

(d.) Because it has not been shown by the documents and correspondence in evidence here that the application of the three mile rule to bays was present to the minds of the negotiators in 1818, and they could not reasonably have been expected either to presume it or to provide against its presumption;

(e.) Because it is difficult to explain the words in Article III of the treaty under interpretation "country . . . together with its bays, harbours and creeks" otherwise than that all bays without distinction as to their width were, in the opinion of the negotiators, part of the territory;

(f.) Because from the information before this Tribunal it is evident that the three mile rule is not applied to bays strictly or systematically either by the United States or by any other Power;

(g.) It has been recognized by the United States that bays stand apart, and that in respect of them territorial jurisdiction may be exercised farther than the marginal belt in the case of Delaware Bay by the report of the United States Attorney-General of May 19th, 1793; and the letter of Mr. Jefferson to Mr. Genet of November 8th, 1793, declares the bays of the United States generally to be "as being landlocked, within the body of the United States."

5. In this latter regard it is further contended by the United States that such exceptions only should be made from the application of the three mile rule to bays as are sanctioned by conventions and established usage; that all exceptions for which the United States of America were responsible are so sanctioned; and that His Majesty's Government are unable to provide evidence to show that the bays concerned by the treaty of 1818 could be claimed as exceptions on these grounds either generally, or, except possibly in one or two cases, specifically.

But the Tribunal, while recognizing that conventions and established usage might be considered as the basis for claiming as territorial those bays which on this ground might be called historic bays, and that such claim should be held valid in the absence of any principle of international law on the subject, nevertheless is unable to apply this, *a contrario*, so as to subject the bays in question to the three mile rule as desired by the United States:—