The Kolyma and Indigirka Rivers are the major ones that drain to this sea, and they have only limited navigational potential. This sea covers an area of 337,750 square miles and has an average depth of about 100 feet.³⁷

The Kara Sea, Laptev Sea, Chukotsk Sea and the East Siberian Sea are considered by many jurists to be akin to gulfs and therefore, subject to the rules of internal waters. The Anglo-Norwegian case of 1951 provides a great deal of fuel for this argument.³⁸

Other jurists conclude that these waters are obviously Soviet due to: (1) Navigation depends on the adjacent state. (2) Sovereignty by the Soviet Union is necessary for national security. (3) Russian ships are the only ones that navigate these waters. (4) It is not an international sea route. (5) Russia has always exercised its authority over the area.³⁹ Russian decrees of 1616 and 1620 and Acts of 1839 and 1869 regulated navigation in this area and thus these seas "must be considered as our national waters, as closed seas, whose legal regime must be determined in virtue of the recognition of sovereignty of the U.S.S.R. over these seas."⁴⁰

FOOTNOTES

CHAPTER IV

- ¹Bouchez, p. 227.
- ²"Black Sea," Encyclopedia Americana, 1966, v. IV, p. 38.
- ³Barabolya, p. 122, 148-161.
- ⁴Ibid., p. 126.
- ⁵Colombos, p. 219-220.
- ⁶Michael Florinsky, ed. Encyclopedia of Russia and the Soviet Union (New York: McGraw-Hill, 1961), p. 608.
- ⁷Ibid., p. 58.
- ⁸Barabolya, p. 113.
- ⁹A.J. Karpritig, "The Baltic Sea: Keystone of Northern Europe," Unpublished Thesis, U.S. Naval War College, Newport, R.I.: 1965, p. 10-13.
- ¹⁰Barabolya, p. 136-137.
- ¹¹Ibid., p. 180-181.
- ¹²"Caspian Sea," Colliers Encyclopedia, 1968, v. V, p. 515-516.
- ¹³Colombos, p. 193.
- ¹⁴Kozhnevnikov, p. 226.
- ¹⁵"Japan, Sea of." Encyclopedia Britannica, 1966, v. XII, p. 944-945.
- ¹⁶Barabolya, p. 143.
- ¹⁷"Okhotsk, Sea of." Encyclopedia Americana, 1966, v. XX, p. 689.
- ¹⁸Barabolya, p. 114.
- ¹⁹William N. Harben, "Soviet Positions Concerning Maritime Waters," The JAG Journal, Oct.-Nov. 1961, v. XV, No. 8, p. 153.

- 20 Secretariat, p. 70.
- 21 Bouchez, p. 219.
- 22 Florinsky, p. 477.
- 23 Bouchez, p. 219.
- 24 Ibid., p. 220.
- 25 "White Sea," Colliers Encyclopedia, 1968, v. XXIII,
p. 473.
- 26 Barabolya, p. 197.
- 27 Ibid., p. 197.
- 28 Harben, p. 152.
- 29 "U.S. Repeats Protest on Closing of Peter the Great
Bay," p. 461-462.
- 30 Barabolya, p. 197.
- 31 Teruo Kobayashi, The Anglo-Norwegian Fisheries Case
of 1951 and the Changing Law of the Territorial Sea (Gaines-
ville: University of Florida Press, 1965), p. 47.
- 32 Ibid.
- 33 Bouchez, p. 223-224.
- 34 Florinsky, p. 265.
- 35 Ibid., p. 300.
- 36 "Chukchi Sea," Encyclopedia Britannica, 1966, v. V,
p. 736.
- 37 Florinsky, p. 141.
- 38 Kozhevnikov, p. 227.
- 39 Bouchez, p. 227.
- 40 Ibid.

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

Conclusions. The Soviet Union has enclosed itself in a cocoon of territorial water which is 12 miles in width. This limit starts at the outer edge of the internal waters. The United States has expressed concern over the 12 mile limit but since most of the claims to historic waters are of unofficial nature they have not attempted to establish where the majority of these inland waters end.

The seas that have been listed as closed seas as well as those that have been listed as historic waters were at one time or another classified as a closed sea. This classification has changed over the years until they are now classed as indicated in Chapter IV. Even now the Sea of Okhotsk is on the brink of changing from a closed sea to an historic water.¹ This will be the first sea to be unilaterally declared by the Soviets as such while it still borders another state. Should communism extend into South Korea similar claims might be made to the Sea of Japan. The north part of the Caspian is of course already internal waters of the Soviet Union. Communism has spread to all of the Black Sea powers except Turkey. The present regime of the Black Sea has not given the Soviet Union a strong position of control but the next change is sure to strengthen

this control and further military control of the Eastern Mediterranean would be more assured. The Soviet Union has been very patient in this area as if they expected communism to consume Turkey sooner or later.

The Soviet growing military strength in the Baltic is bound to deter other military forces in this area primarily due to Soviet control of the air over the sea.

Apparently the regime of closed seas is passing into history. The only real regime which allowed for control of these seas was the regime of the straits that allowed entry and exit. Disagreement on control of these straits will most likely continue as debates in the international arena. When the Soviet Union has her naval forces at the desired level they can be assured that no sane naval commander would attempt to operate his forces where logistic support could be sliced on a moment's notice and control of the air, surface and subsurface would be immediately denied. Why should the Soviet Union push closed seas any further when they are in fact closed and once communism overtakes the littoral states they can become historic waters.

But what of the historic waters, especially those vast frozen areas to the north. These historic waters carry the possible claim of internal waters. As such there is no innocent passage and jurisdiction over those who venture through is complete. This appears to be a much better regime for the Soviets than one for closed seas.

The Northwind incident of 1965 and the Eastwind and Edisto incident of 1967 have shown the absolute control which the Soviet Union exercises.² Even if these vessels had been merchant vessels they would have been required to use Soviet icebreakers.³

It is not clear why the United States has not challenged the Soviet control over this area by more frequent diplomatic protest and by continued effort to use these waters for commercial and military purposes. The only apparent reason is that they have accepted Soviet control and sovereignty over these seas.

Recommendations. It is recommended that closed seas as defined here be considered as high seas subject only to the regime that controls the straits or canals that allow entry and exit.

It is further recommended that the following regime be established on a case by case basis and that it be incorporated into the Convention on the Territorial Sea and Contiguous Zone;

Historic waters are those waters which due to the geographic, economic and security characteristics may be considered as territorial waters of the littoral state. Such areas may be bordered by one or more states subject to agreement between the littoral states and the approval of a special commission which will be established in a like manner to Articles 9-12 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, or the optional protocols adopted at the 1958 Geneva Conference.⁴ The burden of proof of such

claims is on the state making the claim. The following factors must be considered to determine the historic status of the area: 1) the authority exercised over the area by the State claiming it as "historic"; 2) the continuity of such exercise of authority; 3) the attitude of foreign States.⁵ All areas which have not been resolved in the past by some multilateral means or which have not been resolved as indicated above will be considered as high seas.

The right of the littoral state to claim "historic" waters as territorial waters vice internal waters is sufficient to provide adequate jurisdiction while still providing for innocent passage through the area. The three guidelines which are given to be considered will meet with opposition from the Soviet Union especially concerning the "attitude of foreign States," but the commission or the court should be able to determine if an attitude of a foreign State is new or, in fact, is the historic attitude that has existed.

This method of resolving problems of historic waters might also be expanded to include settlement of claims to straits, archipelagoes or polar sectors.

FOOTNOTES

CHAPTER V

¹ Harben, p. 153.

² Butler, p. 84; "Edisto & Eastwind Planned 8000 Mile Voyage," U.S. Dept. of State Bulletin, 18 September 1967, p. 521.

³ Butler, p. 138.

⁴ Secretariat, p. 74.

⁵ Ibid., p. 72.

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