

But the Tribunal is unable to agree with this contention:—

(a.) Because admittedly the geographical character of a bay contains conditions which concern the interests of the territorial sovereign to a more intimate and important extent than do those connected with the open coast. Thus conditions of national and territorial integrity, of defence, of commerce and of industry are all vitally concerned with the control of the bays penetrating the national coast line. This interest varies, speaking generally, in proportion to the penetration inland of the bay; but as no principle of international law recognizes any specified relation between the concavity of the bay and the requirements for control by the territorial sovereignty, this Tribunal is unable to qualify by the application of any new principle its interpretation of the treaty of 1818 as excluding bays in general from the strict and systematic application of the three mile rule; nor can this Tribunal take cognizance in this connection of other principles concerning the territorial sovereignty over bays, such as ten mile or twelve mile limits of exclusion based on international acts subsequent to the treaty of 1818 and relating to coasts of a different configuration and conditions of a different character;

(b.) Because the opinion of jurists and publicists quoted in the proceedings conduces to the opinion that, speaking generally, the three mile rule should not be strictly and systematically applied to bays;

(c.) Because the treaties referring to these coasts, antedating the treaty of 1818, made special provisions as to bays, such as the treaties of 1686 and 1713 between Great Britain and France, and especially the treaty of 1778 between the United States and France. Likewise's Jay's Treaty of 1794, article 25, distinguished bays from the space "within cannon-shot of the coast" in regard to the right of seizure in times of war. If the proposed treaty of 1806 and the treaty of 1818 contained no disposition to that effect, the explanation may be found in the fact that the first extended the marginal belt to five miles, and also in the circumstance that the American proposition of 1818 in that respect was not limited to "bays," but extended to "chambers formed by headlands" and to "five marine miles from a right line from one headland to another," a proposition which in the times of the Napoleonic wars would have affected to a very large extent the operations of the British navy;