

ing renunciation refers only to such portions of the bays which were under the sovereignty of Great Britain and not to such other portions, if any, as form part of the high seas.

And thus it appears that, far from being immaterial, the territoriality of bays is of the utmost importance. The treaty not containing any rule or indication upon the subject, the Tribunal cannot help a decision as to this point, which involves the second branch of the British contention that all so-called bays are not only geographical, but wholly territorial as well, and subject to the jurisdiction of Great Britain. The situation was very accurately described on almost the same lines as above stated by the British memorandum sent in 1870 by the Earl of Kimberley to Governor Sir John Young: "The right of Great Britain to exclude American fishermen from waters within three miles of the coasts is unambiguous and, it is believed, uncontested. But there appears to be some doubt what are the waters described as within three miles of bays, creeks or harbours. When a bay is less than six miles broad its waters are within the three-mile limit, and therefore clearly within the meaning of the treaty; *but when it is more than that breadth, the question arises whether it is a bay of Her Britannic Majesty's dominions.* This is a question which has to be considered in each particular case with regard to international law and usage. When such a bay is not a bay of Her Majesty's dominions, the American fishermen shall be entitled to fish in it, except within three marine miles of the "coast"; when it is a bay of Her Majesty's dominions, they will not be entitled to fish within three miles of it, that it is to say (it is presumed), within three miles of a line drawn from headland to headland." (United States Case Appendix, p. 629.)

Now, it must be stated in the first place that there does not seem to exist any general rule of international law which may be considered final, even in what refers to the marginal belt of territorial waters. The old rule of the cannon-shot, crystallized into the present three marine miles measured from low water mark, may be modified at a later period, inasmuch as certain nations claim a wider jurisdiction, and an extension has already been recommended by the Institute of International Law. There is an obvious reason for that. The marginal strip of territorial waters, based originally on the cannon-shot, was founded on the necessity of the riparian State to protect itself from outward attack, by providing something in the