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670. MARITIME JURISDICTION

Section 7 of Title 18 provides that the "special territorial and maritime jurisdiction of the United States" includes:

(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

Until recently the term "high seas" was always understood as intending the open and unenclosed waters of the sea beginning at low-water mark. *In re Ross*, 140 U.S. 453, 471 (1891); *Murray v. Hildreth*, 61 F.2d 483 (5th Cir. 1932); *see also United States v. Rodgers*, 150 U.S. 249 (1893) (Great Lakes). Although it has become common of late to use the term to describe waters beyond a marginal belt or "territorial sea" over which a nation claims special rights, *see, e.g., United States v. Louisiana*, (Louisiana Boundary Case), 394 U.S. 11, 22-23 (1969); *United States v. Postal*, 589 F.2d 862, 868 (5th Cir.), *cert. denied*, 444 U.S. 832 (1979), the classic definition, contemporaneous with this statute's development, is the correct one. The territorial sea was extended from 3 to 12 nautical miles by Presidential Proclamation 5928 of December 27, 1988.

The words of limitation "and out of the jurisdiction of any particular State," that appear in section 7(1) do not qualify the "high seas" jurisdiction, but only the "other waters within the admiralty and maritime jurisdiction of the United States." *See Hoopengartner v. United States*, 270 F.2d 465, 470 (6th Cir. 1959); *Murray v. Hildreth*, 61 F.2d 483; *see also United States v. Rodgers*, 150 U.S. at 265-66. Accordingly, the fact that a state fixes its boundary beyond the low-water mark and claims jurisdiction over the marginal sea, while relevant to venue, is immaterial to Federal jurisdiction. *See Murray v. Hildreth*, 61 F.2d 483. Although states' rights to exercise authority over the marginal sea developed more slowly than the law governing the jurisdiction of the Federal government over the marginal sea, *see United States v. California*, 332 U.S. 19, 32-35 (1946), it cannot be doubted that a state may exercise jurisdiction over the marginal portion of the ocean, provided there is no conflict with Federal law or the rights of foreign nations. *See Skiriotes v. Florida*, 313 U.S. 69 (1941). Indeed, a state may, subject to the same limitations, enforce its laws upon its citizens and registered vessels on the high seas beyond its territorial waters. *Id.* at 77. It is usually the policy of the Department to defer to a state when it is prepared to undertake prosecution of conduct violative of both state and Federal law.

Despite the apparent universal application of the term "high seas," it was early held that, as a general rule, Federal criminal jurisdiction does not attach to offenses committed by and against foreigners on foreign vessels. *See United States v. Holmes*, 18 U.S. (5 Wheat.) 412 (1890); *United States v. Palmer*, 16 U.S. (3 Wheat.) 281, 288 (1818). *See, however*, 18 U.S.C. § 7(8). The Convention on the High Seas to which the United States is a party, purports to give the flag state exclusive jurisdiction over its vessels on the high seas. However, the Convention has been held not to be self-executing with the result that it does not confer on defendants the right to complain of arrests, searches and seizures made without consent of the flag state or any subsequent trial. *United States v. Postal*, 589 F.2d 862, 873 (5th Cir.), *cert. denied*, 444 U.S. 832 (1979).

The limitation on Federal jurisdiction when the offense takes place on a river or harbor within the admiralty or maritime jurisdiction of the United States but not "out of the jurisdiction of a particular State," applies to offenses by naval personnel on naval vessels. *See United States v. Bevans*, 16 U.S. (3 Wheat.) 336 (1818).

"State" in the context of 18 U.S.C. § 7(1) means "State of the United States." Thus, there is Federal jurisdiction under this provision for offenses committed on American vessels in the territorial waters, harbors and inland waterways of foreign nations. *See United States v. Flores*, 289 U.S. 137 (1933). The port nation may also have jurisdiction if the offense disturbs its peace. *Id.* at 157-59.

Vessels have the nationality of the country where they are registered and whose flag they have a right to fly. *See United States v. Arra*, 630 F.2d 836 (1st Cir. 1980). *See United States v. Ross*, 439 F.2d 1355 (9th Cir.1971), *cert. denied*, 404 U.S. 1015 (1972), for methods of proving nationality. Note that under 18 U.S.C. § 7(1) Federal jurisdiction attaches if the vessel is even partially owned by a citizen of the United States. *See United States v. Keller*, 451 F. Supp. 631, 636-37 (D.P.R. 1978), *aff'd on other grounds, sub nom United States v. Arra*, 630 F.2d 836 (1st Cir.1980).

Venue for maritime offenses committed "out of the jurisdiction of a particular State" is governed by 18 U.S.C. § 3238. *See United States v. Ross*, 439 F.2d at 1358-59. Where the offense occurred within the boundaries of a state, venue lies there. *See United States v. Peterson*, 64 F. 145 (E.D.Wis. 1894).

Federal prosecution may not be undertaken following a state prosecution for the same conduct without authorization of the Assistant Attorney General of the Criminal Division as provided by JM 9-2.031 (Petite Policy). Prosecution should not be undertaken following a foreign prosecution unless substantial Federal interests were left unvindicated.

[cited in JM 9-20.100]

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