

12-1929

Jurisdiction in Marginal Seas, with Special Reference to Smuggling, by William E. Masterson

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Recommended Citation

Hervey, John G. (1929) "Jurisdiction in Marginal Seas, with Special Reference to Smuggling, by William E. Masterson," *Indiana Law Journal*: Vol. 5 : Iss. 3 , Article 4.

Available at: <https://www.repository.law.indiana.edu/ilj/vol5/iss3/4>

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REVIEWS

JURISDICTION IN MARGINAL SEAS*

The exclusion of intoxicating liquors and the imposition of heavy duties upon its importation by various countries have renewed the activities of smugglers. Also, it has raised the interesting question of the extent, if any, to which a state may enforce its revenue laws against foreign vessels when they are beyond the traditional "territorial waters." It is essentially a problem of jurisdiction over the marginal high seas by the littoral state. However, this treatise considers the exercise of jurisdiction for one purpose only, viz., the prevention of smuggling. The volume treats of the law as it has developed in England and the United States. Only occasional reference is made to the law of other countries, although such laws have existed for years. Since such laws have been "in existence for more than a hundred years, and have not been opposed by other states, a customary rule of the Law of Nations may be said to exist, which allows littoral states in the interest of their sanitary and revenue laws to impose certain duties upon such foreign vessels bound for their ports as are approaching, although not yet within their territorial maritime belt." Such is the rule of law the historical development of which is traced in this volume.

The real basis for such jurisdiction and, from the point of view of International Law the test of its soundness, according to Mr. Masterson, is to be found in the theory of interests. This jurisdiction must be exercised for the protection of various interests: it serves a highly useful purpose from the standpoint of the enforcing state. Also, the exercise of such jurisdiction does not run counter to the interests of the flag or state or the Community of Nations, inasmuch as the laws apply only to vessels engaged in unlawful enterprises. Legitimate commerce does not suffer.

The doctrine of "freedom of the seas" has never permitted the high seas to remain open for all purposes. Pirates may be seized at any time. In time of war neutral vessels may be visited and searched. Foreign vessels violating the laws of a state within its territorial waters may be pursued on the high seas under the doctrine of "hot pursuit." These interferences are not looked upon as violations of the freedom of the seas. Neither can the seizure of a vessel engaged in violating the smuggling laws of a littoral state be so regarded. The smuggler

**Jurisdiction in Marginal Seas With Special Reference to Smuggling*, by William E. Masterson. Macmillan Company: New York. \$5.00. pp. xxviii, 425.

and the pirate stand in the same class since neither can demonstrate a legal interest in their undertakings.

At some future date the rule may be contested. A customary law may no longer suffice and it may become necessary to resort to an international convention. As world trade expands and the interdependence of states increases this problem, which was formerly peculiar to England and the United States, may become the concern of all states. The initial steps in such a solution have already been taken. The exact point has been covered in the rum treaties negotiated by the United States with numerous countries. These treaties, together with the resulting cases and decisions, are considered at length by Mr. Masterson. The Convention of 1925 between Germany, the North European States and Soviet Russia provides that "the parties shall not object to the application of each other's laws to vessels engaged in smuggling, within twelve marine miles from the shore, etc." Similar treaties have been made by Mexico and other states. The Members of the League of Nations regard this as a subject of International Law whose regulation by international agreement would seem to be "most desirable and realizable at the present moment." In the light of these developments it appears that a general international convention on the problem of jurisdiction over the marginal seas may reasonably be expected within the next few years. The developments thus far are set out by Mr. Masterson.

The work is primarily historical. The author has relied heavily upon original sources, placing special emphasis upon municipal legislation and executive proclamations, treaties and diplomatic correspondence, and court decisions, some of which have not hitherto been published. The book will be of interest to all those interested in the development of the law; it will scarcely suffice as a guide for those charged with the application of the law to the facts in a particular controversy.

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