INTERNATIONAL COURT OF JUSTICE

MARITIME DISPUTE
(PERU *v.* CHILE)

COUNTER-MEMORIAL OF THE GOVERNMENT OF CHILE

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ANNEXES 279 – 320

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WRITINGS OF PUBLICISTS (IN ALPHABETICAL ORDER)

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(IN ALPHABETICAL ORDER)

Annex 249

F. A. Ahnish, *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea,* 1993

The International Law of
Maritime Boundaries and the
Practice of States in
the Mediterranean Sea

FARAJ ABDULLAH AHNISH

CLARENDON PRESS · OXFORD
1993

In sectors A, B, and C the boundary is a negotiated line. In sector D it is the median line. The Agreement includes a common deposit clause, whereby drilling by either party up to 1 n.m. from the boundary line is prohibited. Article 1 of the maritime Boundary Agreement between Colombia and Panama describes the boundary as the median line, 'with the exception of some minor deviations that have been approved to simplify the route'.[202] However, the boundary commences equidistant from the adjacent mainland territories, but when dividing the opposite territories of the mainland of Panama and the various cays belonging to Colombia, it follows no specific principle. It consists of a series of straight lines in a stepped formation. Several Colombian cays appear to have been ignored.

Of interest are the Soviet maritime Boundary Agreements with Finland and Poland. To date they represent the only examples whereby States agree formally to convert their former shelf boundaries to single maritime boundaries.[203] The original Agreements provided for modified equidistance boundaries.[204]

The following maritime boundary agreements represent almost the only negotiated lines which do not apply equidistance in their entirety.[205] These are the Agreements between Ecuador and Peru,[206] Peru and Chile,[207] and Colombia and Ecuador.[208] The boundary lines are drawn on parallels of latitude from a specific point near the land boundary terminus. The coastlines of the States involved exercise no influence on these lines. No boundary delimitation principles have been specified in these treaties. The boundaries appear to have been negotiated on the basis of acceptable solutions agreed upon by the parties.

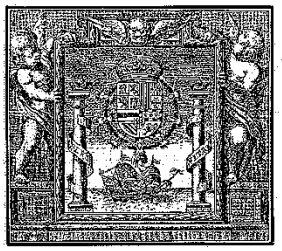
As was seen earlier, a number of States have agreed on a joint zone solution either across the boundary line or without the delimitation of the entirety of their respective jurisdiction.[209] What impact these joint zones (exclusively related to hydrocarbons) will have on prospective exclusive zone or single boundary delimitation between the same States is an interesting question. If one were to speculate, a solution would seem to be largely contingent on the relative importance of the fishery resources contained in the exclusive zone for either or both of the States involved. Perhaps it will become important for the States to develop a mechanism

[202] Agreement of 1977, *LIS* 79: 6–7.
[203] USSR–Poland, 13 Mar. 1986; USSR–Finland, 24 Nov. 1986, *LIS* 108: 26.
[204] USSR–Poland, 19 Oct. 1973, *LIS* 55; USSR–Finland, 19 Oct. 1973, *LIS* 56.
[205] See also the 1977 Boundary Agreement between Colombia and Costa Rica, delimiting their maritime zones in the Caribbean, *LIS* 84, analysis, p. 5.
[206] Declaration of 18 Aug. 1952 between Chile, Ecuador, and Peru in *LIS* 88.
[207] Ibid. see analysis in *LIS* 86.
[208] Maritime Boundary Agreement of 1975, *LIS* 69.
[209] *Supra*, Ch. 4 s.4(*b*).

Annex 250

F. Altuve – Febres Lores, *El Perú y la Oceanopolítica*, 1998

El Perú y la Oceanopolítica



Fernán Altuve - Febres Lores

Con esta posición, el Perú hacia relativamente compatible su tesis territorialista con la Convención del Mar que se estaba elaborando y que estaría terminada en 1982, así mismo no hablaba estrictamente de un territorio del Estado sino de la República, y este no se consideraba inalienable, con lo cual mediante un Tratado Internacional, nuestro país podía convertir su soberanía absoluta en una soberanía económica.

En 1993, la nueva Constitución ha retirado la Segunda Declaración de la carta fundamental, y su artículo 54, si bien es una copia casi exacta de los de 1980, agrega que el territorio correspondiente al Estado y lo declara Inalienable, con lo cual se ha dado una vuelta de tuerca, más dentro de la tradicional teoría *Territorialista* peruana. Cabe señalar que en este artículo continúa el error de sus predecesores, que establecen un límite restrictivo de hasta 200 millas cuando la Declaración de Santiago, dice que esta es una distancia mínima.

c) *El Perú ante la tesis chilena*

La tesis *Territorialista* del Perú presenta tres problemas importantes. Primero, el ya mencionado de la autolimitación del Dominio Marítimo, sólo hasta una dis-

tancia de 200 millas, cuando nuestros compromisos internacionales hablan de un distancia mínima de 200 millas.

En segundo lugar tenemos, que el "suelo y subsuelo" del zocalo continental, es un territorio oceánico o mejor dicho suboceánico que requiere de "límites naturales" propios e independientementes, de los que son utiles para la superficie del mar.

El tercero y más importante, es que nuestros límites marítimos son medidos por nuestra propia definición, en base a los paralelos y no de acuerdo a la media equidistate, como internacionalmente se acepta y como también lo ha establecido la Convención de 1982. (Figura 11).

Como este último problema, es el que permite la avanzada de la tesis del "Mar Presencial" hasta el hito N°1 de la frontera norte (paralelo 18° 20), algunos comentaristas han creído posible contrarrestar este defecto con la firma de la Convención del Mar, por parte del Perú y así permitir que las Zonas Económicas Exclusivas de ambos países, se rijan por el Art. 74.1 de la Convención que dice:

> "La delimitación de la Zona Económica Exclusiva entre Estados con costas adyacentes o situadas frente a frente, se efectuará por acuerdo entre ellos sobre la base del derecho internacional, a que se hace referencia en el artículo 38 del Estatuto de la Corte Internacional de Justicia, a fin de llegar a una solución equitativa".

Pero lo que tenemos que tener presente, es que este precepto no beneficia en nada al Perú, pues nosotros celebramos el 4 de diciembre de 1954 un "Convenio sobre zona especial fronteriza marítima", que ha sido ratificado por el Perú, Ecuador y Chile. el cual en su numeral 1 habla:

> "... del Paralelo que constituye el límite marítimo entre dos países..."

Por esta razón al adherirnos a la Convención no nos sería aplicable el artículo 74 en su inciso 1 sino el mismo artículo en su inciso 4, el cual señala que:

> "Cuando exista un acuerdo en vigor entre los Estados interesados, las cuestiones relativas a la delimitación de la Zona Económica Exclusiva se resolverán de conformidad con las disposiciones de ese acuerdo".

El hecho que la Convención, establezca un tribunal obligatorio no significa que podamos hacer ningún reclamo válido, pues el Convenio de 1954 sería preferido por cualquier magistrado internacional, en su calidad de ley entre las partes.

El camino lógico, para recuperar el espacio marítimo que nos corresponde, está en la ocupación efectiva del mar. Antonio Belaúnde, nos recuerda que Luis Banchero Rossi, poco antes de su muerte, ya había hablado de nuestro deber de ocupar nuestro mar. (Belaunde: 1981, p.35). Ahora bien, debemos tener presente que esta actitud nuestra, puede generar un conflicto jurídico con el vecino del sur. Si esta situación se diese, deberíamos procurar que los países suscriptores de la Convención se atengan a su Zona

[…]

c) Peru and the Chilean thesis

Peru's Territorial thesis presents three major problems. First, it contains a self-imposed limitation of the Maritime Dominion, up to a distance of only 200 miles, whereas our international commitments refer to a minimum distance of 200 miles.

[...]

Thirdly and most importantly, our maritime boundaries are measured, according to our own definition, on the basis of the parallels and not through the equidistance line, [which is] internationally accepted and established by the 1982 Convention.

Given that this last issue allows for the advancement of the thesis of the "Presencial Sea" up to Boundary Marker No. 1 of the northern frontier (parallel 18° 20), some commentators have understood that it is possible to counteract this flaw through the signature of the Convention on the Law of the Sea by Peru in order to allow the Exclusive Economic Zones of both countries to be governed by Article 74.1 of the Convention, which reads as follows:

[...]

But we need to remember that this provision does not benefit Peru at all, because we concluded on 4 December 1954 an "Agreement Relating to a Special Maritime Frontier Zone", which has been ratified by Peru, Ecuador and Chile, which in Article 1 refers to:

> "… the parallel which constitutes the maritime boundary between two countries …".

For this reason, article 74 paragraph 1 would not be applicable to us by adhering to the Convention. Rather, paragraph 4 of the same article would apply, which reads as follows:

> "Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement."

The fact that the Convention establishes a mandatory tribunal does not mean that we can bring a valid claim, for the 1954 Agreement would be preferred by any international judge, as the law between the Parties.

Annex 251

A. Arias-Schreiber, "La Nature Juridique de la Zone Économique Exclusive", in Académie Diplomatique Internationale, *Propos sur le nouveau droit de la mer – Colloque*, 1985

LA NATURE JURIDIQUE DE LA ZONE ÉCONOMIQUE EXCLUSIVE

par

Alfonso ARIAS-SCHREIBER
Ambassadeur du Pérou

La question de la nature juridique de la zone économique exclusive (Z.E.E.) fut l'objet de discussions parfois acharnées au sein de la Troisième Conférence des Nations Unies sur le droit de la mer, non seulement en raison des divergences d'approche au niveau des écoles de pensée, mais aussi parce que les protagonistes de la Conférence représentaient des Etats souvent éloignés par des réalités et des intérêts très divers.

Le seul accord qui existait dès le début était que l'institution de cette zone se détachait de la dichotomie classique entre la mer territoriale, domaine de l'Etat riverain, et la haute mer, espace de tous et de personne, ou, si l'on veut, d'usage commun. On comprend alors l'enthousiasme des juristes face au paradis du défi intellectuel pour donner chacun sa propre interprétation sur l'identité et la filiation du nouveau-né.

La première question est de savoir à qui appartient la zone. Il ne s'agit pas d'une question purement académique, car la réponse comporte des implications d'ordre pratique très importantes pour la conduite des Etats dans cet espace maritime. La plus évidente de ces conséquences consiste à établir à qui reviennent ce qu'il est convenu d'appeler « les droits résiduels », c'est-à-dire ceux qui ne sont attribués de manière expresse ni à l'Etat riverain, ni aux autres Etats. Ce problème a une importance particulière dans le cas d'activités à caractère militaire, et pourrait en avoir encore davantage dans le futur, à propos des nouveaux usages de la mer résultant des progrès scientifiques et technologiques.

En ce qui concerne le terme « juridiction » qui, étymologiquement signifie « dire ou déclarer le droit », il implique l'autorité d'un Etat pour dicter les règles applicables dans l'exercice des compétences qui lui sont reconnues et afin d'assurer l'exécution de ces règles face à d'autres Etats.

La référence à ces deux concepts, que la Convention attribue exclusivement à l'Etat côtier dans la zone économique, suffirait pour conclure qu'il s'agit d'un espace de juridiction nationale. Mais il y a des considérations encore plus importantes résultant de l'ampleur des droits reconnus à l'Etat riverain et qui s'appliquent aux principaux usages de la zone en question : l'exploration, l'exploitation, la conservation et la gestion des ressources naturelles vivantes et non vivantes des eaux, des fonds marins et de leur sous-sol ; d'autres activités économiques comme la production d'énergie à partir de l'eau, des courants et des vents ; l'établissement et l'utilisation d'îles artificielles, d'installations et de structures ; la recherche scientifique marine, la protection et la préservation du milieu marin... Après cette énumération, on se demande : que reste-il pour les autres Etats ? En réalité, seules demeurent les libertés de communication internationale, dont l'exercice n'est cependant pas illimité puisqu'il doit tenir compte des droits et des obligations de l'Etat côtier ; il reste aussi le droit des Etats sans littoral et des Etats à caractéristiques spéciales de participer à l'exploitation des excédents des ressources vivantes, droit qui est lui-même soumis à des conditions restrictives dans la nouvelle Convention.

Ainsi, si l'on met en balance les droits et la juridiction de l'Etat côtier et les droits et libertés des autres Etats dans la Z.E.E., du point de vue qualitatif et quantitatif, il faut admettre que la balance penche largement en faveur de l'Etat côtier. Si l'on ajoute la faculté qu'on reconnaît à ce dernier d'assurer le respect de ses lois et règlements dans les cas expressément prévus, y compris l'arraisonnement, l'inspection, la saisie et l'introduction d'une instance, il est illogique de ne pas reconnaître qu'il exerce sur la zone les attributs de la juridiction nationale.

Par ailleurs, la zone économique doit être analysée dans sa perspective historique afin de mieux comprendre sa portée. L'antécédent le plus lointain de cette nouvelle institution est la zone maritime de 200 milles qui fut établie d'abord par le Chili et ensuite par le Pérou en 1947 pour protéger les ressources exis-

tantes et les utiliser au bénéfice des populations côtières, sans affecter le droit de libre navigation. Par la suite, elle fut instituée avec les attributs de souveraineté et de juridiction nationale à des fins essentiellement économiques. La Déclaration de Santiago en 1952, souscrite par le Chili, l'Equateur et le Pérou, reprit expressément ces mêmes attributs. Dans les décennies 50 à 70, d'autres Etats latino-américains étendirent leur juridiction jusqu'aux 200 milles, quelque-uns d'entre eux sous forme de mer territoriale. En 1972, les pays de la région des Caraïbes, réunis à la Conférence de Saint-Domingue, adoptèrent l'institution de la mer patrimoniale, comme zone adjacente à la mer territoriale, également jusqu'à la limite de 200 milles, ajoutant aux compétences à finalités économiques, celles en matière de recherche scientifique et de contrôle de la pollution. La même année, au Séminaire de Yaoundé, les Etats africains approuvèrent une recommandation qui reconnaissait leur droit d'établir, au-delà de la mer territoriale, une zone économique sur laquelle ils exerceraient une juridiction exclusive pour l'exploitation des ressources vivantes de la mer au profit de leurs peuples, ainsi que pour prévenir et contrôler la pollution.

Une fois commencés les travaux préparatoires de la Troisième Conférence sur le droit de la mer, le concept de zone économique exclusive ouvrit la voie à une solution transactionnelle entre les positions des Puissances maritimes, qui n'acceptaient de reconnaître que la limite des 12 milles ainsi que des droits préférentiels de l'Etat côtier pour l'exploitation de certaines espèces dans les eaux adjacentes considérées comme haute mer, et la position des pays qui avaient instauré une mer territoriale de 200 milles.

Ce bref rappel de la genèse de l'institution révèle que, depuis le début, elle fut conçue avec les caractéristiques d'une zone de juridiction nationale. Postérieurement, environ une centaine de pays côtiers ont établi des zones maritimes jusqu'à la limite des 200 milles et, parmi eux, très peu nombreux sont ceux qui considèrent ces zones comme faisant partie de la haute mer. En conséquence, la pratique générale des Etats qui ont procédé de cette manière en vertu d'actes unilatéraux, sans attendre la conclusion des négociations de la Conférence, confirme la thèse selon laquelle la grande majorité des pays côtiers considèrent qu'il s'agit de zones de juridiction nationale au sujet desquelles ils se sentaient autorisés à légiférer.

Annex 252

V. A. Belaúnde, *Trayectoria y Destino – Memorias Completas, Vol. II*, 1967

VICTOR ANDRES BELAUNDE

TRAYECTORIA Y DESTINO

MEMORIAS

TOMO II

EDICIONES DE EDIVENTAS S. A.
LIMA, 1967

pacífico. En conformidad con la Carta de la ONU, se estableció la preferencia de los medios convenidos por las partes. Decía el artículo 6º del Pacto: "Tampoco podrán aplicarse dichos procedimientos a los asuntos ya resueltos por el arreglo de las partes, por el laudo arbitral o por sentencia de un Tribunal internacional, o que se hayan regido por Acuerdos o Tratados en vigencia en la fecha de la celebración del Pacto". El artículo impedía el revisionismo, consagraba el respeto a la cosa juzgada y la preferencia por los procedimientos acordados por las partes. Puede señalarse el Pacto de Bogotá como un progreso respecto de los medios jurídicos del Acta de Ginebra y de los Pactos de Wáshington.

[…]

… Article 6 of the Pact stated: "The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty." The article prevented revisionism, establishing the respect for *res judicata* and the preference for the procedures agreed by the parties. The Pact of Bogotá may be highlighted as an improvement with regard to the legal means of the Geneva Act as well as with regard to the Washington Pacts.

[…]

Annex 253

E. D. Brown, *Sea-Bed Energy and Mineral Resources and the Law of the Sea, Vol. III – Selected Documents, Tables and Bibliography,* 1986

SEA-BED ENERGY
AND MINERAL RESOURCES
AND THE LAW OF THE SEA

Volume III

Selected Documents, Tables and Bibliography

by

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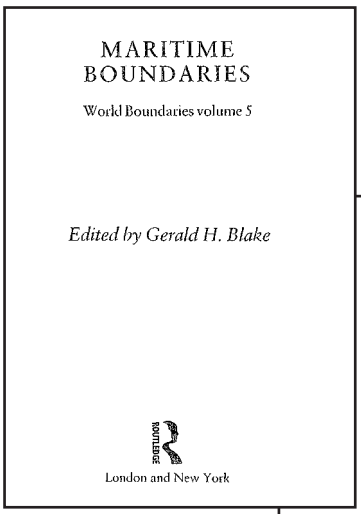
Professor of International Law in the University of Wales;
Director, Centre for Marine Law and Policy, UWIST,
Cardiff

Graham & Trotman
A member of the Kluwer Academic Publishers Group

No.	Parties and short title	Date of signature	Entry into force	Text
	France—Venezuela			
15	Treaty of delimitation of economic zones between the French islands of Guadeloupe and Martinique and Venezuela.	17.7.80	28.1.83	*Libya Annex*, No. 67.
	France—Saint Lucia			
16	Delimitation of the maritime areas between the islands of Martinique and St. Lucia.	4.3.81	4.3.81	*Journal Officiel de la République Française*, 4 March 1981; *Libya Annex*, No. 69.
	Trinidad and Tobago (formerly United Kingdom)—Venezuela			
17	Treaty relating to submarine areas of the Gulf of Paria between United Kingdom and Venezuela (accepted by Trinidad and Tobago after independence).	26.2.42	22.9.42	UK Treaty Series, No. 10 (1942), Cmnd. 6400; 205 LONTS 122; *Limits*, No. 11, 1970; ASB, p. 181; *Libya Annex*, No. 1; 1 *IL Ocean Dev.*, p. 432.
	Colombia—Panama			
18	Agreement determining boundary between their respective marine and submarine areas in the Caribbean Sea and the Pacific.	20.11.76	30.11.77	VIII *New Directions*, p. 88; *Limits*, No. 79, 1978; *Libya Annex*, No. 48.
	Colombia—Ecuador			
19	Agreement on delimitation of marine and submarine areas and maritime co-operation.	23.8.75	22.12.75	ST/LEG/SER.B/19, p. 398; *Limits*, No. 69, 1976; *Libya Annex*, No. 44.
	Chile—Ecuador—Peru			
20	Declaration on the Maritime Zone.	28.8.52	Ratified by the 3 States	ST/LEG/SER.B/6, p. 723; *Limits*, No. 86, 1979 and No. 88, 1979; *Libya Annex*, No. 2.
21	Protocol of Accession to 20 above, opening the Declaration to accession by other American States.	6.10.55		ST/LEG/SER.B/18, p. 381.
22	Agreement relating to a special maritime frontier zone.	4.12.54	Ratified by the 3 States	ST/LEG/SER.B/6, p. 734; *Limits*, No. 86, 1979 and No. 88, 1979; *Libya Annex*, No. 2.
	Argentina—Uruguay			
23	Agreement determining boundary between maritime jurisdictions in Rio de la Plata and lateral maritime boundary and continental shelf boundary.	19.11.73	12.2.74	13 ILM (1974), p. 251; *Limits*, No. 64, 1975; ASB, p. 185; *Libya Annex*, No. 32.

Annex 254

R. R. Bundy, "State Practice in Maritime Delimitation", in G. H. Blake (ed.), *World Boundaries volume 5: Maritime Boundaries,* 1994, p. 18



2

STATE PRACTICE IN MARITIME DELIMITATION

Rodman R. Bundy[1]

INTRODUCTION

Since 1942, more than one hundred maritime delimitation agreements have been entered into between states. These agreements deal principally with the continental shelf, although some refer simply to the delimitation of 'maritime areas' between the states concerned. Now that the concept of the Exclusive Economic Zone has become established as a principle of customary international law, despite the fact that the United Nations Convention on the Law of the Sea has not yet come into effect, it can be expected that future delimitations will increasingly deal with the EEZ as well.

Collectively, these agreements fall under the rubric of 'state practice'. Before discussing a number of specific examples, it is perhaps appropriate to place state practice in its proper context by commenting briefly on its legal relevance.

THE LEGAL RELEVANCE OF STATE PRACTICE

References to state practice in the jurisprudence

The question here is two-fold: (i) whether state practice points to the existence of any particular method of delimitation that is legally obligatory or that has an *a priori* or privileged status over other methods; and (ii) if not, whether state practice is nonetheless still relevant in a legal context to maritime delimitation.

Here, the starting point must be what the International Court of Justice had to say in the first continental shelf delimitation case decided by it – the 1969 *North Sea Continental Shelf Cases* between Denmark, the Federal Republic of Germany, and The Netherlands. The Court made several important pronouncements of principle which have largely

(a) Brazil–Uruguay (Figure 2.14). The agreement states that the boundary line is 'nearly perpendicular' to the general direction of the coast.
(b) Senegal–Guinea Bissau (Figure 2.15). A 240° azimuth or rhumb line has been employed roughly perpendicular to the coast.

Lines of longitude or latitude

This method is a close relative of the perpendicular method. Undoubtedly, one of its advantages lies in its simplicity. Examples include a number of delimitations along the west coast of South America as well as agreements in Africa and Central America: Chile–Peru (Figure 2.16), Peru–Ecuador (Figure 2.17), Colombia–Ecuador (Figure 2.18), Colombia–Panama (Figure 2.19) – this unusual boundary follows a step-like series of lines of longitude and latitude over part of its course – and The Gambia–Senegal (Figure 2.20).

The lengths of coasts involved

This factor was highly relevant in the Libya–Tunisia, Libya–Malta and US–Canada cases. Examples where the respective lengths of the coasts involved appear to have played an important role in the delimitation include France–Spain (Figure 2.21). This example was referred to in both the Libya–Tunisia and US–Canada cases. (The US State Department Geographer has referred to a coastal ratio of 1:1.54 in favor of France which may have played a role in the parties' agreement to push the seaward portion of the line closer to Spain.)

Geomorphology

In the 1969 *North Sea Continental Shelf Cases*, the Court observed that 'it can be useful to consider the geology of [the] shelf in order to find out whether the direction taken by certain configurational features should influence delimitation'.[9] Bearing in mind that at the time a state's legal title to the continental shelf rested in part on the notion of the 'natural prolongation' of the landmass into and under the sea, it was thought that geological or geomorphological features could play an important role in maritime delimitation, and parties to subsequent cases argued accordingly. Even in the 1982 Libya–Tunisia case, the Court left open the possibility that such features could be relevant to future delimitations.[10]

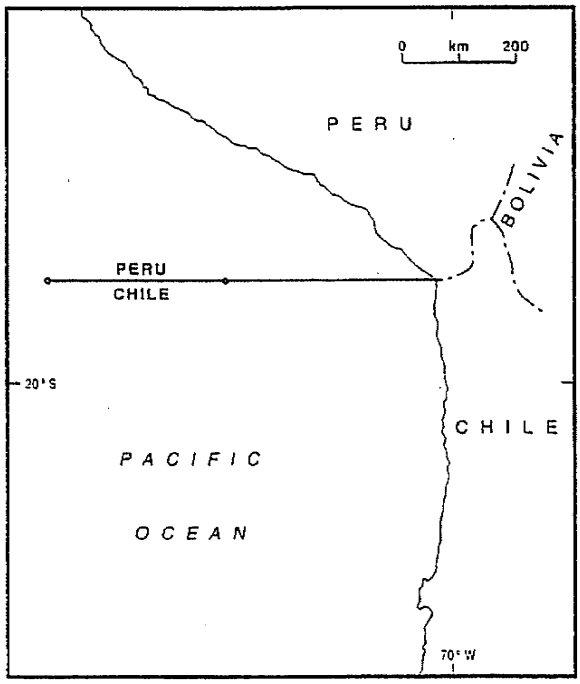


Figure 2.16 The Chile–Peru maritime boundary

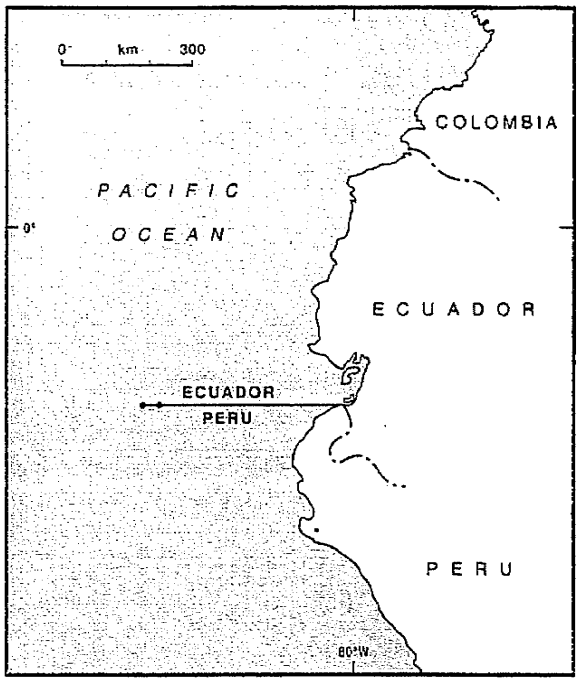


Figure 2.17 The Ecuador–Peru maritime boundary

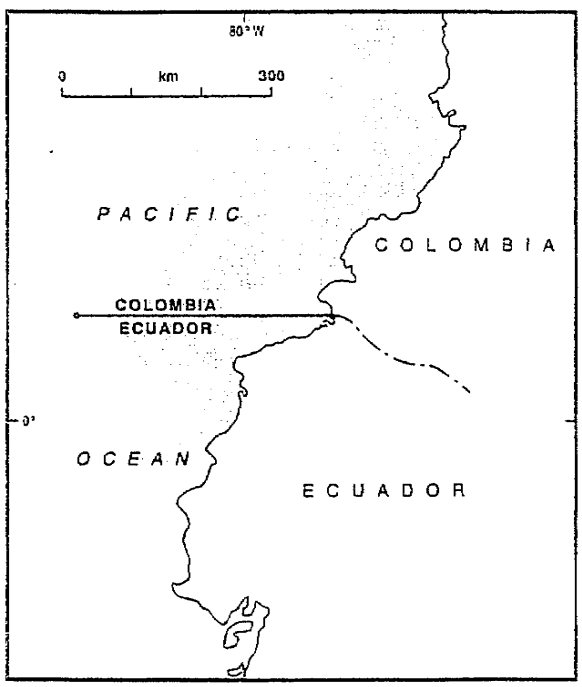


Figure 2.18 The Colombia–Ecuador maritime boundary

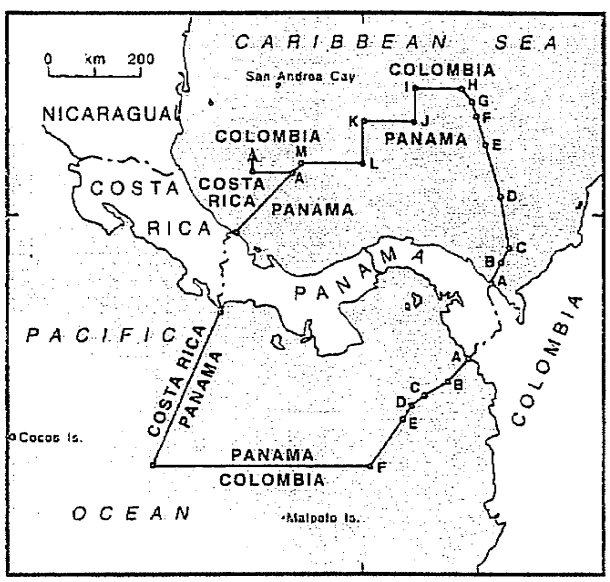
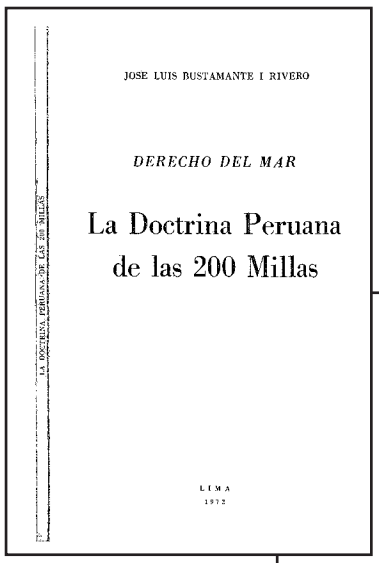


Figure 2.19 The Colombia–Panama maritime boundary

Annex 255

J. L. Bustamante y Rivero, *Derecho del Mar – La Doctrina Peruana de las 200 Millas,* 1972



De lo expuesto en los acápites anteriores se desprende que las proclamaciones presidenciales de diversos Estados americanos en los años cuarenta de este siglo, así como la Declaración de Santiago de 1952 que cabe calificar como una proclamación efectuada por acuerdo multilateral, constituyen instrumentos jurídicos provistos de legitimidad i licitud inobjetables por el hecho de no infringir ninguna regla consagrada del derecho internacional i por haber sido fundamentados en principios universales de derecho i en realidades geográficas, biológicas i humanas de fácil comprobación, según se verá luego. Por consiguiente, tales proclamaciones son capaces de generar derechos nuevos, tendientes a colmar vacíos de que adolecía el derecho tradicional del Mar.

IV

LA PROCLAMACION PERUANA: DECRETO SUPREMO DE 1º DE AGOSTO DE 1947

Detengámonos ahora a examinar el texto de la Proclamación Peruana contenida en el Decreto Supremo Nº 781, de fecha 1º de agosto de 1947, que con el voto consultivo del Consejo de Ministros expidió el Presidente Bustamante i Rivero i refrendó el Ministro de Relaciones Exteriores de esa época Dr. Enrique García Sayán.

Los nociones jurídicas que ese Decreto pone en juego son dos: la de plataforma submarina o zócalo continental i la de mar aledaño a la costa o mar territorial. I cuida de precisar ambas nociones no solamente en relación con el territorio continental peruano, sino también con el territorio insular contiguo, vale decir con las islas inmediatas a las costas continentales del Perú.

En cuanto al primer punto, determina el Decreto (Art. 1º) que "la soberanía i jurisdicción nacionales se extienden a la plataforma submarina o zócalo continental e insular adyacente a las

costas continentales e insulares del territorio nacional, cualesquiera que sean la profundidad i la extensión que abarque dicho zócalo". Según esto, la concepción peruana no admite limitaciones de soberanía en cuanto al área de la plataforma ya sea en razón de su profundidad, ya en razón de la distancia hasta la cual aquella se prolongue mar afuera.

En lo que concierne al mar territorial, el Decreto establece (arts. 2º i 3º) que "*la soberanía i jurisdicción* nacionales se ejercen también sobre el mar adyacente a las costas del territorio nacional, cualquiera que sea su profunidad i en la extensión necesaria para *reservar*, proteger, conservar i *utilizar* los recursos i riquezas naturales de toda clase que en dicho mar o debajo de él se encuentren". El texto del art. 3º menciona en seguida la facultad que se reserva el Estado de establecer cuál sea esa "extensión necesaria" en cada época o por razón de circunstancias que pudieran sobrevenir en el futuro; i desde luego, la demarca i fija dentro de una zona que partiendo de la costa termina en una línea imaginaria paralela a ella i trazada sobre el mar a una distancia de doscientas millas marinas siguiendo la línea de los paralelos geográficos. Señala luego el procedimiento para demarcar la zona de mar territorial en torno a las islas nacionales, siempre sobre la base de una distancia de doscientas millas.

Por último, hace el Decreto (art. 4º) la salvedad de que estas proclamaciones no afectan el principio de libre navegación de naves de todas las naciones, conforme al Derecho Internacional.

Al comentar este Decreto, cabe señalar en él dos aspectos importantes. El primero atañe a porqué el Decreto no se limitó a estatuir sobre la plataforma continental sino que entró a pronunciarse sobre la cuestión del mar territorial, Tratándose de la costa peruana, un decreto circunscrito a la plataforma habría sido incompleto i defectuoso. Debido especialmente a la proximidad extrema de la Cordillera de los Andes a la línea de costa, nuestro litoral no posee plataforma continental sino en una fracción de su longitud; i en ciertas partes esa plataforma es muy angosta pues no faltan sitios en que el talud del zócalo se precipita casi verti-

calmente hacia el fondo de los senos marinos a muy corta distancia de la ribera. En tales circunstancias, legislar únicamente sobre la plataforma habría sido omitir la mención del régimen jurídico de una buena parte de nuestra frontera marítima; i no hay ninguna porción de frontera que deba quedar privada de la protección legal de su soberanía nacional. Entre nosotros, la zona del mar territorial, aparte de su función específica, viene así a compensar las deficiencias de nuestra geografía en cuanto a plataforma continental. Este razonamiento funciona igualmente si se mira el problema bajo el ángulo biológico. Observaciones técnicas locales demuestran que el ámbito de la presencia estable o "habitat" normal de los recursos vivos constitutivos del complejo biológico del mar peruano alcanza en veces una amplitud bastante próxima a las doscientas millas; al paso que la anchura mayor de nuestra plataforma submarina no llega a sobrepasar las sesenta millas; de modo que una protección eficaz de aquel complejo no sería lograda con la vigilancia i control de sólo las aguas epicontinentales de la plataforma. Es la anchura mayormente extensa de un mar territorial adecuado a los circunstancias del complejo vivo aledaño a nuestra costa, la que permite completar hasta su tope la eficacia de la función estatal de preservación i *aprovechamiento* de los recursos vivos.

Un segundo aspecto cuyo alcance conviene definir en el Decreto es el tocante a cuál sea el "status" jurídico que allí se atribuye a las costas del territorio nacional. A mi juicio, no es otro que el "status" típico del mar territorial, el cual se reputa inserto en la soberanía del Estado ribereño. Recientemente se ha dado en aducir que el texto del art. 3º establece simplemente una zona marítima de jurisdicción especial limitada a los fines de control i protección de los recursos en ella existentes, incluídas aguas, suelo i subsuelo; pero sin que tal jurisdicción implique por parte del Estado un acto de soberanía, sino sólo el resultado de una liberalidad permitida por motivos razonables en el área del mar libre o alta mar. Tal aseveración es a mi juicio errónea; pues la interpretación del Decreto Supremo de 1º de agosto de 1947 i el

vocabulario jurídico que su texto emplea no dejan lugar a duda sobre la identidad que allí se establece entre la zona de 200 millas i el mar territorial. Conforme a dicho Decreto, esa zona es zona "*de soberanía*", declarada en cumplimiento de la obligación del Estado de fijar da manera inconfundible el "*dominio marítimo* de la Nación. "Dominio marítimo" significa pertenencia o propiedad de un mar; i en el lenguaje del Derecho Internacional, la propiedad o dominio pleno, asiento de la soberanía, sólo se da en las *áreas territoriales*. (1).

Nótese, por otra parte, que el art. 2º del Decreto no se limita a implantar sobre los recursos i riquezas del mar ribereño una supervigilancia protectora del Estado contra posibles abusos sino que destina esos bienes *a ser utilizados* por dicho Estado costero, es decir, *a hacerlos suyos*, a incorporarlos a su patrimonio. ¿Cabe, acaso, una expresión más neta del ejercicio de la soberanía?

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(1) Se arguye que el texto literal del Decreto de 1947 no menciona explícitamente la expresión "mar territorial". Mas me permito recordar que en cuestiones técnicas las cosas no sólo se identifican por sus nombres, sino por la mención de las calidades esenciales inherentes a su naturaleza. Aunque el texto no haya empleado literalmente la frase "mar territorial", han sido usados, en cambio, reiteradamente, así en los considerandos como en la parte dispositiva, en concepto de atributos o características inherentes a la nueva faja de 200 millas, ciertos términos jurídicos que ya he mencionado arriba, a saber los de "soberanía" i "dominio", que típicamente corresponden a lo que es pertenencia o propiedad del Estado i forma parte de él; i a lo que, por tanto, configura en el lenguaje forense esa extensión marítima de nueva creación como un verdadero "mar territorial".

Otra prueba contundente de que tal fue la intención del Poder Ejecutivo del Perú al expedir su Decreto consiste en que el texto no hace distingo o división alguna entre el mar territorial estrictamente dicho (bien sea el clásico de las 3 millas o el que se intenta establecer de 6 i 6) i la zona adicional que alcanza hasta las 200 millas, bautizada ahora antojadizamente como "zona de protección i utilización de los recursos marinos". El Decreto habla, en globo, de una faja de 200 millas, medida a partir de la costa, es decir, allí donde comienza el mar territorial, i sometida en toda su anchura a la soberanía i jurisdicción del Estado. Esto implica claramente una *ampliación* del mar territorial *como área única;* pues de lo contrario se habría establecido una doble demarcación del mar territorial i de la zona contigua, i en cuanto a ésta última, se habría señalado como línea inicial o de arranque el límite *exterior* del mar territorial. En el texto no hay rastro de esa división.

Hay algo más: Ratificando su proclamación de agosto de 1947, el Perú suscribió en unión de Chile i el Ecuador la Declaración de Santiago, de fecha 18 de agosto de 1952, en la cual los tres Estados declaran "*la insuficiencia* de la antigua extensión del mar territorial para la conservación, desarrollo *i aprovechamiento* de las riquezas existentes en las aguas que bañan sus costas; i, "*como consecuencia*" extienden la soberanía i jurisdicción *exclusivas* que a cada uno de ellos corresponde sobre el mar que baña las costas respectivas *hasta una distancia mínima de 200 millas marinas* de las aludidas costas (art. I i II); i las extienden igualmente al suelo y subsuelo de la zona marítima así ampliada, hasta la misma distancia (art. III). Es importante anotar en este texto tres elementos capitales:

a) Si se declara que la antigua extensión del mar territorial i de la zona contigua es insuficiente i se hace, por ello, *una ampliación* o prolongación de esta extensión hasta 200 millas, suprimiendo en adelante toda distinción entre "mar territorial" i "zona contigua", cae de su peso que lo que se amplía o prolonga es el mar territorial por ser el solo elemento esencial del área costera susceptible de ser asiento, como lo dice el texto, de una soberanía *exclusiva* del Estado. — b) Si, a mérito de una declaración de "soberanía *exclusiva*", se mantiene en el área ampliada el poder del Estado ribereño de *aprovechar* o *apropiarse* de los recursos marinos que ya se le reconocía en el área antigua del mar territorial, es forzoso admitir que en la nueva zona la exclusividad de la soberanía es precisamente lo que configura la noción del mar territorial. — c) La Declaración menciona *copulativamente*, esto es, como cosas distintas, cada una con su sentido propio i diferente, la *soberanía* i la *jurisdicción;* i extiende ambas potestades al sujeto "mar ribereño"; de modo que no cabe pensar que el propósito de sus autores fue constituir en la zona de las 200 millas solamente un mar *jurisdiccional*, sino —i en primer término— un mar *sometido a la soberanía del Estado*, o sea un *mar territorial.*

A la luz de estos razonamientos, la única interpretación posible del texto del Decreto de 1º de agosto de 1947 —concordante

con el de la Declaración de Santiago— es que la zona ribereña de las 200 millas fue creada allí con las características que el Derecho Internacional atribuye al mar territorial; es decir, como zona a la cual se extiende la plena jurisdicción del Estado como efecto i corolario de su poder de soberanía.

Tal me parece ser la interpretación genuina que corresponde al texto del Decreto de 1º de agosto de 1947 i a sus conexos i también la que corresponde al buen sentido, pues el acto de jurisdicción, sea ésta amplia o concreta, general o particularizada, supone una potestad de mando, una fuente de autoridad que tratándose del Estado se llama soberanía.

REPAROS AL DECRETO DE 1947

Consideremos ahora ciertas objeciones de orden doctrinal que rozan aspectos de carácter histórico, político, i económico.

a) Se afirma que un mar territorial de doscientas millas cercena o reduce el área de la "alta mar" o "mar libre" con lesión de los derechos de la comunidad internacional que gozaba de la posesión de esa área. Este argumento parte de la hipotética premisa de que la ley internacional hubiera consagrado como una de sus reglas el mar territorial de tres millas, lo cual —como ha quedado ya dicho— no es exacto. Ni siquiera lo es que ulteriormente se haya llegado a un compromiso sobre un mar territorial de doce millas, pues los esfuerzos desplegados en tal sentido en las reuniones de Ginebra no alcanzaron éxito total, sino una mayoría inferior a los dos tercios. Lo cierto es que precisamente en vista de la falta de consenso general sobre esta materia, no son pocos los Estodos que han procedido a señalar la extensión de sus mares territoriales a la luz de sus individuales criterios i de las circunstancias geográficas de su litoral. Pero no es esto sólo: lo que más interesa es el análisis de la noción jurídica de la libertad de los mares. El objetivo inicial i permanente de esta idea ha sido i es garantizar la libre comunicación entre los pueblos para facilitar el contacto humano, llenar las necesidades del comercio i fomentar

la difusión de la cultura. La libertad de navegación era uno de los aspectos de la libertad de comunicaciones; i este principio continúa respetado a través de los diferentes criterios legales sobre el mar territorial: todos ellos reconocen a las naves extranjeras el derecho de tránsito libre bajo la forma de "paso inocente" por las aguas del Estado ribereño i el acceso pacífico a sus costas i puertos. No ha habido, pues, infracción de este principio al ser ampliada la anchura de ciertos mares territoriales.

El régimen internacionalizado de "alta mar" comprendía también la libertad de pesca; mas a este propósito es menester hacer distingos. Siempre fue lícito respecto a los navegantes el ejercicio eventual de la pesca particular para fines de subsistencia; e igual prerrogativa se tolera en los mares territoriales. Pero el problema jurídico es diferente en cuanto a la pesca comercial de personas o empresas dedicadas sistemáticamente a la pesquería con propósitos de lucro. La riqueza ictiológica de los mares ribereños se reputa patrimonio de los habitantes del territorio contiguo según una invariable tradición de los pueblos, tan vieja como el mundo. Allí, en el mar nacional, la pesca es alimento i condición de vida de los nativos. Cuando —a mayor abundamiento— el país ribereño es aún inmaduro i no ha alcanzado su pleno desarrollo económico, necesita, además, de esa riqueza biológica para industrializarla i convertirla en fuente pecuniaria de recursos que promueva el alza del nivel humano de su población. En tales condiciones, un despojo por terceros de esos dones de la Naturaleza i de la geografía local se hace más marcadamente inexcusable cuando quienes pretenden consumarlo son elementos extraños a la región, mensajeros de países lejanos que, a su turno, poseen sus costas i mares propios donde podrían asentar las mismas actividades. Por eso es que los Estados dueños de un mar territorial tienen plenísimo derecho de invocar su prioridad para el aprovechamiento de los recursos de su propio mar i de reglamentar en él el ejercicio de la pesca por pescadores foráneos, en forma que no se haga peligrar el interés preferente de sus pobladores ni la conservación del complejo ecológico nacional.

[…]

In relation to the territorial sea, the Decree establishes (arts. 2 and 3) that "national *sovereignty and jurisdiction* are also exercised over the sea adjoining the shores of national territory, whatever its depth and in the extension necessary to *reserve*, protect, maintain and *utilize* natural resources and wealth of any kind which may be found in or below those waters." The text in Article 3 mentions the prerogative reserved to the State to establish the "necessary extension" at different times or on the basis of future supervening circumstances; and therefore it demarcates and fixes [that necessary extension] within a zone which, starting from the coast, ends at an imaginary line parallel to it and traced over the sea at a distance of 200 nautical miles following the line of the geographic parallels.

[…]

- c) The [Santiago] Declaration mentions *jointly*, that is, as independent concepts, each one with its own and different meaning, the *sovereignty* and the *jurisdiction*; and extends both powers to the subject "adjacent sea"; in such a way that it is not correct to think that the authors' purpose was to constitute within the 200 miles only a *jurisdictional* sea, but – and in the first place – a sea *subject to the sovereignty of the State*, that is a *territorial sea*.

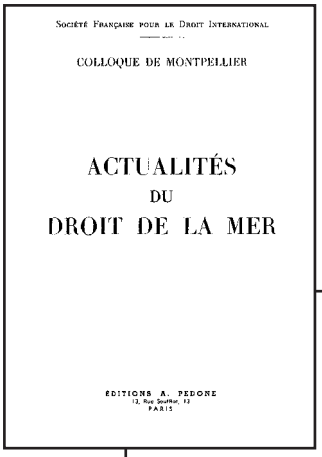
In light of this reasoning, the only possible interpretation of the text of the Decree of 1 August 1947 – concordant with the Santiago Declaration – is that the 200-mile zone adjacent to the coast was created in this case with the characteristics that International Law attributes to the territorial sea; that is, as a zone to which the full jurisdiction of the State applies as an effect and as a logical conclusion of its power of sovereignty.

This is in my view the authentic interpretation of the text of the Decree of 1 August 1947 and its related texts as well as the one according to common sense, for the act of jurisdiction, be it broad or concrete, general or specific, supposes a power of command which regarding the State is called sovereignty.

[…]

Annex 256

J. Castañeda, "Les Positions des États Latino-Américains",
Actualités du droit de la mer, 1973, p. 158



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LES POSITIONS DES ÉTATS LATINO-AMÉRICAINS

Le droit de la mer n'a cessé de se transformer depuis un quart de siècle. Certains estiment — et peut-être n'ont-ils pas tort — que ces transformations ont commencé avec la Proclamation Truman de 1945. Cependant, le régime du plateau continental n'a pas été le seul à se développer. Ainsi, un chapitre relatif à la protection des ressources biologiques a été ajouté en partie au droit de la mer à la Conférence de 1958.

Depuis lors, et malgré l'œuvre fructueuse de codification de cette conférence, la poussée vers le développement progressif du droit international de la mer n'a cessé. La consolidation du droit en la matière n'a été, paradoxalement, qu'une base pour la relance de nouvelles transformations.

Les pays de l'Amérique latine ont joué un rôle important dans la préparation et les résultats des conférences de Genève sur le droit de la mer. Mais l'influence de leur action s'est accrue depuis lors. A part la question du régime international des fonds marins, dont l'initiative revient à Malte, les Etats latino-américains sont à l'origine des changements qui s'annoncent dans tous les autres domaines du droit de la mer, et notamment dans tout ce qui a trait à la délimitation des espaces maritimes. En fait, si la Conférence des Nations Unies sur le droit de la mer, prévue pour 1973, a été convoquée, c'est en partie en raison des mesures prises par ces Etats. L'étude de leur position présente donc un intérêt spécial.

La position des pays latino-américains se manifeste, d'une part, par la promulgation de textes législatifs, et de l'autre, par leur action au sein des organismes internationaux, notamment le comité préparatoire pour la conférence des Nations Unies. Ces deux aspects doivent être étudiés séparément. Si les textes législatifs représentent une preuve plus formelle et sûre d'une coutume internationale, l'annonce de l'attitude d'un pays a un intérêt certain quand il s'agit de juger les perspectives d'avenir d'un processus déjà engagé de développement progressif du droit international.

L'action législative

La première revendication de « souveraineté » sur les mers adjacentes, jusqu'à une distance de 200 milles, fut celle du Chili, du 23 juin 1947. Le décret du Pérou, rédigé en des termes presqu'identiques, est du 1er août 1947. Ces deux revendications ont donc été faites depuis un quart de siècle, période qui n'est pas négligeable. La Déclaration dite de Santiago, du 18 août 1952, a été émise conjointement par les trois pays du Pacifique Sud, soit l'Equateur, le Pérou et le Chili. Les trois gouvernements y « proclament comme norme de leur politique internationale maritime, la souveraineté et la juridiction exclusives... sur la mer qui baigne leurs côtes jusqu'à une distance minimum de 200 milles marins ».

Il n'est pas aisé de déterminer clairement la nature juridique de cette zone et, donc, des droits revendiqués. Les interprétations données par les représentants de ces trois pays sur la portée de la Déclaration n'ont pas été identiques ; par ailleurs, les textes législatifs en vigueur dans les trois Etats ne correspondent pas tous à l'exercice de souveraineté sur une étendue de 200 milles, au moins au regard des notions traditionnelles. Ainsi, la législation chilienne prévoit une mer territoriale de 3 milles.

Au fond, il est assez difficile de classifier les positions des différents pays latino-américains : la technique juridique employée n'a pas toujours été très précise, et d'autre part, il s'agit d'un domaine non seulement fort complexe, mais en pleine évolution, ce qui permet une marge considérable d'improvisation. En tout cas, pour présenter un tableau cohérent il sera nécessaire d'utiliser, comme termes de référence, les notions connues et acceptées.

Un premier groupe est formé par les Etats qui revendiquent une vraie mer territoriale, *stricto sensu*, de 200 milles, c'est-à-dire, une zone sur laquelle l'Etat riverain exerce la plénitude des compétences normalement liées à la notion de souveraineté ; il s'agit donc d'un espace maritime sujet au régime juridique établi dans la convention de Genève de 1958 sur la mer territoriale.

Les pays de ce premier groupe sont peu nombreux : l'Equateur (décret du 10 novembre 1966), le Panama (loi du 2 février 1967) et le Brésil (décret-loi du 25 mars 1970). Ces textes législatifs emploient l'expression « mer territoriale », et ces trois pays ne reconnaissent, d'une façon expresse ou implicite, d'autres droits aux navires étrangers que celui de passage inoffensif.

A ces trois Etats, il faut ajouter le Pérou. Il est vrai que la récente loi sur les pêcheries du 25 mars 1971 parle d'une « mer juridictionnelle jusqu'à 200 milles », et que le décret de 1947 avait surtout pour but la protection des ressources de la mer ; mais le Pérou a interprété d'une façon constante la Déclaration de Santiago comme une revendication de « mer territoriale » *stricto sensu*. Certains aspects de la législation péruvienne confirment cette conclusion : la loi sur l'aviation civile du

11 novembre 1965 déclare que le « Pérou exerce la souveraineté exclusive sur l'espace aérien au-dessus de son territoire et de ses eaux juridictionnelles jusqu'à 200 milles ».

Un deuxième groupe est formé par des pays qui réclament une étendue de 200 milles, mais qui reconnaissent la liberté de navigation et la liberté de survol dans cette zone ou dans une partie de celle-ci. Ce sont l'Argentine, le Costa Rica, le Chili, le Salvador, le Nicaragua et l'Uruguay. Certains textes parlent de « mer territoriale » ou de « souveraineté » ; dans le cas du Salvador, l'article 8 de la Constitution de 1962 prévoit même que le territoire de la République « comprend la mer adjacente jusqu'à une distance de 200 milles ». La liberté de navigation et celle de survol sont néanmoins reconnues dans les six pays, comme comportant des droits plus étendus que le simple passage inoffensif. Le cas de l'Uruguay est significatif : seul le droit de passage inoffensif existe pour les premiers 12 milles, tandis que sur les autres 188 milles, la « liberté de navigation » et de survol sont reconnues. La différence essentielle entre les deux régimes, on le sait, réside dans les restrictions que l'Etat riverain peut imposer, selon la Convention de 1958, au passage inoffensif pour des motifs de sécurité ou autres.

Des discussions ont eu lieu au Comité préparatoire des Nations Unies sur la compatibilité ou l'incompatibilité entre une mer territoriale authentique, caractérisée par l'exercice de la souveraineté, et la reconnaissance de la liberté de navigation et de survol en tant que vrais droits fondés sur le droit international et garantis par cet ordre juridique. Certains délégués, dont le représentant de la France, M. Jeannel, et moi-même, avons considéré qu'il y avait là une contradiction.

On a tenté récemment de concilier juridiquement ces deux situations en faisant appel à une nouvelle notion dite de la « pluralité de régimes ». Aucune règle du droit international ne prescrit obligatoirement, dit-on, l'unité de la mer territoriale. Il peut avoir deux ou même plusieurs régimes juridiques successifs à l'intérieur de cette mer : certains droits peuvent être reconnus jusqu'à une première distance, 12 milles par exemple, et d'autres plus étendus au-delà de cette limite.

Le but de ces revendications de 200 milles est manifestement de réserver aux nationaux l'exploitation des ressources biologiques de la mer, ainsi que celle des ressources minérales du lit de la mer et de son sous-sol. Elles visent plus que la simple conservation. Par contre, les trois autres libertés de la haute mer, énoncées dans la II[e] Convention de Genève, ne sont pas en cause. La position de ces six pays a donc pu être caractérisée comme la projection d'une compétence spécialisée sur la haute mer, plutôt que comme une vraie mer territoriale. Par ailleurs, ces déclarations passent sous silence certains problèmes qui n'ont attiré que très récemment l'attention, comme la prévention de la contamination de la mer et la recherche scientifique par des Etats non riverains dans la zone de 200 milles.

Le dernier groupe de pays latino-américains est constitué par ceux qui réclament une mer territoriale classique, soit une bande de mer étroite, jusqu'à une distance de 12 milles dans la plupart des cas, et qui

n'ont pas établi dans leur législation, au-delà de cette distance, des zones de pêche exclusive ou d'autres restrictions. Il s'agit surtout de pays riverains de la mer des Caraïbes : Colombie, Venezuela, Mexique, Trinidad et Tobago, Jamaïque, Saint Domingue, Haïti, Cuba, Guatemala et Honduras.

Vers une position commune. Les instruments régionaux

La délimitation des espaces maritimes a fait l'objet d'une action régionale en Amérique latine depuis longtemps. Le Comité juridique interaméricain (Comité de Rio), le Conseil interaméricain de jurisconsultes, ainsi que des conférences spécialisées, ont traité de ces questions à plusieurs reprises, sans pour autant réussir à unifier les positions des divers pays. Plus récemment, des efforts ont été entrepris en vue de parvenir à une position commune latino-américaine dans le cadre des travaux préparatoires de la future conférence des Nations Unies. Ces tentatives semblent vouées à des meilleurs résultats.

En mars 1970, à Montevideo, les neuf pays latino-américains qui à cette date revendiquaient 200 milles, selon l'une ou l'autre des diverses formules, ont déclaré le droit des Etats riverains d'établir « les limites de leur souveraineté et de leur juridiction maritime conformément aux caractéristiques géographiques et géologiques et en fonction des facteurs qui conditionnent l'existence des ressources marines et les besoins de leur exploitation rationnelle ».

En août de la même année, tous les pays latino-américains, sauf Cuba et Haïti, se sont réunis à Lima à la recherche d'une position commune. La Conférence n'a pas affirmé expressément le droit de revendiquer 200 milles, et la Déclaration par elle adoptée ne reflète pas la différence de position entre ceux qui revendiquent une mer territoriale et ceux qui réclament l'exercice d'une compétence spécialisée pour la pêche. Le point de rencontre a été la reconnaissance du « droit de l'Etat riverain d'établir les limites de sa souveraineté ou de sa juridiction maritime suivant des critères raisonnables, en accord avec les caractéristiques géographiques, géologiques et biologiques et avec les besoins de l'utilisation rationnelle de ces ressources ». La Déclaration énonce ensuite que les mesures de réglementation aux fins précitées doivent être prises sans nuire « à la liberté de navigation des navires et au survol par les aéronefs de tous les pavillons ».

Curieusement, la Déclaration de Lima a fait l'objet de réserves de signe contraire. Trois pays ont voté contre : la Bolivie, le Paraguay et le Venezuela, ce dernier indiquant son désaccord avec la disposition essentielle, déjà citée, de la Déclaration. Le Mexique a interprété les termes « suivant des critères raisonnables » de cette même disposition comme signifiant « jusqu'à une limite de 12 milles ». D'un autre côté, bon nombre de pays ont interprété la « liberté de navigation et de survol » comme synonyme du droit de passage inoffensif.

Position au sein du Comité préparatoire de la Conférence des Nations Unies

Il n'est pas aisé d'identifier les positions latino-américaines dans le cadre de la préparation de la future Conférence des Nations Unies. D'abord, seulement onze pays latino-américains font partie du Comité préparatoire. Ensuite, la position législative de chaque Etat ne coïncide pas nécessairement avec l'attitude qu'il adopte dans la formulation conjointe de règles futures à caractère universel. Il est souvent difficile de faire la part de l'idéal et celle du possible ; il y a aussi le problème des affinités et d'autres facteurs politiques qui ne sont jamais absents en Amérique latine comme ailleurs, dans ce genre de situations.

Cependant, on pourrait penser que certaines tendances commencent à se dessiner. La conclusion indirecte qui se dégage de la Déclaration de Lima de 1970, selon laquelle il revient à chaque Etat de fixer les limites de sa souveraineté maritime, ainsi que les débats en 1971 et au printemps de 1972 au sein du Comité préparatoire, montrent que presque tous les Etats latino-américains sont d'accord sur un postulat minimum : l'Etat riverain doit exercer des pouvoirs suffisants au-delà de 12 milles, non seulement pour conserver les ressources vivantes de la mer au large de ses côtes, mais aussi pour les réserver au profit de ses nationaux.

Certains, peut-être une minorité, considèrent que l'Etat doit pouvoir exercer à cette fin une pleine et entière souveraineté. D'autres estiment qu'il suffit d'une compétence spéciale, d'une zone de pêche exclusive, qui n'entraverait pas la liberté de navigation et de survol ; mais presque tous les Etats latino-américains, cependant, coïncident sur la distance de 200 milles comme limite de cette souveraineté ou de cette compétence spéciale. Ce n'est pas une position fondée sur des textes législatifs, mais c'est certainement l'attitude que prendront les Etats latino-américains à la prochaine conférence sur le droit de la mer.

Un certain nombre de pays, dont le Mexique, la Colombie et le Venezuela, ont soutenu récemment une conception que, faute d'un meilleur nom, on est convenu d'appeler la thèse de la « mer patrimoniale ». Il s'agit simplement de la conception classique de la mer territoriale, comme une bande relativement étroite de mer adjacente, c'est-à-dire jusqu'à une distance de 12 milles, et au-delà de la limite extérieure de cette mer, une juridiction ou compétence spéciale sur la haute mer, jusqu'à une distance de 200 milles, qui permettrait à l'Etat riverain de réserver au profit de ses nationaux les ressources biologiques de la mer, ainsi que les ressources minérales du lit de la mer et de son sous-sol. Si le plateau continental s'étend au-delà de 200 milles, comme c'est le cas en plusieurs endroits en Amérique latine, l'Etat riverain exerce des droits souverains sur lesdites ressources conformément à la Convention de Genève de 1958 sur le plateau continental.

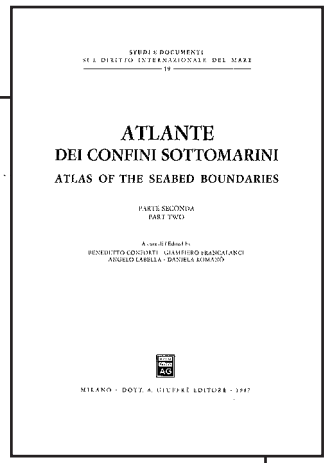
Au commencement de juin se tiendra en République Dominicaine une conférence des pays qui bordent la mer des Caraïbes, où cette

conception sera examinée. Il n'est pas improbable qu'elle devienne la position commune des quatorze pays participants. Il est prévu que tous les pays latino-américains feront une tentative, peut-être plus tard dans l'année, pour établir une position commune entre les deux tendances existantes sur le problème de la délimitation des espaces maritimes.

Jusqu'à présent, les Etats de l'Amérique latine ont présenté au Comité préparatoire un document conjoint sur le régime des fonds marins, dont le trait essentiel est la prévision d'une association entre l'Autorité et des entreprises privées pour l'exploitation des ressources, ainsi qu'une liste détaillée, présentée conjointement avec les pays afro-asiatiques, des sujets que devrait traiter la future Conférence des Nations Unies.

Annex 257

B. Conforti and G. Francalanci (eds), *Atlas of the Seabed Boundaries, Part Two,* 1987



CHILE / ECUADOR / PERU

(A) DECLARATION ON THE MARITIME ZONE.

Santiago, 18.8.1952.

Source: LIS, Nos. 86 and 88.

1. Governments are bound to ensure for their peoples access to necessary food supplies and to furnish them with the means of developing their economy.

2. It is therefore the duty of each Government to ensure the conservation and protection of its natural resources and to regulate the use thereof to the greatest possible advantage of its country.

3. Hence it is likewise the duty of each Government to prevent the said resources from being used outside the area of its jurisdiction so as to endanger their existence, integrity and conservation to the prejudice of peoples so situated geographically that their seas are irreplaceable sources of essential food and economic materials.

For the foregoing reasons the Governments of Chile, Ecuador and Peru, being resolved to preserve for and to make available to their respective peoples the natural resources of the areas of sea adjacent to their coasts, hereby declare as follows:

I) Owing to the geological and biological factors affecting the existence, conservation and development of the marine fauna and flora of the waters adjacent to the coasts of the declarant countries, the former extent of the territorial sea and contiguous zone is insufficient to permit the conservation, development and use of those resources, to which the coastal countries are entitled.

II) The Governments of Chile, Ecuador and Peru therefore proclaim as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast.

III) Their sole jurisdiction and sovereignty over the zone thus described includes sole sovereignty and jurisdiction over the sea floor and subsoil thereof.

IV) The zone of 200 nautical miles shall extend in every direction from any island or group of islands forming part of the territory of a declarant country. The maritime zone of an island or group of islands belonging to one declarant country and situated less than 200 nautical miles from the general maritime zone of another declarant country shall be bounded by the parallel of latitude drawn from the point of which the land frontier between the two countries reaches the sea.

V) This declaration shall not be construed as disregarding the necessary restrictions on the exercise of sovereignty and jurisdiction imposed by international law to permit the innocent and inoffensive passage of vessels of all nations through the zone aforesaid.

VI) The Governments of Chile, Ecuador and Peru state that they intend to sign agreements or conventions to put into effect the principles set forth in this Declaration and to establish general regulations for the control and protection of hunting and fishing in their respective maritime zones and the control and coordination of the use and working of all other natural products or resources of common interest present in the said waters.

Santiago, 18th August, 1952.

JULIO RUIZ BOURGEOIS
Chilean Delegate

JORGE FERNANDEZ SALAZAR
Ecuadorean Delegate

ALBERTO ULLOA
Peruvian Delegate

CHILE / ECUADOR / PERU

(B) AGREEMENT RELATING TO A SPECIAL MARITIME FRONTIER ZONE.

Lima, 4.12.1954.

Source: LIS, Nos. 86 and 88.

The Governments of the Republics of Chile, Ecuador and Peru, in accordance with the agreement known as Resolution No. X, signed in Santiago, Chile, on 8th October 1954 by the Permanent Commission of the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific,

After seeing the proposals and recommendations approved in October of the present year by the said Permanent Commission,

Have designated the following plenipotentiaries:

His Excellency the President of the Republic of Chile has nominated H.E. Sr. Alfonso Bulnes Calvo, Ambassador Extraordinary and Chilean Plenipotentiary in Peru;

His Excellency the President of the Republic of Ecuador has nominated H.E. Sr. Jorge Salvador Lara, Charge d'Affaires of Ecuador in Peru; and

His Excellency the President of the Republic of Peru has nominated H.E. Sr. David Aguilar Cornejo, Minister of Foreign Affairs of Peru,

Who;

And whereas:

Experience has shown that innocent and inadvertent violations of the maritime frontier between adjacent States occur frequently because small vessels manned by crews with insufficient knowledge of navigation or not equipped with the necessary instruments have difficulty in determining accurately their position on the high seas;

The application of penalties in such cases always produces ill-feeling in the fishermen and friction between the countries concerned, which may affect adversely the spirit of co-operation and unity which should at all times prevail among the countries signatories to the instruments signed at Santiago; and

It is desirable to avoid the occurrence of such unintentioned infringements, the consequences of which affect principally the fishermen:

Agree:

First: A special zone is hereby established, at a distance of 12 miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries.

Second: The accidental presence in the said zone of a vessel of either of the adjacent countries, which is a vessel of the nature described in the paragraph beginning with the words « Experience has shown » in the preamble hereto, shall not be considered to be a violation of the waters of the maritime zone, though this provision shall not be construed as recognizing any right to engage, with deliberate intent, in hunting or fishing in the said special zone.

Third: Fishing or hunting within the zone of 12 nautical miles from the coast shall be reserved exclusively to the nationals of each country.

Fourth: All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference of the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

In testimony of which, the respective plenipotentiary representatives of the Governments of Chile, Ecuador and Peru sign three copies of this document in Lima on the fourth day of the month of December in the year one thousand nine hundred and fifty four.

For the Chilean Government
ALFONSO BULNES CALVO

For the Ecuadorean Government
JORGE SALVADOR LARA

For the Peruvian Government
DAVID AGUILAR CORNEJO

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R. Dupuy and D. Vignes (eds), *A Handbook on the New Law of the Sea, Vol. 1*, 1991

ACADÉMIE DE DROIT INTERNATIONAL DE LA HAYE
HAGUE ACADEMY OF INTERNATIONAL LAW

A Handbook on the New Law of the Sea

1

EDITED BY
RENÉ-JEAN DUPUY
DANIEL VIGNES

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legitimate activities of the immediately adjacent neighbouring States in certain areas lying within archipelagic waters. Such rights must not be transferred to third States. An archipelagic State must also respect existing submarine cables laid by other States in its waters without making a landfall: it must "permit the maintenance and replacement of such cables upon receiving due notice of their location".

SECTION 4 THE EXCLUSIVE ECONOMIC ZONE: THE TERRITORIAL INFLUENCE

The notion of an exclusive economic zone constitutes, together with that of the international sea-bed Area (see Chaps. 12 *et seq.*, *infra*), the major innovation of the new law of the sea. Its origin lies in the sacred figure of 200 miles. It appeared in 1947, when Chile and Ecuador claimed such an extent for the exercise of full sovereignty. Two years after the Truman Proclamation on the United States continental shelf, which was itself followed by the Mexican, Brazilian and Argentine declarations, the three countries of Latin America's Pacific coast decided to correct an inequity inflicted upon them by geography: the lack of a continental shelf. The major movement which has been pressing for equality for the past several centuries has today gone beyond the struggle against situations of inequality created by men and by the improper organization of society; it has now extended to the correcting of original inequalities resulting from nature[3].

This figure of 200 miles, advanced by the three Andean States, was based on a scientific fact: it would enable them to reach the Humboldt Current, which was particularly rich in living species[4]. It is quite remarkable that this figure of 200 miles, which in the circumstances was justified by the argument of access to a promising current, has become a potent idea, a political myth in the sense in which Georges Sorel understood that notion[5]. It played an attractive role of considerable importance in other countries which, even though they were not in the same geographical circumstances and had no similar current beyond their national waters, nevertheless insisted on this figure, which has since become sacrosanct.

The claim created the right, first because Latin American countries on

3. See footnote 1, *supra*.
4. During the past few years a warm current, known as El Nino, has come to oppose the beneficial effects of the Humboldt Current.
5. In the opinion of G. Sorel (*Réflexions sur la violence*, 1908), a myth is a collection of motivating images which have a mobilizing effect on the human consciousness, or even on human enthusiasms, thus arousing people's desire to carry out their political projects.

the Atlantic coast, such as Brazil and Uruguay, adopted the figure of 200 miles, and then because it came to be enshrined in regional documents, specifically the declarations adopted by the Organization of American States at Santiago in 1952, at Lima on 2 August 1970 and at Santo Domingo on 7 June 1972. All the countries in that region of the world, except Cuba and Haiti, now assert sovereign rights over areas of the same extent[6].

This movement has spread to the majority of coastal developing countries, as early as the work of the United Nations Sea-Bed Committee, which, beginning in 1968, made the preparations for the Third Conference on the Law of the Sea. Even if not all such countries claim 200 miles, in most cases because they do not have maritime zones that are defined clearly enough, they nevertheless exhibit a tendency to project their sovereignty out to sea, the same tendency which is realized by unilateral national decisions. Some States, such as Senegal, by virtue of the principle that "whoever can do the greater can do the lesser", began by arrogating to themselves a fisheries zone 110 miles in breadth. The movement became so widespread that it was later joined by those of the maritime great Powers which had ocean coastlines. France joined this movement between the fourth and the fifth sessions, in 1976. In this respect it followed the Soviet Union, although the latter was a major fishing Power and by reason of that fact had long been, like all major fishing nations, a partisan of freedom of the seas and inclined to accept only a narrow zone of national jurisdiction. China had already spoken out openly in favour of 200 miles, a fact which gave it a certain prestige among the coastal States of the third world.

For a clear understanding of what this irreversible movement included, one must realize that it ultimately resulted from two types of orientation which were both historical and logical in nature.

Historically, the concept of exclusive economic zone may be viewed as representing a precarious compromise notion between sovereignty and freedom, and a number of coastal States hope in fact to regain their sovereignty over a zone which originally was depicted as merely the location of certain specialized rights relating to resources. The internal logic of sovereignty, a naturally indivisible concept, makes it reconstitute itself after the attempts to dismember it in the name of the theory of the economic zone in order to render it more acceptable to the major maritime Powers and the land-locked countries.

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6. In fact the first State to conceive of the notion of a zone covered by certain economic rights of the coastal State was Honduras, which, by its decree No. 25 of 17 January 1951, created the *zona de control y protección de los recursos naturales* extending 200 miles beyond the Atlantic coast. As is known, Honduras has access to the Pacific through the Bay of Fonseca.

Division A A COMPROMISE FORMULA: TEMPERED TERRITORIALISM

The compromise appeared in the African and Latin American origins of the notion worked out in a form acceptable to those who upheld the freedom of the seas and who felt very uneasy about the territorialist positions of Chile, Peru and Ecuador, which claimed that their 200 miles covered an area of full sovereignty. As early as 1947, those three countries were laying claim to 200 miles on that basis and were assimilating that area to the territorial sea. As the Caracas session approached, it seemed impossible that the maritime great Powers would be able to accept such an extensive territorial sea, in the light of the economic and military interests involved. It is well known, in fact, that in the territorial sea foreign navigation must respect the strict rules of innocent passage.

It was in those circumstances that Kenya proposed in the Asian-African Legal Consultative Committee, meeting at Colombo in 1971, the concept of economic zone, in a spirit of compromise: this was not the territorial sea and therefore did not represent a claim of full sovereignty. Its object was simply to win recognition of economic rights held by coastal States over a maritime space of vast extent [7], while the freedoms of navigation, overflight, cable-laying and pipeline-laying would be retained.

In this first formulation, Kenya specified that coastal States would be authorized to issue fishing licences in exchange for technical assistance, but in 1972 the same Government submitted the autonomous notion of a zone of exclusive jurisdiction over living and mineral resources. Later the Declaration of the Organization of African Unity, adopted at Addis Ababa on 24 May 1973 and reaffirmed at Mogadiscio on 11 June 1974, extended the principle of the permanent sovereignty of peoples over their natural resources to the economic zone, "without prejudice to the other legitimate uses of the sea". Thus, in order to win acceptance of the 200-mile limit, the area it enclosed was "deterritorialized". Parallel with this, similar efforts had been made in Latin America.

A variant of the notion of economic zone had appeared in Latin America under the name of the "patrimonial sea", enunciated in the Declaration of Santo Domingo, adopted by the Conference of Caribbean Countries on 7 June 1972. On 2 August 1973, Colombia, Mexico and Venezuela submitted to the Sea-Bed Committee a draft whose Article 4 stated the following:

"The coastal State has sovereign rights over the renewable or non-

7. Asian-African Legal Committee, fourteenth session, *Brief of Documents on the Law of the Sea*, Vol. II, p. 161.

1. The development of the spatial domain of coastal States

This is enshrined in a number of notions. In addition to that of straits, which today are very often covered by territorial waters owing to the extension of the territorial sea to 12 miles, consideration must also be given to the notion of the *extended continental shelf* beyond the economic zone. The advent of the latter has not, in fact, put an end to the concept of the continental shelf. Quite the contrary, the continental shelf concept, an integral part of the new notion of continental margin, extends to the outer edge of that margin, that is to say, to the limit where the slope is replaced by the abyssal plain. There are more than 60 countries in this category, some of them exceeding the 200-mile limit only slightly, while others exceed it by considerable distances (see Chap. 6).

The Convention places archipelagic States in a category distinct from that of archipelagos that are dependencies of continental States, and it recognizes not only the extension of their sovereignty over the waters included in the interior of the perimeter formed by the archipelago but also a territorial sea and an economic zone beyond this polygon, with the result that the water area under the jurisdiction of such island States consisting of archipelagos is multiplied by an enormous factor. Thus, at present, one may say that almost the total area of the South Pacific is covered by exclusive economic zones, but unilateral practices go beyond the provisions of the texts.

2. National legislations

These are manifested at three levels. First of all without decreeing actual economic zones, a number of States have decreed fisheries zones. The International Court of Justice, in its 1974 judgment on competence in fisheries matters, recognized that this notion had acquired the value of customary law. Such zones, whose extent varies from 50 to 200 miles, have been decreed in Europe by Iceland, as early as 1975, and after 1977 by the United Kingdom, Norway, Sweden, the Soviet Union and the European Economic Community. In North America this has been done by Canada and the United States. The case is the same with the Bahamas, Guyana and Japan, and similar zones exist in Africa, such as those of Senegal and Morocco. (For fuller details, see pp. 312-313, *infra*, and Chap. 19, in Vol. 2.)

It is noteworthy that the fisheries zones that certain States have allocated to themselves in this way, covering areas less than 200 miles wide, are based on taking account of the extension of those countries' continental shelves. The close interdependence between the sea-bed and the superjacent column of water is evident in such cases. Thus, Senegal created a fisheries zone 110 miles beyond its territorial waters, which

themselves extend 12 miles[19]. The outer limit of the zone corresponds to the continental slope, that is to say, to the limit of the abyssal plain, at a depth of 3,000 metres.

It must not be forgotten that the regions most abundant in fish lie above the continental shelf, so that this correspondence between fisheries zones and the continental shelf is not accidental. This also explains the fact that some States which have a continental shelf extending beyond the economic zone of 200 miles have felt entitled to propose that they should be granted preferential fishing rights above this prolongation. Although this claim failed, it nevertheless expressed a method of reasoning founded on the symbiosis between the sea-bed and the superjacent waters, with the former affording a territorial basis of support for the latter.

Several States, going beyond the stage of an exclusive fisheries zone, have unilaterally created exclusive economic zones. In Europe such a zone has been claimed by France since 1976 with regard to its metropolitan territory, except for the Mediterranean coast and for the coasts of its overseas possessions. Spain, Portugal and Norway have also established such zones. Mexico in North America and Suriname in South America have done the same. In the Indian Ocean region Yemen, India, Bangladesh, Myanmar, Sri Lanka, the Seychelles and Mauritius have economic zones 200 miles wide. The same is true of the Comoros, New Zealand and Fiji. The legal régime governing these various economic zones may be a moderate one, as in the case of the French régime, it may be based on the provisions of the Convention, or it may follow a maximalist model, with a territorialistic tendency, which brings the régime of the economic zone very close to that of the territorial sea.

The situation is far from having reached a stage at which all coastal States regard 12 miles as the outer limit of the territorial sea. While some States, such as Belgium, the Netherlands, the United Kingdom, Poland, the German Democratic Republic and the United States, remained for a long time or still remain faithful to the 3-mile limit, El Salvador has a territorial sea of 200 miles, as have Argentina, Brazil, Peru and Uruguay. In Africa the Congo, Mauritania, Ghana and Nigeria have territorial seas 30 miles wide, Cameroon and Zambia have extended the limit to 50 miles, Cape Verde and Gabon to 100 miles, Guinea-Bissau and Senegal to 150 miles, and Benin, Liberia and Sierra Leone to 200 miles. Thus, while the extension of the economic zones measured from archipelagic States, or those with a continental margin going beyond the limit of the economic zone, often has the effect of taking a considerable bite out of the

19. Act of 19 April 1972, *Journal officiel de la République du Sénégal*, 13 May 1972, pp. 749-750.

international Area, the common heritage of mankind, we find that the territorial sea in turn tends to devour the economic zone itself (see the Annex to this Chapter, page 308).

At the same time, even when States remain within the framework of the exclusive economic zone concept elaborated in the Convention, they have available to them a large margin of discretionary power which is itself susceptible of extension.

Paragraph 2 **From Exclusive Competence to Discretionary Power**

Various provisions governing the exercise of the coastal State's rights in its economic zone attribute a discretionary power to that State. This is true *inter alia* of Article 253, paragraph 4, which gives coastal States the right to refuse or revoke their consent to the execution of a scientific research project (see Chap. 20, in Vol. 2); it is also the case of the freedom coastal States have under Articles 61 and 62 to determine the allowable catch of fish or their own harvesting capacity. Furthermore, even though it is provided that they must negotiate agreements with third States, they remain free to choose their own partners, and if they cannot reach an agreement, it is hard to see how that can be compelled to conclude one. Here we touch on the problem of the settlement of disputes arising from the exercise of the coastal State's rights and powers in its zone. They gave rise to difficult discussions at the Conference, especially at the fourth session (1976) and the seventh session (1978). From the very outset, it became clear that coastal developing States were hostile to the principle of the mandatory settlement of disputes especially in this domain. In fact, while they have accepted the principle for disputes relating to sea-bed sites in the common heritage of mankind, they have, on the other hand, opposed the suggestion that disputes relating to the territorial sea, to the exclusive zone and the continental shelf or to archipelagic waters could be settled by such a method. A proposal to reject this method was made by Peru in 1976, in the course of informal negotiations, while Iceland affirmed that it did not want to open a door by way of which the rights and jurisdictions attributed to coastal States could be included in the provisions relating to the settlement of disputes.

The maritime great Powers and the States of the Group of 53, on the other hand, favoured establishing as broad a category as possible for this type of dispute that was subject to mandatory settlement, especially with regard to the coastal State's exercise of its rights in the economic zone. However, the coastal States (apart from subsequent developments, discussed in Chapter 25, in Vol. 2) had succeeded in bringing about the adoption of a graduated régime. The Informal Composite Negotiating Text, in its Article 296, brought, if not an actual overturning of the principle, at least

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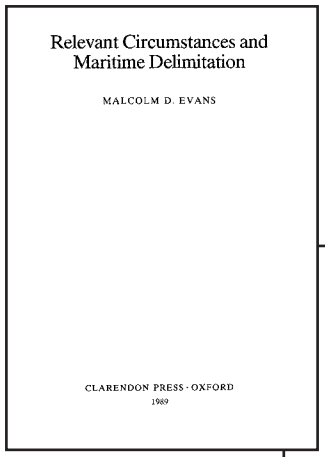
M. Evans, *Relevant Circumstances and Maritime Delimitation*, 1989



coastline. The result was dependent on the scale of the chart and the length of coastline used.'[67]

Perhaps the most accurate summary of the role of macrogeography is found in the Canadian pleadings, when they said 'The function of a survey of the macrogeographical situation is to place the area to be delimited in its proper context and *not* to indicate the facts relevant to the delimitation.'[68]

State practice furnishes other examples of regional geography influencing delimitation. For example, the 1952 'Declaration on the Maritime Zone' of Chile, Ecuador and Peru said 'The maritime zone of an island or group of islands . . . shall be bounded by the parallel of latitude drawn from the point at which the land frontier between the two countries reaches the sea.'[69] In effect, the maritime boundaries between these three countries were to be continuations of the land boundaries. This was adhered to in their resulting delimitations, with minor alterations.[70] What made this both possible and desirable was the geographical configuration of the region: of three adjacent states facing onto the Pacific Ocean in such a way and at such distances that lines of latitude produced an equitable result within the context of the region as a whole.

Thus the macrogeographical context can have an impact as a factor affecting the assessment of the general geographical relationship existing within the relevant area. It may do so in two ways. First, by reducing the relative importance of particular factors or features. Second, the geography of the wider framework might suggest a different means of achieving the delimitation than that indicated by the immediate area. This second aspect is in fact more closely akin to regional state practice and will be investigated further elsewhere.[71]

Ultimately, the problem is to distinguish between macrogeography and the general geographical framework. The Court in the *Malta–Libya* Case certainly employed a far more liberal construct than the Chamber in the *Gulf of Maine* Case. It is impossible to lay down precise criteria. One can only point out the differences at the extremes and hope that parties remind themselves that 'the distinction in question is the expression, not of any inherent property of the facts of nature, but of a human value judgment which will necessarily be subjective and which may vary on the basis of the same fact, depending on the perspectives and the ends in view'.[72]

[67] ILC Rep. 1956, A/3156, Commentary to Article 14, para. 6. This concerns territorial sea delimitation, but the Commentary to Article 72 extends the reasoning to the case of the continental shelf.

[68] Canadian Counter-Memorial, para. 77 (emphasis in original).

[69] See ST/LEG/SER. B/8 p. 41, 'Declaration on the Maritime Zone', Santiago, 18 Aug. 1952, para. iv.

[70] See Chile–Peru, 86 *Limits in the Seas*; Ecuador–Peru, 88 *Limits in the Seas*, Annex II.

[71] See Chap. 19, sect. 2 below.

[72] *Gulf of Maine* Case, para. 36.

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W. C. Extavour, *The Exclusive Economic Zone,* 1979

Winston Conrad EXTAVOUR

The Exclusive Economic Zone

A Study of the Evolution and Progressive Development of the International Law of the Sea

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1979

Section 3 The Progeny of the Truman Proclamations

The unilateral claims to extended jurisdiction over maritime areas embodied in the Truman Proclamations served as a catalyst to similar State action in many regions of the globe, so that over the following decade many States, often with direct reference to these proclamations, established claims to their continental shelves and to fisheries jurisdiction in the superjacent waters. [49] As regards claims in the Latin American region, especially, the particular trend which developed prompted one commentator to declare that

> "... the North American doctrine suffered so many transformations in the succeeding claims that in a very short time it has been reduced to no more than a historical antecedent in Latin American philosophy on matters of international maritime law". [50]

This Latin American "philosophy" which shall be the main subject of our discussion was the starting point of the development of the concept of the exclusive economic zone.

3.1. *Major claims prior to the United Nations Conferences on the Law of the Sea of 1958 and 1960*

The earliest of these claims already appeared to diverge significantly in scope from the Truman Proclamations. The Mexican Presidential Declaration with respect to Continental Shelf of 29th October, 1945, lays claim to

> "the whole of the continental platform or shelf [defined according to the 200-metre isobath criterion] adjoining its coastline, and to each and all of the natural resources existing there, whether known or unknown"

and asserted that the Mexican Government was "taking steps to supervise, utilise and control closed fishing zones necessary for the conservation of this source of well-being". [51] The main difference between this claim and

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[49] *Cf. Laws and Regulations on the Regime of the High Seas,* ST/LEG/SER.B/1 (1951), pp. 3 *et seq.*

[50] Alvarez, *op. cit.,* p. 46 (author's translation).

[51] *Laws and Regulations on the Regime of the High Seas,* ST/LEG/SER.B/1 (1951), p. 14.

continental sea" concept to that of the exclusive economic zone was the safeguard it contained for freedom of navigation, thus advancing the idea of a *sui generis* territorial sea..

Chile

By the Presidential Declaration Concerning the Continental Shelf of 23rd June, 1947 [57], Chile, relying on the precedent set in a previous declaration which had

> "categorically proclaimed the sovereignty of the respective States over the land surface or continental shelf adjacent to their coasts, and over the adjacent seas within the limits necessary to preserve . . . the natural riches belonging to them . . .",

confirmed and proclaimed :

> "(1) . . . its national sovereignty over all the continental shelf adjacent to the continental and island coasts of its national territory, whatever may be their depth below the sea, and claims by consequence all the natural riches which exist on the said shelf, both in and under it, known, or to be discovered ; and
>
> (2) . . . its national sovereignty over the seas adjacent to its coasts whatever may be their depths, and within those limits necessary in order to reserve, protect, preserve and exploit the natural resources of whatever nature found on, within and below the said seas, placing within the control of the government especially all fisheries and whaling activities . . .".

Within the "continental seas" a zone of 200 nautical miles was immediately made subject to such protection and control. It was also specifically provided that the declaration of sovereignty did not affect the rights of free navigation on the high seas.

Costa Rica

The legislation [58] enacted by Costa Rica followed the general pattern which now seemed to have been set. The continental shelf was made subject to the national sovereignty of that State "at whatever depth it is

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[57] *Laws and Regulations on the Regime of the High Seas,* ST/LEG/SER.B/1 (1951), pp. 6-7.

[58] *Ibid.,* p. 8 : Maritime Fishing and Hunting Act, enacted by Decree No. 190 of 28th September, 1949 ; Decree Law No. 803, concerning Continental and Insular Shelf, 2nd November, 1949 (which interpreted Decree Law No. 116 of 27th July, 1948, itself relating to jurisdiction over the shelf and overlying waters).

found". But as regards fisheries jurisdiction in the superjacent waters, only the inadequately defined "rights and interests of Costa Rica" were proclaimed thereover, according to which "maritime fishing and hunting carried on in said areas shall be under the surveillance of the Government of Costa Rica". [59] Consequently, that State extended its protection over a zone of 200 miles in which the rights of free navigation on the high sea were, however, to subsist.

Honduras

In the case of Honduras, Articles 4 and 153 of the Political Constitution were amended by Congressional Decree No. 102 of 7th March, 1950, to read as follows :

> "*Article 4* : . . . the submarine platform or continental and insular shelf, and the waters which cover it, in both the Atlantic and Pacific Oceans, at whatever depth it may be found and whatever its extent may be, forms a part of the national territory."
>
> "*Article 153* : The following belongs to the State : . . . the dominion, likewise full, inalienable, and imprescriptible, over all the resources which exist in its submarine platform or continental and insular shelf, in its lower strata, and in the area of the sea included within vertical plains constructed on its boundaries." [60]

Panama

Article 209 of the Panamanian Constitution of 1st March, 1946, lists the submarine continental shelf as belonging to the State. [61] In addition, Article 3 of Decree No. 449 for the Regulation of Shark Fishing by Foreign Vessels in the Waters under the Jurisdiction of the Republic, of 17th December, 1946, states that :

> "For the purposes of fisheries in general, national jurisdiction over the territorial waters of the Republic extends to all the space above the sea-bed of the submarine continental shelf. For this reason the product of any fishing within the limits indicated is considered a national product, and is therefore subject to the provisions of the present decree." [62]

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[59] *Ibid.*, p. 10.

[60] *Ibid.*, p. 11. *Cf.* also pp. 302-303 : Congressional Decree No. 25 (approving Presidential Decree No. 96 of January 1950) of 17th January, 1951. Article 1 of this Decree declares sovereignty over the afore-mentioned areas and lays down the 200-mile zone of fisheries protection stipulated in Article 3.

[61] *Ibid.*, p. 15.

[62] *Ibid.*, p. 16.

Peru

The Peruvian Presidential Decree No. 781 Concerning Submerged Continental or Insular Shelf, of 1st August, 1947, [63] was patterned closely after the Chilean Decree which had appeared only six weeks earlier. The Peruvian Decree states that "national sovereignty and jurisdiction" are proclaimed over the continental and insular shelves to whatever depth and extension these may be found, as well as over

> ". . . the sea adjoining the shores of national territory whatever its depth and in the extension necessary to reserve, protect, maintain and utilise natural resources and wealth of any kind which may be found in or below those waters."

Like the Chilean Decree, the present legislation also stated that the limits within which such jurisdiction was to be exercised were regarded as being flexible and subject to modification "in accordance with future changes which may originate as a result of further discoveries, studies and national interests which may arise in the future". [64] For the immediate future, however, the control and protection envisaged were declared to extend "over an area covered between the coast and an imaginary parallel line to it at a distance of 200 nautical miles measured following the line of the geographical parallels". Finally, it was provided that the declaration did not affect the right to free navigation by ships of all nations according to international law.

El Salvador

The Political Constitution of 17th September, 1950 stated in its Article 7 that :

> "The territory of the Republic within its present boundaries is irreductible. It includes the adjacent seas to a distance of 200 sea miles from low water line and the corresponding airspace, subsoil and continental shelf." [65]

The Declaration on the Maritime Zone

At the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific held at Santiago on 18th August, 1952, Chile, Ecuador and Peru—the so-called CEP States—signed four

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[63] *Ibid.*, pp. 16-17.

[64] *Ibid.*, p. 17.

[65] *Ibid.*, p. 300 (Annex to *Laws and Regulations on the Regime of the High Seas*, ST/LEG/SER.B/1, July 1952).

agreements, the most important being the Declaration on the Maritime Zone or "Santiago Declaration". In this instrument, the Governments of the three countries proclaimed that :

> "as a principle of their international maritime policy ... each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast".

The agreement also provided for "their sole jurisdiction and sovereignty over the sea-floor and subsoil thereof", and that the Declaration

> "shall not be construed as disregarding the necessary restrictions on the exercise of sovereignty and jurisdiction imposed by international law to permit the innocent and inoffensive passage of vessels of all nations through the zone aforesaid". [66]

The Santiago Declaration underscored the purely economic motivation of the policy which it proclaimed and thus was to become a direct antecedent of the concept of the exclusive economic zone. The Preamble to the Declaration enunciated the duty of governments "to ensure for their peoples access to necessary food supplies and to furnish them with the means of developing their economy" ; it also emphasised the need to "ensure the conservation and protection of its natural resources and to regulate the use thereof to the greatest possible advantage of its country". By its claim to "sole sovereignty and jurisdiction" over the sea-bed and subsoil and the waters of the 200-mile zone, the Declaration, however, appeared to point to a much broader jurisdiction than a claim to exclusive jurisdiction over the resources present in those areas. In short, the impression was being created that a *territorial sea* of 200 miles wide was being established for each of the signatory States. This conclusion is further supported by the reference in the text of the Declaration to the recognition of the right of "innocent and inoffensive passage" of foreign ships in the zone.

Certain writers have endorsed this opinion. Espiell, for instance, asserts that although the expression "territorial sea" is not found in the text, it is inferred that the nature of the maritime zone claimed is that of the territorial sea. [67] Alvarez shares this opinion, stating that even though

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[66] *Laws and Regulations on the Regime of the Territorial Sea,* ST/LEG/SER.B/6 (1956), pp. 723-4, at 723.

[67] Espiell, H. G., "La mer territoriale dans l'Atlantique sud-américain", 16 *AFDI* (1970), pp. 743-763, at 744, note 1. The explanation of the fine imposed on five vessels belonging to the Greek shipowner Onassis, captured in November 1954 for infringing the Peruvian fishing laws, was that the vessels had violated the "territorial sea" of Peru, *cf.* Alvarez, *op. cit.,* p. 56.

the Preamble to the Declaration advances conservation of resources as its objective, the claim relates in reality to an enlarged territorial sea ; [68] García Amador had early concurred in this view but revised it later on. [69]

The approach adopted in the Declaration of Santiago seemed to offer certain distinct advantages to its authors. On the one hand, as a territorial sea claim it permitted them to justify the exercise of exclusive jurisdiction over fisheries. [70] In this respect, it was clear that despite current developments, the prevailing law did not appear to permit such jurisdiction beyond the territorial sea of a coastal State. Action was accordingly taken by these Latin American States on the basis of the proposition that in the absence of a universally recognised rule defining the maximum permissible breadth of the territorial sea, each State was entitled to establish unilaterally the breadth of its territorial sea. [71] On the other hand, the absence of any reference to a "territorial sea" in the text gave these States a certain degree of flexibility in the enactment of supplemental legislation. In reality, each of these countries interpreted the Declaration in a different way ; so that although all three adhere to the Declaration, their national regimes, as shall be seen later, have differed. [72] This flexibility permitted the emphasis to be placed on the functional rather than the purely territorial approach to these claims and, later on, their use as precedents for the elaboration of the concept of the exclusive economic zone.

Outside the Latin American region, at least two instances of national claims demonstrating characteristics similar to those described above deserve mention, namely, those of Iceland and the Republic of Korea.

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[68] Alvarez, *op. cit.*, p. 53.

[69] Alvarez naturally disagrees with García Amador's later assessment of the legal status of the zone as a *sui generis* zone in the latter's *The Exploitation and Conservation of the Resources of the Sea,* 2nd and enlarged edition, Leyden, A. W. Sijthoff, pp. 78 *et seq.* He observes that García Amador had earlier expressed the view at the Third Meeting of the Inter-American Council of Jurists (Mexico City, 1956, *Actas y Documentos, op. cit.*, Vol. I, p. 75), that the 200-mile claim of the CEP States was a "territorial sea" claim. See Alvarez, *op. cit.*, p. 53.

[70] With respect to jurisdiction over the resources of the sea-bed and subsoil, the doctrine of the continental shelf was rapidly being transformed into a rule of customary international law, thus permitting States, independently of any proclamation, to exercise jurisdiction over these resources.

[71] Other States displayed this approach as well. For example, Norway in the *Anglo-Norwegian Fisheries* Case, 1951. See Counter Memorial of Norway, paragraph 242 ; in a diplomatic note of 31st August, 1950, replying to Danish and Swedish protests against the extension by the Soviet Union of its exclusive fishing limit to 12 miles in the Baltic, reproduced in Schapiro, L. B., "The Limits of Russian Waters in the Baltic", 27 *BYIL* (1950), pp. 439-448.

[72] For a relevant commentary on this practice, *cf.* Orrego Vicuña, Francisco (ed.), *Tendencias del Derecho del Mar Contemporáneo,* Buenos Aires, 1974, pp. 20-25.

Annex 261

E. Ferrero Costa, "Fundamento de la Soberanía Marítima del Perú Hasta las 200 Millas", in Pontificia Universidad Católica del Perú, *Derecho*, No. 32, 1974, p. 38

PONTIFICIA
UNIVERSIDAD CATOLICA
DEL PERU

DERECHO

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EDUARDO FERRERO COSTA

FUNDAMENTO DE LA SOBERANIA MARITIMA DEL PERU HASTA LAS 200 MILLAS

1. Fundamentos Geográficos y Biológicos. 1.1. Características geográficas y biológicas: un eco sistema. 1.2. El afloramiento y las 200 millas. 1.3. Los límites de acuerdo a las propias realidades. 2. Importancia Económica de las 200 millas. 2.1. La riqueza pesquera. 2.2. Importancia de la pesca en la economía nacional. 2.3. Los recursos petrolíferos. 2.4. Los recursos y las 200 millas. 3. El Derecho a la Subsistencia y el Derecho soberano a la libre disposición de los recursos naturales como principal fundamento. 3.1. El Derecho de Conservación: Subsistencia y desarrollo. 3.2. El Tercer Mundo y los recursos del mar y el Desarrollo. 3.3. Naciones Unidas y los Derechos al Desarrollo y a la libre disposición de los recursos naturales. 3.4. Los Derechos Humanos. 4. Otros Fundamentos Jurídicos de la Soberanía Marítima del Perú. 4.1. Derecho de vecindad o adyacencia. 4.2. Derecho de accesión. 4.3. Derecho de compensación. 4.4. Derecho de posesión. 4.5. El ejercicio efectivo de la Soberanía Marítima hasta las 200 millas. 5. Actuales tendencias en Caracas.

En un momento histórico como el actual —de grandes presiones y cambios en la Sociedad Internacional— no es suficiente afirmar la existencia de la soberanía marítima hasta las 200 millas. Sin desconocer la importancia de las realidades políticas, es necesario analizar rigurosamente el sustento científico-jurídico que consolida nuestro dominio marítimo, establecido a partir del Decreto Supremo de 1947.

La proclamación, defensa y ejercicio de la soberanía marítima hasta las 200 millas, significa para el Perú el inicio y desarrollo de una nueva visión internacional del Derecho del Mar. Esta reconoce la inseparable relación existente entre el territorio nacional y la zona del mar adyacente hasta las 200 millas, donde las singulares características geográficas, físicas y biológicas configuran un eco-sistema único e indivisible que encierra grandes riquezas naturales; así como las necesidades socio-económicas de los Estados, sus respectivos derechos a la subsistencia, desarrollo, y el derecho soberano a la libre disposición de los recursos naturales, reconocidos como Derechos Humanos Universales. El análisis de estos fundamentos, así como de otros que se mencionan en los párrafos siguientes, es el objetivo del presente trabajo.

1. Fundamentos Geográficos y Biológicos.

La primera realidad que fundamenta la soberanía marítima del Perú hasta las 200 millas, está constituida por las peculiaridades geográficas, físicas, biológicas y atmosféricas de la zona costera del Perú. Estas características, que son diferentes en los diversos océanos del mundo, junto con la distinta latitud y posición de los Estados en el planeta, hacen que se presenten sistemas ecológicos distintos; y, en algunos casos como el del Perú, sistemas ecológicos únicos e indivisibles.

1.1. Características geográficas y biológicas: un eco sistema.

La costa peruana, que por su ubicación geográfica debería ser cálida, lluviosa y de exuberante vegetación, es temperada, de casi nula precipitación pluvial y en su mayoría desértica. A lo largo de 2,815 kilómetros corre una costa desértica cuyo ancho tierra adentro varía llegando en muchas partes a más de 50 kilómetros, para luego encontrarse con la Cordillera de los Andes que, cerca a la Costa, cruza todo nuestro territorio. El desierto costero se encuentra cortado solamente por 57 ríos de caudal permanente o intermitente que nacen en la vertiente occidental de los Andes y desembocan en el mar. Esta situación pobre de la costa es originada en

la cojinoba, el atún, el barrilete, etc. En fin, existe una fuente inmensa de recursos pesqueros que representan una solución futura para el problema cada vez mayor de la alimentación, tanto a nivel nacional como internacional.

2.3. Los recursos petrolíferos.

Las riquezas de la zona de soberanía marítima hasta las 200 millas no se agotan con los recursos pesqueros. Sin abundar en mayores detalles en cuanto a recursos minerales (21) —a fin de no desviar la atención central del presente trabajo— veamos someramente lo que sucede en el aspecto petrolífero. En el cuadro No. 5 se presenta la producción de petróleo crudo nacional desde el año 1961 hasta el año 1974 inclusive. En el cuadro se ha desdoblado la producción de acuerdo a las zonas geográficas de explotación: la costa, la selva u oriente y el zócalo continental que está en la zona de soberanía marítima hasta las 200 millas.

Del cuadro No. 5 se desprende que en 1961 el 93.2 o/o del petróleo provino de la costa, el 5.1 o/o de la selva y solamente el 1.7 o/o del zócalo continental. Sin embargo, en 1966, el 7.8 o/o del petróleo nacional ya se extraía del zócalo. La declinación de la producción de la costa comenzó a producirse a partir de 1968, en que aquella llegó al 67.1 o/o, mientras que la del zócalo aumentó considerablemente representando ya el 28.7 o/o. En 1970, el 37.9 o/o del total del petróleo nacional se obtuvo del zócalo continental y durante el año 1973 ésta fue casi igual que la producción de la costa. Finalmente, en el primer semestre del año 1974 el 51.3 o/o del total del petróleo nacional fue extraído exclusivamente del zócalo continental, mientras que sólo el 46.5 o/o de la costa y el 3.7 del Oriente.

En consecuencia, actualmente, en que el país tiene déficit de petróleo e importa una parte para cubrir sus necesidades, y en momentos de grandes alzas del precio del mismo, el petróleo del zócalo continental representa el mayor soporte a la economía nacional en este aspecto. Su importancia decrecerá en el futuro, con el descubrimiento y explotación de ricos yacimientos petrolíferos de la Selva y la construcción del Oleoducto Nor Peruano. (22). Sin embargo, el hecho es que hoy en día el petróleo de la zona de soberanía marítima hasta las 200 millas contribuye fuertemente a la política petrolera nacional. Además, hay nuevas zonas del zócalo continental que están siendo exploradas a fin de aumentar la producción petrolera en esta zona (23).

Los datos presentados son suficientemente elocuentes para demostrar la importancia que tienen para la economía nacional los recursos vivos y no vivos de la zona de soberanía marítima hasta las 200 millas.

2.4. Los recursos y las 200 Millas.

Ahora bien, podría tratar de decirse que para la exploración y explotación de los recursos no es necesario establecer 200 millas, por cuanto aquellos se encuentran muy cerca al litoral. Sin embargo, tal afirmación sería inexacta. Para efectos de la explotación del petróleo cabe tener en cuenta que el zócalo continental en la costa norte del Perú supera las 12 millas, y más allá de este límite, también se está explorando para la futura explotación de petróleo.

En relación a los recursos vivos del mar, la realidad es que muchos de éstos son capturados más allá de las 12 millas. De un estudio realizado por el Ministerio de Pesquería (24), se aprecia que en la zona que va desde las 12 millas hasta las 200 millas, captura de las 27 especies pesqueras más importantes es de 1,109 millones de toneladas métricas, que representa el 10.6 o/o del total. De otro lado, en la zona que va desde las 12 millas hasta las 200 millas el volumen de captura es de 9,386 millones de toneladas métricas, que representa el 89.4 o/o del total. Respecto al valor de la captura, el valor de la

(21) Véase Teves Rivas, Néstor: "Interpretación, Valoración y Proyección de la Riqueza Minera y Petrolera de las 200 Millas del Mar Peruano", en Fundamentos de la Doctrina de las 200 Millas Peruanas, op. cit.

(22) Hasta el momento en la selva peruana existen reservas confirmadas de petróleo por 600 millones de barriles, verificadas por PETROPERU y la Occidental Petroleum, faltando todavía que se confirmen los resultados alcanzados por 18 empresas extranjeras bajo contrato en la selva. En relación al oleoducto Nor Peruano, éste podrá transportar a la costa inicialmente 200 mil barriles de petróleo crudo, a partir de julio de 1976. Declaración del General EP. Carlos Bobbio, Gerente General de PETROPERU, en los diarios El Peruano y La Prensa de 11 de octubre de 1974.

(23) En esta tarea se encuentran abocadas la Belco Petroleum Co. y la Tenneco Oil Co., Publicación en el Diario Oficial El Peruano del 4 de julio de 1974.

(24) Valdez Zamudio, Francisco, op. cit.

CUADRO No. 5

DESCRIPCION PORCENTUAL DE LA PRODUCCION DE PETROLEO CRUDO EN EL PAIS POR ZONAS GEOGRAFICAS Y SU RELACION A LA PRODUCCION TOTAL NACIONAL (1961 - 1974)

AÑOS	PRODUCCION TOTAL (Barriles)	COSTA o/o	ORIENTE o/o	ZOCALO CONTINENTAL o/o
1961	19'371,237	93.2	5.1	1.7
1962	21'132,306	91.4	6.2	2.4
1963	21'467,979	92.2	5.7	2.1
1964	23'118,929	92.6	5.2	2.2
1965	23'067,855	89.7	5.4	4.9
1966	23'207,025	87.1	5.1	7.8
1967	25'856,637	76.9	4.5	18.6
1968	27'056,127	67.1	4.2	28.7
1969	26'252,566	63.5	3.9	32.6
1970	26'269,312	58.7	3.4	37.9
1971	22'587,878	61.5	3.8	34.7
1972	23'644,429	53.6	3.3	43.1
1973	25'772,540	49.3	2.3	48.4
1974	14'205,768	46.5	3.7	51.3

Fuente: Dirección General de Hidrocarburos, Ministerio de Energía y Minas

Nota: Los datos del año 1974 se refieren al primer semestre.

captura efectuada en la zona que va desde la costa hasta las 12 millas es de S/. 945,863.6 miles de soles, que representa el 15.2 o/o del total. De otro lado, el valor de la captura efectuada en la zona que va desde las 12 hasta las 200 millas es de S/. 5'277,496.5 miles de soles, que representa el 84.8 o/o del valor total en las dos zonas.

Cabe destacar que la mayor captura en la zona que va desde las 12 millas hasta las 200 millas, no es sólo de anchoveta. En efecto, otras especies también son capturadas en una mayor cantidad más allá de las 12 millas, tal como es el caso del bonito, caballa, jurel, merluza, etc. Más aún, en lo que respecta al atún, éste sólo se captura más allá de las 12 millas. En consecuencia, la extensión de la soberanía marítima hasta las 200 millas es fundamental. Un límite más estrecho, como por ejemplo el de las 12 millas para la pesca planteado por Estados Unidos en la Conferencia de Ginebra de 1960, sería totalmente inconveniente para el país y, por tanto, inaceptable.

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[…]

TABLE No. 5

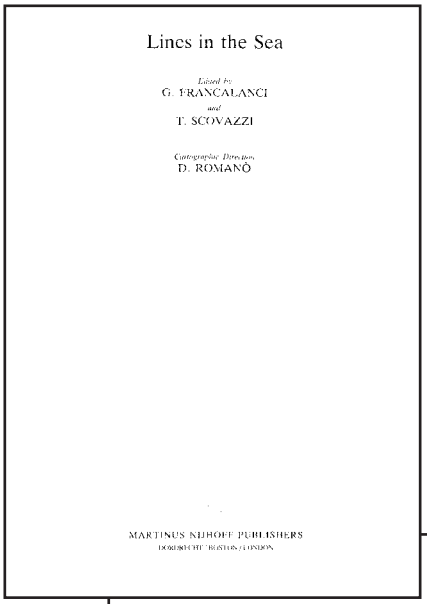
DESCRIPTION, IN PERCENTAGES, OF THE PRODUCTION OF CRUDE OIL IN THE COUNTRY, BY GEOGRAPHIC ZONES AND IN RELATION TO THE TOTAL NATIONAL PRODUCTION (1961 – 1974)

YEARS	TOTAL PRODUCTION (Barrels)	COAST %	EAST %	CONTINENTAL SHELF %

[…]

Annex 262

G. Francalanci and T. Scovazzi (eds), *Lines in the Sea*, 1994



98. CHILE–PERU

The already mentioned Declaration on the maritime zone, adopted in Santiago on 18 August 1952 by Chile, Ecuador and Peru,[4] contains a provision on the lateral delimitation of the zone which refers to the parallel of latitude drawn from the point at which the land frontier reaches the sea:

> Si una isla o grupo de islas pertenecientes a uno de los países declarantes estuviere a menos de 200 millas marinas de la zona marítima general que corresponde a otro de ellos, la zona marítima de esta isla o grupo de islas quedará limitada por el paralelo del punto en que llega al mar la frontera terrestre de los Estados respectivos (art. IV).

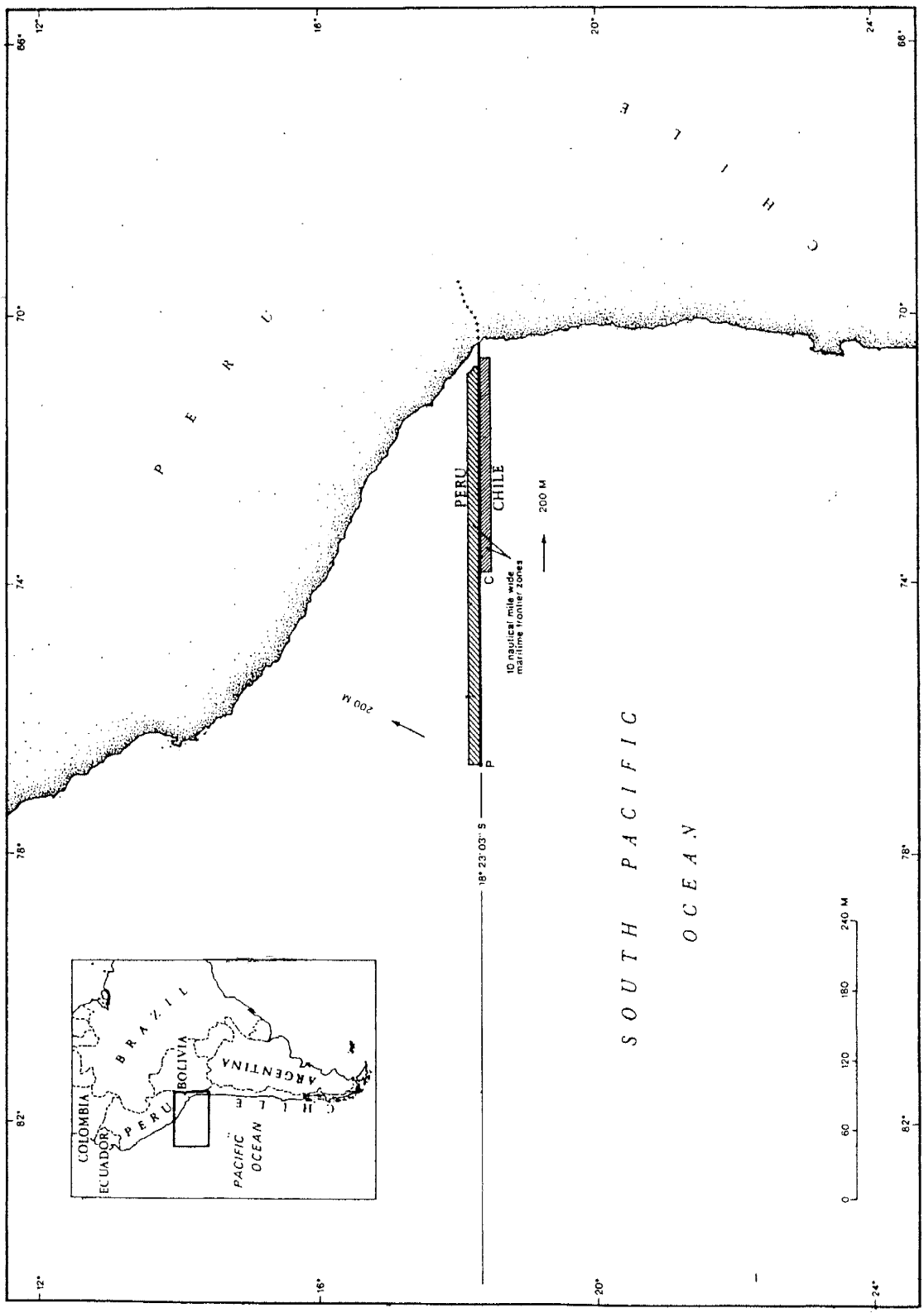
There is some ambiguity in the provision, which seems only to consider the case of islands.[5] However a subsequent convention signed by Chile and Peru in Lima on 4 December 1954[6] establishes a 10–mile buffer zone at each side from the parallel which constitutes the maritime limit between the two countries:

> Establécese una zona especial, a partir de las 12 millas marinas de la costa, de 10 millas marinas de ancho a cada lado del paralelo que constituye el límite marítimo entre los dos países (Art. I).

The involuntary presence of fishing vessels of one party within the buffer zone of the other is not considered as a violation of the provisions on the maritime zone. The reasons are the following:

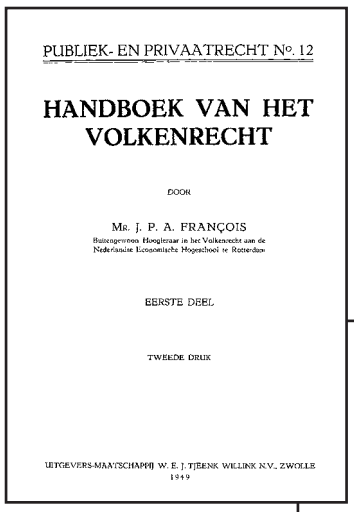
> Considerando que la experiencia ha demonstrado que debido a las dificultades que encuentran las embarcaciones de poco porte, tripuladas por gente de mar con escasos conocimientos de náutica o que carecen de los instrumentos necesarios para determinar con exactitud su posición en alta mar, se producen con frecuencia de modo inocente y accidental violaciones de la frontera marítima entre los Estados vecinos.

The map shows the maritime frontier between Chile and Peru. The boundary line considerably departs from equidistance. This explains why two final points of the line can be envisaged, one (point P) located at 200 n.m. from the nearest point in Peru and the other (point C) located at 200 n.m. from the nearest point in Chile.


PERU
CHILE
200 M
10 nautical mile wide maritime frontier zones
200 M
18° 23' 03" S
SOUTH PACIFIC OCEAN
0 60 120 180 240 M
BRAZIL
BOLIVIA
ARGENTINA
COLOMBIA
ECUADOR
PERU
CHILE
PACIFIC OCEAN

Annex 263

J. P. A. François, *Handboek van het Volkenrecht*, 1949



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Buitengewoon Hoogleraar in het Volkenrecht aan de Nederlandsche Economische Hogeschool te Rotterdam

EERSTE DEEL

TWEEDE DRUK

UITGEVERS-MAATSCHAPPIJ W. E. J. TJEENK WILLINK N.V., ZWOLLE
1949

en een nader vast te stellen graad (voorgesteld is 32°) O.L.; het geeft voorschriften omtrent wijze van uitoefening der visserij, grootte der mazen van de netten, minimummaat voor de vis, het afdwingen van de naleving der bepalingen (instelling van visserijkruisers), nationaliteit, registratie en identificatie der vissersschepen en bestraffing van overtredingen. De Conferentie stelde zich op het standpunt, — neergelegd in een Ontwerp-Protocol — dat een Staat uitsluitende jurisdictie over de visserij alleen kan uitoefenen in de 3-mijlenzone; bilaterale overeenkomsten zouden echter, ten aanzien van de vaartuigen der wederpartij, het recht kunnen vestigen tot maatregelen ook *buiten de territoriale zee*.

Veel verder gaat in dit opzicht de Proclamatie, met Executive Order, uitgevaardigd op 28 Sept. 1945 door de President der Verenigde Staten. Daarbij wordt aangekondigd de instelling, bij nadere Executive Orders, van „fishery conservation zones in areas of the high seas contiguous to the coasts of the United States". Voor deze zones zullen voorschriften worden gegeven, betreffende „administration, regulation and control of the fishery resources and of fishing activities". Geldt het gebieden, waar tot dusver de visserij uitsluitend door Amerikaanse schepen wordt uitgeoefend, dan zullen deze regels eenzijdig door de Verenigde Staten worden vastgesteld; betreft het daarentegen gebieden, waar de visserij ook door onderdanen van andere Staten rechtmatig wordt uitgeoefend, dan zal de instelling van deze *beschermingszones* onderwerp zijn van een voorafgaande overeenkomst met de betrokken Staat of Staten. Een maximum grens, tot waar deze zones zich kunnen uitstrekken, wordt niet vastgesteld. Chili, dat in een Regeringsverklaring van 23 Juni 1947, het Amerikaanse voorbeeld volgde, gaf daarbij te kennen dat de grens van de zone ter bescherming der visserij al naar de behoefte zou worden bepaald, doch in ieder geval een gebied van 200 zeemijlen van de Chileense kust af zou omvatten.

Zodanige voorschriften, die in verband staan met het opeisen van rechten over het „continentale plateau" (continental shelf, zie blz. 122), laten van het beginsel van de vrijheid der zee, voor zover het de visserij betreft, practisch uitermate weinig over en kunnen dan ook niet in overeenstemming met het Volkenrecht worden beschouwd.

[…]

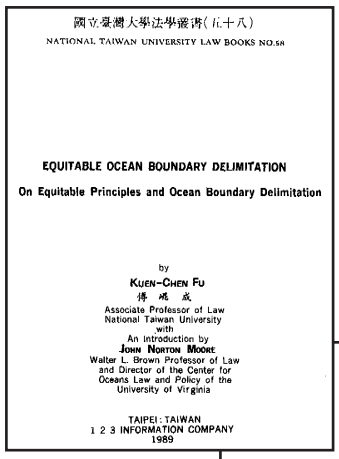
… Chile followed the American example in its governmental proclamation dated 23 June 1947. By this proclamation, it declared that the border of the zone of protected fisheries would be determined according to its needs but would, in any event, include an area of 200 nautical miles off the Chilean coast.

These regulations, which relate to the assertion of rights over the "continental shelf" (continental shelf, see page 122), severely undermine the principle of the freedom of the seas insofar as fisheries are concerned, and cannot therefore be considered to comply with international law.

[…]

Annex 264

Kuen-Chen Fu, *Equitable Ocean Boundary Delimitation – On Equitable Principles and Ocean Boundary Delimitation*, 1989


國立臺灣大學法學叢書(五十八)
NATIONAL TAIWAN UNIVERSITY LAW BOOKS NO.58

EQUITABLE OCEAN BOUNDARY DELIMITATION

On Equitable Principles and Ocean Boundary Delimitation

by
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with
An Introduction by
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University of Virginia

TAIPEI: TAIWAN
1 2 3 INFORMATION COMPANY
1989

(40) Indonesia -- Thailand (Andaman sea ext.) (December 11, 1975)*

(41) Portugal -- Spain (February 12, 1976)*

(42) Mauritania -- Morocco (April 14, 1976)*

(43) India -- Indonesia (January 14, 1977)

(44) Italy -- Greece (May 24, 1977)

(45) India -- Thailand (June 22, 1978)

(46) Turkey -- USSR (June 23, 1978)

(47) Norway -- UK (December 22, 1978)

(48) Malaysia -- Thailand (Gulf of Thailand) (October 24, 1979)

(49) Indonesia -- Papua New Guinea (December 13, 1980)

(50) Norway -- Iceland (October 22, 1981)

(51) France -- UK (June 24, 1982)

(*Not yet in force)

The MZB Agreements reviewed in this section are:

(1) Chile -- Peru (August 18, 1952)

(2) Peru -- Ecuador (August 18, 1952)

(3) Senegal -- Guinea Bissau (April 26, 1960)

(4) Uruguay -- Brazil (July 21, 1972)

(5) Australia -- Indonesia (January 26, 1973)

(6) Argentina -- Uruguay (November 19, 1973)

(7) Senegal -- Gambia (June 24, 1975)

(8) Columbia -- Ecuador (August 23, 1975)

zone specifically established in the border area;

(c) Future modification of the CSB line based on new information or new international law; and

(d) Pre-agreement on dispute settlement.

Details of these special arrangements are to be found in Chapter Five of this study.

B The MZB Agreements

Among the eight earliest MZB agreements all reached before 1976), five are between Latin American States. The chaotic situation of ocean claims initiated by the Santiago Declaration on the Maritime Zone, which was signed by Chile, Ecudaor and Peru on August 18, 1952,[67] has led to the eventual codification of a 200-nautical-mile Exclusive Economic Zone (EEZ) and the allowance of "at least" 200 nautical miles of Continental Shelf in the Provisions of the 1982 UN Convention on the Law of the Sea. This world-wide flux can be best illustrated by the various titles used by different states who have negotiated the thirty-seven MZB agreements reviewed here.

The Chile -- Peru MZB Agreement (August 18, 1952) and the Peru -- Ecuador MZB Agreement (August 18, 1952) delimit maritime boundaries.[68] The Senegal -- Guinea Bissau MZB Agreement (April 26, 1960) delimits the boundary of the Territorial Sea of the Guinea Bissau which extends 150 nautical miles from its shore, and the 12-nautical-mile territorial

Notes

Chapter Three

1. McDougal & Reisman, The Prescribing Function in The World Constitutive Process: How International Law is made, 6 Yale Studies in World Public Order 250 (1980).
2. Office of the Geographer, U.S. Dept. of State, Limits in the Sea, No. 26 (July 16, 1970). The Declaration came into force on the date of signing.
3. Id. No. 55 (October 19, 1973).
4. Id. No. 50 (January 10, 1973).
5. Id. No. 45 (August 11, 1972).
6. Id. No. 57 (September 12, 1974).
7. Id. No. 59 (October 9, 1974).
8. Id. No. 60 (November 11, 1974).
9. Id. No. 83 (February 12, 1979).
10. The legal status of Palk Bay was "decided" in the Annakumaru Pillai v. Muthupayal case, heard in the Appellate Criminal Division of the Indian High Court in Madras in 1903-04. At that time, both India and Sri Lanka (Ceylon) were under various forms of U.K. administration. According to the decision, Palk Bay was "landlocked by His Majesty's dominion for eight-ninths of its circumference...," and "[w]e do not

at 2.

64. A. El-Hakin, supra note 60, at 98.

65. Office of Geographer, supra note 2, No. 10 Revised (June 14, 1974).

66. Id. No. 87 (August 20, 1979), at 9.

67. Chile, Ecuador and Peru proclaimed the Declaration at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific on August 18, 1952. It was declared that as a "principle of their international maritime policy" each State possesses sovereignty and jurisdiction over the area of sea adjacent to its own territory extending "not less than 200 nautical miles" from the coast (Article II). However, later only Chile and Peru ratified the Declaration. See Office of Geographer, supra note 2, No. 86 (July 2, 1979), at 1, 4-5.

68. Id. See also id. No. 88 (October 2, 1979).

69. Id. No. 68 (March 15, 1976).

70. Id. No. 69 (April 1, 1976).

71. Id. No. 104 (September 10, 1985).

72. Gulf of Maine Case, Annex vol. 1 to the Canadian Reply, supra note 17, at 517-522.

73. Id. at 625-630.

74. Id. at 529.

75. Id. at 631

to the dispositions of the country owning the area where such a task is performed;

b) to provide the other party with results of the research activities which are to be carried out in such an area relating to the living resources specifically tuna and other migratory species;

c) to coordinate and carry out with the other party the activities of scientific research that are commonly agreed upon;

d) to periodically provide the other party with information on the type and quantity of fish obtained in the area; and

e) to establish a close cooperation for the purpose of vigilance in the zone so as to prevent nationals of third countries from carrying out non-authorized fishing activities.[24]

In the previously mentioned Australia -- Papua New Guinea MZB Agreement (December 18, 1978), a unique "Protected Zone" was established along the border line. The principal purposes of this special zone are "to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants" (Article 10.3). The further purpose is "to protect and preserve the marine environment and indigenous fauna and flora in the vicinity of the Protected Zone."[25]

In three early MZB agreements reached among four South American states, a special kind of buffer zone was established. In the Chile -- Peru MZB Agreement and the Peru -- Ecuador

MZB Agreement (both signed on August 18, 1952), boundary lines were extremely simplified. The Chile -- Peru boundary followed the parallel of 18°23'03" south latitude. The Peru -- Ecuador boundary followed the parallel of 03°23'33.96" south latitude. Nevertheless, the contracting states still worry about "accidental" intrusions of foreign fishing vessels. Therefore, the two MZB Agreements established a special frontier zone, "at a distance of twelve nautical miles from the coast, extending to a breadth of ten nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries."[26] A similar frontier zone was also established in the Ecuador -- Columbia MZB Agreement (August 23, 1975).[27]

In each of these three frontier zones, accidental presence of a vessel of either of the two adjacent states shall not be considered to be a "violation of the waters of the maritime zone." Yet, this provision "shall not be construed as recognizing any right to engage, with deliberate intent, in hunting or fishing in the said special zone."[28] In other words, the special frontier zones are regarded as <u>buffer zones</u> only.

(c) <u>Future modification of the MZB line</u>: Presumably, since most of the MZB agreements were made after 1976, when countries were more experienced in ocean boundary delimitation, and UNCLOS III had already reached some consensus on the

(1985); Robinson, Colson & Rashkow, Some Perspective on Adjudicating Before The World Court: The Gulf of Maine Case, 79 Am.J.Int'l.L. 578-97 (1985).

9. Von Glahn, Law Among Nations 465-66 (1976). See also J. Gamble, Jr. & D. Fischer, supra note 7, at 3; Fox Arbitration. Reprinted in The International Regulation of Frontier Disputes 168 (E. Luard ed., 1970). Office of Geographer, U.S. Dept. of State, Limits in the Sea, No. 72 (August 4, 1976).

10. Office of the Geographer, U.S. Dept. of State, Limits in the Sea, No. 72 (August 4, 1976).

11. Id.

12. Id. No. 87 (August 20, 1979).

13. Id. No. 75 (September 2, 1977).

14. K. Fu, Chung-kuo te hai-yang yu tsu-yuan. Reprinted in Fa-lyu yu ku-shi (Law and National Affairs) 281 (1982).

15. Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Annex Vol. 1 to the Canadian Reply (December 12, 1983), at 681-87.

16. Office of the Geographer, supra note 10, No. 12 (Mar. 10, 1970).

17. Id. No. 72 (August 4, 1976).

18. Id. No. 83 (February 12, 1979).

19. Gulf of Maine Case, Annex vol. 1 to the Canadian Reply, supra note 15, at 198,204.

20. The Protocal annexed to the 1978 CSB Agreement turned it into a MZB Agreement. See id. at 517-22.

21. Id. at 520-21.

22. Id. at 522.

23. Id. at 541-42. Paragraph 4 of the same Article explains that "residual jurisdiction" means:

> (a) jurisdiction over the area other than seabed jurisdiction or fisheries jurisdiction, including jurisdiction other than seabed jurisdiction or fisheries jurisdiction insofar as it relates to inter alia: (i) the preservation of the marine environment; (ii) marine scientific research; and (iii) the production of energy from the water, currents and winds; and
>
> (b) seabed and fisheries jurisdiction to the extent that the exercise of such jurisdiction is not directly related to the exploratain or exploitation of resources or authorise, activities subject to that jurisdiction.

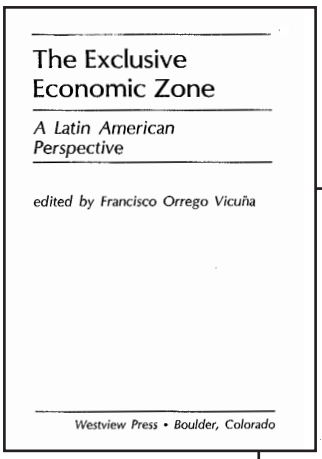
24. Id. at 473-80.

25. Id. at 529-602.

26. Office of the Geographer, supra note 10, No.86 (July 2, 1979), and No. 88 (Oct. 2, 1979).

Annex 265

R. Galindo Pohl, "The Exclusive Economic Zone in the Light of Negotiations of the Third United Nations Conference on the Law of the Sea", in F. Orrego Vicuña (ed.), *The Exclusive Economic Zone – A Latin American Perspective*, 1984, p. 31



Reynaldo Galindo Pohl

4. The Exclusive Economic Zone in the Light of Negotiations of the Third United Nations Conference on the Law of the Sea

THE HISTORICAL APPROACH

Various means may be employed to analyze a juridicopolitical entity. The choice of any one method does not imply that the others are to be condemned. Each method has its place, depending on the nature of the entity and the aims of the investigation. For any given situation, one method may be more appropriate, in the sense that it is more productive, and other methods may be rejected as unsatisfactory or inadequate.

When one endeavors to grasp the significance of a juridicopolitical entity--which means penetrating its nature and anticipating how it will develop in time and space, in other words, its historical unfolding--the historical approach seems most apt. This is especially applicable to entities that are still evolving or that retain the fire of the political forces that gave them birth and have fueled their development and that are still far from reaching the phenomenon of sedimentation that reduces living processes to cold, tidy, lifeless rules that to some extent exist outside of time.

When the evolutionary process of a juridicopolitical entity has come to an end, or when it has become sedimented in habits and customs, formalism may be useful and even necessary at times. But dry and rigid formulas, understood as the symbolic language of the connections of logic, seem to lose their humanity alongside the living process to which they are applied. To treat them as incorporeal and intemporal species at a very high level of abstraction and generalization is to fall into the abyss of logics that provoked Ihering's reaction. Since one is not endeavoring simply to satisfy the interests of reason or discursive preciosities but rather to reconcile interests and aims within a framework of cooperation, peace, and security (all the while striving for fairness), continuing contact with the surrounding circumstances places common sense, which is historical, concrete, and rooted

in fact, on the side of the harmonious progress of international relations and the enrichment of the international community.

Formalism, with its diligent examination of words, its comparison of texts, and its intemporal exegesis, is ill suited to determining the significance and consequences of juridicopolitical entities whose development is still continuing. The historical approach is better suited to this, for by examining the relevant factors, particularly political ones, it can tie events together as the elements of an evolutionary process and, without being wholly dominated by them, can make use of certain formalistic approaches and conclusions.

Stressing differences, considering intentions and agreements outside the immediate context of circumstances, meticulously searching for words, particularly new ones, and making the subtle distinctions between various hues all fit in with distinguishing among claims of parentage and originality. There is in this process a certain throwback to myth and legend, a certain pleasure in spontaneous generation, which seems to satisfy some of the deep anxieties expressed in the birth of Aphrodite full-blown from the mere foam of the sea. The historical approach, on the other hand, focuses on similarities and sequences of events and is concerned more with the heart of the matter than with names, with intentions and context rather than with the text.

Another pitfall is to judge the events of the past according to criteria that are valid for the present. It is common to read--and understandably to be surprised at--papers judging unilateral claims of the 1940s and 1950s as though they were claims made today. Any number of qualifications and objections can be made to such judgments. The fact is that what is now known by the term "Exclusive Economic Zone" (EEZ) was some thirty years ago a creation whose survival was doubtful but whose parentage no one disputed. What is today a victory was then an adventure of consequences for which the minimum penalty was ridicule. Although defeat is an orphan, victory is claimed by many parents, so claims of parentage of the Exclusive Economic Zone abound. Failure, as usual, would have brought on charges of blame, accusations of miscalculation, and political evasions.

The plain fact is that, when seen in historical perspective, the EEZ had its origins in the South Pacific in 1947, finding support and acquiring economic emphasis in the Central Pacific from 1950 onwards. It did not spring forth like the legendary Aphrodite born fully formed, but evolved through a long and slow gestation period, surviving crises and setbacks that threatened to consign it to the dust of the archives.

The pioneering countries, to be sure, tied their own hands with laws and declarations, particularly because their unilateral acts aroused a watchful, and to a point militant, public opinion. These unilateral acts reduced the flexibility that is so necessary in international negotiations and thus restricted the maneuvering space available in the process of transforming unilateral claims into generally accepted rules. But these actions imposed a consistency of policy on successive governments and provided a shield against the pressures of the great powers, which at the time were still able to conduct themselves daringly while provoking little or no international reaction. Without that loss of flexibility, the little group of pioneers could well have disbanded in the 1950s and 1960s. One need only consider what happened to some claims at that time, piously forgotten in highly significant inaction. To gain a full picture of the process whereby the Exclusive Economic Zone was born and has developed, one must examine and evaluate instances both of support and of opposition and, even more, instances of temporary or persistent inaction.

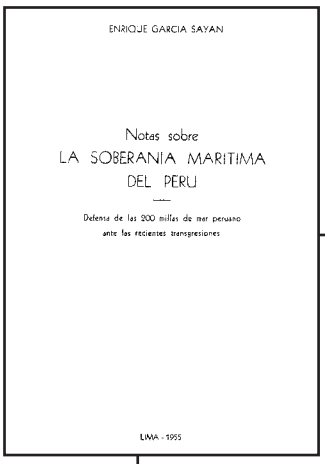
The pioneers formed the EEZ negotiating group in the ad hoc sea bed committee and its successor. But in the 1950s and 1960s, and particularly at the time of the First United Nations Conference on the Law of the Sea in 1958, they were the outcasts of international law. The first unilateral actions aroused irate protests from the naval powers, and some incidents, such as that of the Onassis whaling fleet, captured headlines throughout the world. It is worth recalling the atmosphere of persuasion and pressure within which the 1960 Conference on the Law of the Sea was carried on. To be sure, it was not the same to support the Exclusive Economic Zone at the Caracas session of the Third United Nations Conference on the Law of the Sea held in 1974.

THE PROCESS OF SHAPING THE EXCLUSIVE ECONOMIC ZONE

This process had its beginnings in the unilateral acts of certain Latin American countries bordering on the Pacific Ocean. Concern over conservation both of the marine environment and of living species played its part. But the main driving force was the desire to develop the resources of coastal waters, under a more or less imprecise notion of compensation vis-à-vis the then-recent claims to extensive continental shelves. From coastal headlands, fishing fleets could be seen coming and going at will thanks to the freedom of fishing, a freedom that meant the developed countries had access to fisheries in every ocean without exception. The earliest claims to waters and their

Annex 266

E. García Sayán, *Notas sobre la Soberanía Marítima del Perú – Defensa de las 200 millas de mar peruano ante las recientes transgresiones*, 1955


ENRIQUE GARCIA SAYAN

Notas sobre
LA SOBERANIA MARITIMA
DEL PERU

Defensa de las 200 millas de mar peruano
ante las recientes transgresiones

LIMA - 1955

La trascendencia para los intereses nacionales de la situación creada por las recientes transgresiones de nuestras aguas jurisdiccionales por naves pesqueras extranjeras (*affaire* Onassis, en noviembre-diciembre de 1954 y casos de los "tuna-clippers" norteamericanos en enero y febrero de 1955), me lleva a escribir estas notas en el deseo de cooperar con ellas a un mejor conocimiento de la génesis y justificación del acto gubernativo por el cual se extendió hasta 200 millas la soberanía marítima del Perú. Refiérome al Decreto Supremo del Presidente Bustamante de 1º de agosto de 1947, cuya responsabilidad me incumbe como Ministro de Relaciones Exteriores que lo refrendó.

ANTECEDENTES DEL DECRETO DE 1947

1. La posibilidad cierta de que expediciones pesqueras extranjeras vinieran a operar en gran escala frente a las costas del Perú fué la consideración inmediata que determinó al Gobierno de entonces a proclamar, mediante un acto declarativo y en ejercicio del derecho de conservación inherente a todo Estado, la soberanía nacional respecto de la plataforma continental submarina, así como respecto del mar contiguo a nuestro litoral hasta una distancia de 200 millas marinas.

2. A la sazón la proclamación del Presidente de los Estados Unidos de América del 28 de septiembre de 1945, a la que siguieron las de los Presidentes de México (29 octubre 1945), Argentina (11 ocbre 1946) y Chile (23 junio 1947), había incorporado a la terminología internacional y dado curso oficial a ciertos conceptos nuevos, como el de la plataforma submarina o zócalo continental y el de las zonas de jurisdicción o control para la conservación y utilización por el Estado ribereño de pesquerías y otros recursos marinos.

Diferían en su contenido y alcance estas proclamaciones antecedentes, pero obedecían todas más que a motivos políticos o a doctrinas preconcebidas —a las cuales, por lo demás, no eran ajenas— a consideraciones económicas de orden práctico. La noción del zócalo o plataforma continental referíase en ellas, sin necesidad de definirla, a la prolongación submarina del territorio del Estado ribereño hasta el punto en que se produce la ruptura o descenso hacia los abismos profundos del

mar. Aun cuando esta ruptura no se encuentra a la misma profundidad a lo largo de todos los continentes, estímase que la línea de demarcación más aproximada es la de la isobata de 100 brazas (o sea 182.90 metros). A ella alude un comunicado de prensa de la Casa Blanca emitido el mismo día de la proclamación norteamericana.

3. La proclamación del Presidente Truman, expresada en realidad en dos instrumentos distintos aunque complementarios, y de la que ha llegado a decirse, tal vez hiperbólicamente, que algún día será reconocida "como uno de los actos decisivos en la historia, comparable a los descubrimientos de Colón" (1), declaraba en el primer instrumento la pertenencia de los Estados Unidos y su "jurisdicción y control" respecto de la plataforma submarina, con expresa exclusión de los mares que la cubren y, en el segundo, el derecho de los Estados Unidos de establecer "zonas de conservación" para proteger los recursos pesqueros en áreas de alta mar contiguas a sus costas. Acentúase en el preámbulo del instrumento referente al zócalo continental la necesidad de nuevas fuentes de petróleo y de otros minerales, su existencia en el zócalo continental de los Estados Unidos y la practicabilidad de su utilización con el moderno progreso tecnológico. Como justificaciones de la proclamación referente a las pesquerías se dan la importancia de los productos pesqueros como fuente de sustento para las comunidades costeras así como para la nación en general como recurso alimenticio e industrial, y la necesidad de preservarlos de una explotación destructiva.

La declaración mexicana reinvindicaba la plataforma submarina con las riquezas que contiene y, además, el aprovechamiento y control de zonas de protección pesquera "independientemente de la distancia que las separa de la costa" y "de las que depende el bienestar nacional". El decreto argentino sin señalar un límite en millas, declaraba perteneciente a la soberanía de la nación el zócalo continental y el mar que lo cubre. Finalmente, la declaración del Presidente González Videla proclamaba la soberanía de Chile sobre el zócalo continental y sobre los mares adyacentes a sus costas hasta una distancia de 200 millas.

Quedó así sentado, de una parte, un derecho de dominio del Estado costero a la plataforma submarina o zócalo continental, sobre cuyas potencialidades en petróleo y otros minerales se hacen estimaciones fabulosas (2); y de otra, la existencia, con diversas denominaciones y atributos, de una competencia exclusiva o preeminente del Estado ribereño

(1).—Artículo del Prof. H. H. Clark y del Prof. G. T. Renner en la revista "Saturday Evening Post", 4 abril, 1946.

(2).—El geólogo norteamericano Wallace E. Pratt en un artículo publicado en abril de 1947 en el boletín de la "American Association of Petroleum Geologists", estima que la región del zócalo continental en toda la tierra, cuya extensión se calcula aproximadamente en 10 millones de millas cuadradas, contiene más de un millón de millones de barriles de petróleo, o sea más de 300 veces el consumo mundial anual en aquella época. Y no sólo petróleo sino otros minerales, tales como uranio, se espera encontrar o extraer del zócalo continental.

respecto de determinadas áreas de alta mar contiguas a sus costas y en la medida necesaria para asegurar la conservación y aprovechamiento, en beneficio de sus pobladores, de los recursos pelágicos o minerales que en dichas áreas se encuentren.

CONSIDERACIONES DETERMINANTES DE LA POSICION ADOPTADA

4. De los anteriores planteamientos el único cuyos términos y alcances se identificaban con los que el Perú necesitaba expresar, era el de Chile. Para el Perú, como para Chile, resultaba insuficiente el concepto de la plataforma submarina o zócalo continental, dado que éste es por lo general angosto a lo largo de nuestro litoral y hasta menor de 2 millas en algunos puntos, extendiéndose a lo sumo hasta las 60 u 80 millas en determinada sección (Huarmey-Pimentel). Así aparece de cartas batimétricas confeccionadas a base de sondajes verificados por la marina de guerra peruana o por expediciones de entidades científicas extranjeras. En cambio, Estados Unidos, México y Argentina tienen plataformas submarinas muy extendidas y que se prolongan, en algunos casos, más allá de las 200 millas (la de Estados Unidos fluctúa entre las 5 millas en las costas de Florida, las 130 millas frente a las costas de Luisiana, en la desembocadura del río Silene y las 250 millas en las costas de Nueva Inglaterra). La sola proclamación de nuestra soberanía sobre la plataforma submarina y los mares epicontinentales que la cubren habría dejado desemparada, por tanto, nuestra riqueza ictiológica, que era la que entonces estaba en juego. Tampoco habría quedado ésta lo suficientemente protegida con la mera enunciación de un derecho de establecer ulteriormente "zonas de conservación" en alta mar, a manera de la proclamación norteamericana. El Perú, con mayores razones si cabe que los países que lo antecedieron en su proclamación, necesitaba dar una solución pronta y definida a su problema sin esperar el lento cuando no inalcanzable consenso de la comunidad internacional, y mediante una fórmula que le permitiera oponerse, desde luego, a las intrusiones de expediciones pesqueras extranjeras que comprometieran los intereses económicos del país. Son de dos órdenes estas mayores razones que asisten al Perú y que hacen que para pocos países cobren mayor valor que para el nuestro los recursos del mar: atañen unas a las deficiencias alimenticias de que adolece su población, las que sin embargo pueden ser compensadas con aquellos recursos; y otras, a las especiales medidas de conservación que requiere la fauna marina que sirve de alimento a las aves guaneras. De allí que, en consideración a todo esto, se adoptara al cabo, para preservar tan vitales intereses nacionales, una posición coincidente con la de Chile —la cual resultaba así fortalecida— y que se le diera expresión en el Decreto Supremo del 1º de agosto de 1947 (3).

(3) —Véase texto del Decreto en Anexo I.

[…]

DETERMINANT CONSIDERATIONS CONCERNING THE ADOPTED POSITION

4. From the former declarations, the only one with terms and scope similar to those that Peru needed to express was the one of Chile. For Peru, as for Chile, the concept of the submarine platform or continental shelf was unsatisfactory due to the fact that [the continental shelf] is generally narrow along our coastline and even less than 2 miles at some points, extending at its maximum point to 60 or 80 miles in a specific location (Huarmey-Pimentel). This is shown on bathymetric charts compiled on the basis of [depth] soundings verified by the Peruvian Navy or by expeditions of foreign scientific entities. Conversely, the United States, Mexico and Argentina have very large submarine platforms extending, in some cases, further to the 200 miles (the one of the Unites States ranges from 5 miles on the coast of Florida, to 130 miles off the coast of Louisiana, at the mouth of the Silene River and to 250 miles off the coast of New England). The proclamation solely of our sovereignty over the submarine platform and the epicontinental seas covering it would have left unprotected our ichthyologic wealth, which was at that moment at stake. Nor would the latter have been sufficiently protected by the sole formulation of a right to establish "conservation zones" in the high seas in the future, like in the North American proclamation. Peru, more so than the countries that preceded it in its proclamation, needed to give a prompt and clear solution to its problem without waiting for the slow, if not unattainable, consensus of the international community and through the means of a method that would allow it to oppose, of course, the intrusions of foreign fishing expeditions that compromised the country's economic interests. These major reasons assisting Peru regarding the resources of the sea, which are of major importance only for a few other countries, are of two orders: some relate to the feeding deficiencies suffered by its population, which could yet be compensated for by those resources; some others [relate] to the special conservation measures required by the maritime fauna that serve as food to the guano birds. That is how, in consideration of all this, to preserve such vital national interest, a position was adopted coincident with that of Chile – which was thereby reinforced – and that was reduced to written form by the Supreme Decree of 1 August 1947 ([3]).

([3]) See text of the Decree in Annex 1

[…]

NATURALEZA Y ALCANCE DE LOS DERECHOS PROCLAMADOS

5. Proclámase en el Decreto de 1º de agosto de 1947 la soberanía y jurisdicción nacionales tanto respecto de la plataforma submarina (art. 1º) "cualesquiera que sean la profundidad y la extensión que abarque dicho zócalo", cuyas potencialidades en petróleo y minerales se tuvieron muy presentes, cuanto respecto del mar adyacente a las costas del territorio nacional (art. 2º) "cualesquiera que sea su profundidad y en la extensión necesaria para reservar, proteger, conservar y utilizar los recursos y riquezas naturales de toda clase que en o bajo dicho mar se encuentren". Señálase por lo pronto (art. 3º) como zona de control y protección para el ejercicio de la soberanía y jurisdicción nacionales en el mar adyacente a las costas del territorio peruano, la comprendida entre esas costas "y una línea imaginaria paralela a ellas y trazada sobre el mar a una distancia de 200 millas marinas, siguiendo la línea de los paralelos geográficos". A tenor del mismo Decreto (art. 3º) este límite de la zona de control y protección no es intangible sino susceptible de modificarse "de acuerdo con las circunstancias sobrevinientes por razón de los nuevos descubrimientos, estudios o intereses nacionales que fueren advertidos en el futuro". Quedó subentendido que la exclusividad de la jurisdicción así declarada, con expreso reconocimiento del derecho de libre navegación (art. 4º), no privaba al Gobierno peruano de la facultad de autorizar a otro Estado o a sus nacionales para que, con sujeción a condiciones que se señalara, ejercitaran actividades pesqueras dentro de la zona sometida al control del Perú.

Tales fueron los derechos declarados en el Decreto del 1º de agosto de 1947. Cítase en su preámbulo a las proclamaciones antecedentes de otros Estados y exprésase que la enunciación de tales derechos ha sido "admitida prácticamente en el orden internacional".

Justifícase en los considerandos la reivindicación del zócalo submarino en una realidad geomorfológica. La de las pesquerías, en factores económicos que hallan su expresión en el derecho de conservación inherente a todo Estado. Además de estas razones para proteger las pesquería, esgrímese en el preámbulo del Decreto el poderoso argumento ya apuntado y que le es propio al Perú: el de que los peces de nuestro litoral sirven de alimento a las aves productoras del guano, fuente éste de riqueza nacional (4).

(4).—La subsistencia de las aves guaneras impone adoptar medidas conservacionistas de la anchoveta, pez con el que se alimentan en más de un 95% el guanay y el piquero, dos de las principales especies productoras de guano. "Eslabón fundamental de toda la cadena alimenticia de la zona litoral peruana"; "piedra angular de las pesquerías peruanas"; "alimento de las gallinas que ponen huevos de oro", son algunas de las expresiones con que exalta la significación de la anchoveta el biólogo norteamericano Robert Cushman Murphy, del Museo de Historia Natural de Nueva York. Amenazada la anchoveta de extinción, a pesar de su abundancia, por la pesca masiva e indiscriminada que de ella se hace tanto por los "tuna-clippers" norteamericanos que la utilizan como carnada para atraer a los atunes y barriletes, cuanto por empresas peruanas que la extraen para convertirla en harina de pescado, la

Los derechos que en virtud de estas fundamentaciones se reclama tanto respecto del zócalo submarino cuanto de los recursos existentes en el mar, asumen así un carácter de preexistentes a su formal reivindicación ante la comunidad internacional.

LA FORMA DEL ACTO DECLARATIVO

6. Dióse expresión a esta declaración de derechos en un Decreto Supremo —el mismo que se adoptó, dada su importancia, con el voto consultivo del Consejo de Ministros— por conceptuarse que al Presidente de la República era a quien correspondía, como personero de la Nación y director de sus relaciones internacionales según la Constitución, proclamar, en las circunstancias, una aplicación e interpretación de tal naturaleza de nuestra soberanía territorial y marítima. En ejercicio de semejantes atribuciones habían procedido a expedir sus respectivas proclamaciones, los Presidentes de los Estados Unidos, México, Argentina y Chile. También por Decreto presidencial lo ha hecho después Brasil.

NOTIFICACION DIPLOMATICA DEL DECRETO Y RESERVAS FORMULADAS

7. Comunicada la declaración a las naciones con las que mantenemos relaciones diplomáticas, sólo fué objeto de observaciones y reservas —hasta donde llega mi conocimiento— de parte de Gran Bretaña y los Estados Unidos. Las de los Estados Unidos fueron también dirigidas, por sus respectivas proclamaciones, a la Argentina y a Chile, en idénticas y simultáneas notas del 2 de julio de 1948 en las que se expresa que los derechos declarados "excederían los límites generalmente aceptados para las aguas territoriales". Importa anotar, sin embargo,

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Compañía Administradora del Guano encomendó al citado biólogo el estudio del problema. Basado en sus propias observaciones y experiencias acumuladas desde el año 1919, el naturalista norteamericano concreta sus conclusiones en un Informe (25 de junio de 1954), con las siguientes frases de denuncia y admonición: "El porvenir de la producción del guano en el Perú y también el de la pesquería mayor para la alimentación humana, ya sea en forma de productos al natural o enlatados, depende del tino con que se maneje en la actualidad el porvenir de la anchoveta. Si ahora se dictan las medidas necesarias a la supervivencia de esta especie podrán los peruanos dar por seguro que sostendrán *ad perpetuum* sus riquezas ictiológicas fundamentales. En caso contrario, tendremos que lamentar que una nueva "Saturnalia" se cierna sobre un bioma de tanta importancia..." (El Guano y la Pesca de la Anchoveta, por Robert Cushman Murphy - Informe Oficial al Gobierno - Lima, julio 1954). Haciéndose eco de esta llamada de alarma, el Comité de Protección a la Naturaleza ha pedido que se declare a la anchoveta "reserva" nacional.

Para apreciar, por último, la importancia del guano como riqueza en la economía nacional, bastan los datos siguientes: la agricultura peruana satisface con el guano más de una mitad de sus necesidades de fertilizante; la extracción anual de más de 200 mil toneladas de guano, dá trabajo a más de 10 mil hombres y proporciona al Estado un ingreso de más de 60 millones de soles al año. El monto de esta cifra no da, sin embargo, un índice exacto del valor de la riqueza guanera, pues, según una política desde hace tiempo observada, el guano se vende a los agricultores a un precio menor que el que podría alcanzar en el mercado internacional, lo que importa el otorgamiento por el Estado de un subsidio a los agricultores.

vienen abriéndose paso y siendo objeto de consideración y debate en conferencias internacionales, tanto en el plano oficial como en el de las organizaciones privadas. Cuentan ya así con todo un cuerpo de doctrina que las sustenta. Al mismo tiempo, diversos actos posteriores de los propios Estados han desarrollado su alcance o les han aportado el valor de una refrendación.

ACTOS CONFIRMATORIOS DE LOS DERECHOS DECLARADOS EN 1947

35. En lo que respecta al Perú, el Decreto Supremo del 1º de agosto de 1947, punto de partida y base del nuevo régimen marítimo nacional y de la posición internacional que tenemos adoptada en la materia, ha sido confirmado por otros dos actos posteriores: la ley de petróleo y la Declaración sobre zona marítima suscrita en Santiago, el 18 de agosto de 1952, por delegados de Perú, Chile y Ecuador.

La ley Nº 11780, llamada "de petróleo", promulgada el 12 de marzo de 1952, aportó la primera confirmación al comprender al "zócalo continental" hasta una distancia de 200 millas, entre las "zonas" que pueden ser materia de concesiones (Art. 14) ([22]). Más que de la realidad geológica y morfológica del subsuelo marítimo frente a nuestras costas —el que no tiene, como se sabe, en tanto que "zócalo", una extensión semejante— la ley de petróleo debe haber tenido en cuenta la zona marítima de "control y protección" declarada en el Decreto de 1947.

La Declaración sobre zona marítima suscrita en Santiago el 18 de agosto de 1952 por los delegados de Chile, Ecuador y Perú a la "Primera Conferencia de Explotación y Conservación de las Riquezas Marítimas del Pacífico del Sur" ([23]), ha sido el desarrollo de mayor significación sobrevenido al régimen que Chile y Perú proclamaron por sendos Decretos desde el año 1947. Invocando un género de consideraciones económicas del mismo orden que las enunciadas en las declaraciones antecedentes de 1947, aunque sin aludir a ellas, los Gobiernos de Chile, Ecuador y Perú proclaman conjuntamente en la Declaración de Santiago, como norma de su política internacional marítima, "la soberanía y jurisdicción exclusivas que a cada uno de ellos corresponde sobre el mar que baña las costas de sus respectivos países, hasta una distancia mínima de 200 millas marinas desde las referidas costas" (Arts. II y III). La distancia de 200 millas que se señala es, pues, intangible, y ya no sujeta a modificaciones "por razón de nuevos descubrimientos, estudios o intereses nacionales que fueren advertidos en el futuro", como se dice en el Decreto peruano de 1947 y también, en términos análogos, en la declaración chilena del mismo año. Supone, pues, el señalamiento a firme de esa distancia, que es en definitiva la que necesitamos mantener para la adecua-

([22]).—Véase texto en Anexo II.
([23]).—Véase texto en Anexo III.

da protección de la unidad del complejo biológico existente en los mares de los tres países.

Procede mencionar, por último, dentro del género de actos confirmatorios de los derechos declarados en 1947, una reciente Resolución Suprema, expedida por el ramo de Relaciones Exteriores con fecha 12 de enero de 1955, en la que, para los efectos de determinar en los trabajos cartográficos y de geodesia la zona marítima de 200 millas a que se refieren el Decreto Supremo de 1947 y la Declaración de Santiago de 1952, se precisa que la indicada zona "está limitada en el mar por una línea paralela a la costa peruana y a una distancia constante de ésta, de 200 millas náuticas", la cual línea no sobrepasará la de los paralelos correspondientes "al punto en que llega al mar la frontera del Perú" (24).

36. Complementando la Declaración tripartita de Santiago, suscribiéronse en la misma fecha otros tres instrumentos destinados a realizar los fines señalados en la Declaración. Son ellos: el que organiza una Comisión permanente con representantes de los tres países; el que formula recomendaciones a los tres Gobiernos sobre utilización de los recursos pesqueros; y el que reglamenta la caza de la ballena en las aguas del Pacífico Sur.

37. Conscientes del peso y la confirmación que este conjunto de actos de derecho positivo aportan al régimen marítimo proclamado separadamente por Perú y Chile desde 1947, pues representan la asociación, para sostenerlo, de tres países que abarcan aproximadamente las 9/10 partes de la costa occidental de Sud América, nuevamente han formulado observaciones y reparos Gran Bretaña y Estados Unidos. También otros países que no observaron las declaraciones antecedentes de 1947 han hecho ahora sendas reservas a la Declaración tripartita de Santiago. Son ellos: Noruega, Dinamarca, Holanda, Suecia.

No parece, sin embargo, que las observaciones formuladas pudieran ser capaces de detener un proceso ineluctable del derecho internacional, como es el que tiende a dar fuerza de reglas consuetudinarias a los derechos proclamados por el Perú a partir de 1947.

LA COMISION DE DERECHO INTERNACIONAL DE LAS NACIONES UNIDAS Y LAS EXTENSIONES DE LA SOBERANIA MARITIMA

38. En el seno de los organismos internacionales oficiales ejerce todavía considerable influencia el criterio anglosajón aferrado a las normas tradicionales. Pero, con todo, cabe anotar algunos progresos logrados últimamente.

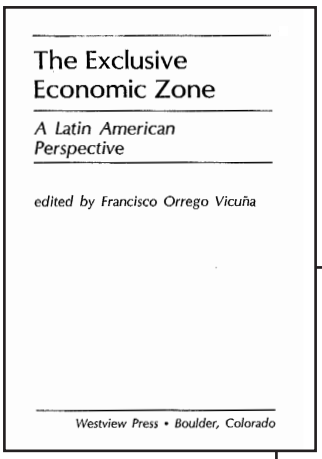
(24).—Véase texto en Anexo IV.

It is appropriate to mention, among the acts confirming the rights declared in 1947, a recent Supreme Resolution issued by the Ministry of Foreign Affairs on 12 January 1955, in which it is specified that, in order to depict the 200-mile maritime zone referred to in the 1947 Supreme Decree and the 1952 Santiago Declaration in cartographic and geodesic works, the indicated zone "is limited at sea by a line parallel to the Peruvian coast at a constant distance of 200 nautical miles from it", which will not go beyond the corresponding parallels "at the point where the frontier of Peru reaches the sea".

[…]

Annex 267

F. V. García-Amador, "The Origins of the Concept of an Exclusive Economic Zone: Latin American Practice and Legislation", in F. Orrego Vicuña (ed.), *The Exclusive Economic Zone – A Latin American Perspective*, 1984, p. 7



F. V. García-Amador

2. The Origins of the Concept of an Exclusive Economic Zone: Latin American Practice and Legislation

In examining the Exclusive Economic Zone (EEZ) as provided for in Part V of the 1982 Convention on the Law of the Sea, one must bear in mind three fundamental aspects of this maritime area: the resources that are the object of exploration, conservation, and exploitation or development; the legal nature of the extended competences that are the zone's fundamental characteristic; and the area to be included in such a zone. It is of great importance to distinguish among these aspects in order to determine how the EEZ has been taking shape. Indeed, in distinguishing among the three aspects mentioned, the historical roots and antecedents of the zone do not always coincide. As this chapter will show, until the essential constituents of the EEZ came together in a new maritime space--and this is what happened in the case of the 200-mile "maritime zone" claimed by the Latin American countries bordering on the South Pacific-- the relevant historical roots and antecedents lay scattered in various claims and proposals that differed as to the aims and objects, the legal nature, and the size envisaged for the zone.

EARLY CLAIMS TO LIVING RESOURCES

The EEZ's earliest antecedents with regard to living resources are the claim to the so-called sedentary fisheries; the claim to the right of "ownership and protection" over the seals and other resources of the Bering Sea; and the claim to a certain area in Moray Firth.

The Claim to the So-called Sedentary Fisheries

Centuries before the appearance of the doctrine of the continental shelf, the area where these fisheries are based, a consensus already existed favoring the

Nations Conference on the Law of the Sea, an extension of "special jurisdictions." Indeed, although in the declaration the three governments proclaim exclusive sovereignty and jurisdiction to be a principle of their international maritime policy, the declaration is clearly concerned with nothing more than "the conservation, development, and use of those resources, to which the coastal countries are entitled." In another part of the declaration, the "exclusive sovereignty and jurisdiction" claimed are said to apply to the sea bed and subsoil appertaining to the maritime zone. Thus, even though the declaration's primary purpose is to enunciate a claim of fishing and hunting rights, it also claims submarine areas, although it does so by rather different means from those usually employed at the time to claim such areas.[27]

With regard to the nature of the maritime zone, one should consider the interpretations given from time to time by authorized representatives of the three countries, particularly within United Nations bodies and at United Nations conferences, which fully confirm the essence of the zone to be indeed a set of special competences and jurisdictions. Thus, when the Santiago Declaration speaks of "the necessary restrictions on the exercise of sovereignty and jurisdiction imposed by international law to permit the innocent and inoffensive passage of vessels through the zone aforesaid," what it is really talking about is freedom of navigation.

Since the right of innocent passage is an integral element of the legal regime of the territorial sea, it need not have been expressly mentioned.[28] This leads one to conclude, particularly when the specific and exclusive objectives of the claim are borne in mind, that what the declaration is actually referring to and recognizing, like the five claims that preceded it, is freedom of navigation, certainly in that part of the maritime zone that does not form part of the territorial sea of any of the three countries.[29]

As one may have gathered, it is in the maritime zone conceived in 1947 and ordained at the multilateral level in 1952 by the Santiago Declaration that the essential elements of the EEZ were brought together for the first time.[30] These elements are (1) the object of the claim: the claim covers all resources-- that is, it takes in the living resources in the waters of the zone as well as the renewable and non-renewable resources of the sea bed and the subsoil beneath the zone; (2) the nature of the rights claimed: the rights are exclusive rights of exploration, conservation, and exploitation or utilization; and (3) the area covered by the claim: the area takes in 200 miles of the sea adjacent to the coastal state. In short, the Santiago Declaration created a "maritime zone" in which, as in the present-

day EEZ, sovereign rights --in other words, exclusive rights-- were claimed in a certain area of the sea with respect to all resources found within that area, and, since the nature of the rights claimed was strictly economic, without prejudice to the recognition of freedom of navigation and the other freedoms enjoyed under the traditional regime of the high seas.

NOTES

1. For the claims on mineral resources, Sir Cecil Hurst: "Whose is the Bed of the Sea?" The British earbook of International Law. 1923-1924. Vol.4. pp. 34 et seq.

2. A principal source in the matter is still the article cited in Note 1.

3. R. Young: "Sedentary Fisheries and the Convention on the Continental Shelf." The American Journal of International Law, 1961, Vol. 55, p. 361.

4. On this arbitration, Leonard L. Larry: International Regulation of Fisheries. 1944. pp. 55-82.

5. Ibid., p. 89.

6. Ibid., pp. 48-55.

7. Minutes of the Second Committee of the Conference. In League of Nations, Acts of the Conference for the Codification of International Law. Vol. 3. Minutes of the Second Committee, Territorial Waters. Off. No. C 351(b). M 145(b). 1930. V. pp. 20 et seq.

8. Ibid., pp. 19, 125, 120, 193, respectively.

9. Ibid., p. 134.

10.Ibid., pp. 142, 189.

11. Ibid., p. 25.

12. The full text of the resolution is reproduced in ibid., p. 212.

13. Mention should also be made of two earlier claims. In 1927 Canada enacted legislation prohibiting certain fishing activities in its territorial sea, which at the time had a three mile width, or restricting those activities in a twelve-mile area during other periods of the year. In 1934, Ecuador regulated certain activities in the high seas contiguous to its territorial sea.

14. Full text in United Nations Legislative Series:Laws and Regulations on the Regime of the High eas (1951) Vol. i. pp. 112-113.

15. Full text of the declaration was published in El Universal, Mexico City, October 30, 1945.

16. For the texts of these regulations and legislation, see United Nations Legislative Series, op. cit. pp. 12-13, and Supplement. 1959. p. 11.

17. Hurst, op. cit.

18. Ibid., p. 40. See also D. M. Johnson: The

International Law of Fisheries. 1965. p. 229.

19. José Luis de Azcarraga: La Plataforma Submarina y el Derecho Internacional. Madrid: 1952. pp. 27-31.

20. See United Nations Legislative Series, op.cit., pp. 112-113.

21. Ibid. Vol. 1. Part I. For the Israeli Claim, Doc.A/CN.4/99/Add.1. p. 22.

22. See, generally, F. V. García-Amador: América Latina y el Derecho del Mar. Santiago: Instituto de Estudios Internacionales de la Universidad de Chile. 1976. pp. 48-98.

23. On the legislative history, see Bernardo Sepúlveda: "Derecho del Mar. Apuntes sobre el sistema legal mexicano." Foro Internacional. 1972. Vol. 13. p. 244.

24. The term "epicontinental sea" appears in the Declaration of Antigua, Guatemala, signed on 24 August 1955 by the Ministers of Foreign Affairs of Central America. See also the Uruguayan Resolution of 26 December 1963 and Decree 235/969 of 16 May 1969.

25. El Mercurio, Santiago, Chile, 29 June 1947, p. 27.

26. See García Amador, op.cit.

27. In this regard it has been correctly stated that the 200-mile Latin American proclamations "claimed rights over the seabed and subsoil as well as over the superjacent waters in a manner unrelated to the geological definition of the continental shelf, recoursing instead to the criterion of distance, irrespectively of whether it coincided or not with the shelf." Francisco Orrego Vicuña:Los Fondos Marinos y Oceánicos. Santiago, Editorial Andrés Bello, 1976. p. 76.

28. F. V. García-Amador: The Utilization and Conservation of the Resources of the Sea. Sijthoff, 1963. pp. 77-79.

29. On further diplomatic interpretation that rejects the territorial sea approach, see the Agreement among Chile, Ecuador and Peru of 12 April 1955, related to a reply to the observations by the United States and the United Kingdom to the Santiago Declaration. Text in: Ministerio de Relaciones Exteriores del Peru: Instrumentos Nacionales e Internacionales sobre Derecho del Mar. Lima, 1971. pp. 225-228.

30. It might be pertinent to insist in that the real origins of the EEZ are to be found in the 200-mile maritime zone of the Latin American countries of the South Pacific. Recent studies seem to suggest that it would originate in the proposals of other countries and regions in the early stages of the Third United Nations Law of the Sea Conference. See, for example, N. S. Rembé: Africa and the International Law of the Sea, 1980. pp. 117-118. Also T. O. Elias: New Horizons in International Law. 1979. pp. 25-26.

Annex 268

G. González Videla, *Memorias, Vol. 2*, 1975

Capítulo I

CONQUISTA Y POSESION DEL MAR TERRITORIAL

Mi Gobierno dedicó especial preferencia no sólo a conservar nuestro patrimonio territorial, como lo demuestran la expedición y ocupación de la Antártida, sino también a que nuestra larga y angosta faja de tierra se ensanchara hacia el mar, donde, sin duda, está el porvenir de Chile.

Nuestro dilatado litoral, con sus inmensos recursos del mar adyacente a su costa y del suelo y subsuelo del mismo, permite asegurar a la población y a las futuras generaciones los medios de subsistencia, ricos en alimentos proteínicos, de los variados y exquisitos productos ictiológicos.

La extensión del mar territorial

En el siglo XVIII no se conocía el fenómeno llamado de la "explosión demográfica", y nadie se sentía amenazado por la falta de reservas alimenticias.

Esta circunstancia hizo que no se diera importancia a los extraordinarios recursos alimenticios del mar, y los Estados fijaran como mar territorial la distancia que alcanza un tiro de cañón disparado desde la costa y que en esa época alcanzaba a tres millas marinas.

Tampoco se sospechaba de las inmensas riquezas tanto minerales como petroleras que oculta el fondo del mar.

Consecuente con el pensamiento de la época, don Andrés Bello, en el art. 593 del Código Civil, fijó como mar territorial de Chile aquel que cubría las tres millas marinas.

Pero el desarrollo industrial de la pesca de las grandes potencias que invadían nuestras costas comprometieron las reservas de nuestra fauna marítima, amenazando con extinguirlas, como ha ocurrido con la caza de la ballena.

Surgió, entonces, un nuevo concepto del Derecho Marítimo, según el cual, sin perjuicio de la libertad del mar para la navegación, el Estado ribereño tenía derechos soberanos para fijar y limitar la extensión del

mar territorial, fundados en razón de la supervivencia del hombre y la explotación de sus riquezas submarinas.

Declaración sobre las doscientas millas

Con fecha 23 de junio de 1947, en la misma época en que me preocupaba de tomar posesión y de ocupar la Antártida, emití la Declaración sobre "extensión del mar territorial", que proclamaba la soberanía de Chile al zócalo continental adyacente a nuestra costa en doscientas millas marinas, para el ejercicio de las medidas de conservación de las riquezas ictiológicas chilenas.

Era la primera Declaración en que se hablaba de las doscientas millas. Me convenció la necesidad y urgencia de ampliar a doscientas millas nuestro mar territorial un acabado e interesante informe del abogado y profesor Fernando Guarello, a quien me unía una antigua amistad. Con antecedentes serios y acusadores, agregados a estadísticas irrefutables, me comprobó que nuestra costa, de Arica a la Antártida, estaba plagada de flotas extranjeras, que amenazaban con la extinción de algunas especies.

Además, México, Argentina y los Estados Unidos, en términos parecidos, defendían la ampliación del mar territorial adyacente a sus costas.

Dos meses después de mi Declaración, el Presidente del Perú, mi eminente amigo José Luis Bustamante, y su Canciller, Enrique García Sayan, emitieron declaraciones parecidas, que facilitaron el Acuerdo de Santiago, firmado entre Chile, Perú y Ecuador.

Esa Declaración del Presidente de Chile tiene el mérito de ser la primera en proclamar en forma clara y definida nuestra soberanía sobre *todo el zócalo continental*, cualquiera que sea la profundidad en que se encuentran las riquezas naturales que existen sobre y bajo este zócalo y en una extensión de doscientas millas.

Se confirma y proclama, además, la soberanía sobre los mares adyacentes a sus costas, cualquiera que fuese sus profundidad, en toda la extensión necesaria para reservar, proteger, conservar y aprovechar los recursos y riquezas naturales de cualquiera naturaleza que sobre dichos mares, en ellos y bajo ellos, se encuentren, sometiendo especialmente a

la vigilancia del Gobierno las faenas de pesca y caza marítimas, con objeto de impedir que las riquezas de este orden fueran explotadas en perjuicio de los habitantes de Chile y mermadas en detrimento del país.

Termina dicha Declaración con dos resoluciones: la primera, estableciendo que la demarcación de las zonas de protección de la caza y la pesca marítimas podía hacerse cada vez que el Gobierno lo estimara conveniente; pero, desde luego, se declara como territorial la zona de doscientas millas que corre paralela a la costa. La segunda es que esta Declaración no afecta a los derechos de libre navegación en la alta mar.

Por la extraordinaria importancia que atribuyo a esta Declaración, en resguardo de los derechos soberanos de Chile sobre su mar territorial, estimo conveniente reproducir su texto in extenso.

[…]

It was the first Declaration that made reference to the two hundred miles. I was convinced of the necessity and urgency to extend our territorial waters up to two hundred miles by a full and interesting report prepared by Fernando Guarello, a lawyer and professor, with whom I share an old friendship. With serious and telling precedents, in addition to irrefutable statistics, he demonstrated that our coastline, from Arica to Antarctica, was plagued with foreign fleets which threatened the extinction of some species.

[...]

Annex 269

Foreword by J. Salvador Lara in P. Goyes Arroyo, *Límite Marítimo: Ecuador-Perú*, 2007, p. xi

PRÓLOGO

Un libro básico sobre nuestros límites en el mar...

Nuevo y oportuno libro, Límite marítimo Ecuador-Perú, es el que se pone en circulación en estos días, precisamente cuando la gula expansionista de algunos halcones del vecino País se empeña en poner en dudas, a más de cincuenta años de plena vigencia, respecto al "Convenio sobre Zona Especial Fronteriza Marítima" que determina como límite marino entre Chile y Perú, y entre Ecuador y Perú, el paralelo geográfico que pasa por el punto en donde la línea de la frontera terrestre toca el mar.

Su autor es el Capitán de Navío (E.M.) Patricio GOYES ARROYO, uno de los más distinguidos oficiales superiores de la Fuerza Naval ecuatoriana, poseedor de varios títulos y diplomas obtenidos en prestigiosas universidades nacionales y extranjeras. Precisamente de ellos nace la autoridad académica de que goza y que garantiza la solvencia y seriedad académica de este libro.

Aunque en él se estudia, principalmente, el asunto relacionado con el Convenio que fija la línea de frontera en el mar entre los países signatarios, este libro estudia también, aspectos relacionados con los otros tres convenios suscritos en la mencionada II Conferencia; el desarrollo mismo de esta cita internacional tripartita, e inclusive asuntos generales de doctrina jurídica sobre el nuevo Derecho del Mar mediante el cual se sentó carta de ciudadanía jurídica universal, aunque restringida, la tesis de las 200 millas de soberanía marítima de la que habían sido pioneros Ecuador, Chile y Perú.

La "II Conferencia, sobre Explotación y Conservación de las riquezas marinas del Pacífico Sur" se reunió en Lima, del 1° al 4 de diciembre de 1954, con representantes plenipotenciarios de los tres países subscriptores de la Declaración de Santiago, quienes estudiaron, aprobaron y subscribieron los seis Convenios siguientes:

* Convenio complementario a la declaración de soberanía sobre la Zona Marítima de 200 millas;
* Convenio sobre Sistema de Sanciones;
* Convenio sobre el otorgamiento de permisos para la explotación de las riquezas del Pacífico Sur;
* Convenio sobre reunión ordinaria anual de la Comisión Permanente, y
* Convenio sobre Zona especial fronteriza marítima.

Actuaron como Plenipotenciarios, con poderes suficientes y debidamente suscritos, los siguientes delegados: Por Chile, don Alfonso Bulnes Calvo, a la sazón Embajador de su país en Lima; por Ecuador, el Lcdo. Jorge Salvador Lara, Encargado de Negocios a.i., y por el Perú, el Dr. David Aguilar Cornejo, connotado jurista e influyente político, por entonces Ministro de Relaciones Exteriores.

Dichos Plenipotenciarios tuvieron asistencia, debidamente acreditada, de los siguientes asesores: Dr. Luis David Cruz Ocampo, notable jurista y experimentado diplomático chileno, hasta poco antes Embajador de su país ante la Santa Sede; Vicealmirante Jorge Guillermo Llosa, alto oficial superior de la Armada del Perú, experto en asuntos jurídicos del mar, Lcdo. Gustavo Dammer, alto funcionario del Departamento de Soberanía Territorial de la Cancillería ecuatoriana.

Los mencionados convenios fueron, con antelación a su firma, estudiados minuciosamente y negociados en un clima de serenidad y recíproco respeto. Tuve la satisfacción de cumplir, respecto a cada uno de ellos, las instrucciones que me impartió la Cancillería ecuatoriana, sobre todo en cuanto se refiere a la clara definición del límite marítimo con el Perú.

Atención especial mereció, en efecto, el "Convenio sobre Zona especial fronteriza marítima". Por cuanto en la Declaración de Santiago ya se había mencionado el paralelo geográfico para la delimitación marina entre los tres países signatarios, propuse una mención expresa de ese concepto en el Convenio que estudiábamos. Los Delegados de Chile y Perú no tuvieron reparo en cuanto al concepto mismo, aunque opinaron que no hacía falta repetirlo expresamente, pues ya constaba en la Declaración de Santiago. Ante mi insistencia se aprobó, respecto de la Zona especial que se creaba para salvaguardar en caso de involuntarias infracciones a los pescadores nacionales de los respectivos países aledaños, establecer dicha Zona a "cada lado del paralelo que constituye el límite marítimo entre los dos países". A mayor abundamiento se aprobó que este instrumento se denominara Convenio sobre Zona Especial Fronteriza Marítima".

Otro punto que logré se admitiera fue el sustancial cambio, en este título y en el articulado, del término "Zona especial fronteriza" en vez de "Zona neutral fronteriza", según se sugería en le proyecto.

Los tres países signatarios fueron ratificando paulatinamente los mencionados convenios. El de "Zona Especial Fronteriza Marítima" fue ratificado de inmediato, el 6 de mayo de 1955,, por el gobierno del Perú presidido por el General Manuel Odría. El Ecuador lo hizo el 9 de noviembre de 1964 y Chile el 16 de agosto de 1967.

Según este convenio quedó definido de modo expreso que el paralelo que parte del punto donde la frontera terrestre toca el Océano Pacífico constituye frontera marítima entre Ecuador y Perú y entre Chile y Perú, norma que ha durado varias décadas y, para el Perú, ha tenido más de medio siglo de vigencia indiscutida, aunque actualmente se ha puesto de relieve una peligrosa interpretación peruana respecto al límite marítimo entre Chile y Perú. En lo que se refiere a la frontera marítima entre Ecuador y Perú, hay ambivalencia en la interpretación peruana para algunos de cuyos viejos halcones, el paralelo no sería el límite, según lo determina el Convenio sobre Zona Especial Fronteriza Marítima, mientras caracterizada esferas oficiales del vecino país sí reconocen la vigencia de dicho instruento jurídico y por lo tanto el paralelo geográfico como límite marítimo entre Ecuador y Perú en el mar.

El Ecuador que proclama el paralelo como límite, debe permanecer vigilante sobre esta peligrosa ambivalencia. En todo caso, hay que desear fervientemente que la discrepancia entre Chile y Perú por este asunto no altere la paz de América y el diferendo se solucione de manera jurídica y pacífica.

Doce años después de la Declaración de Santiago me correspondió el honor de presentar a don Clemente Yerovi Indaburu, Presidente del Ecuador, y como su Ministro de Relaciones Exteriores, un proyecto de reforma al Código Civil que contemplaba la expresa definición ecuatoriana de su mar territorial. El Presidente se dignó aceptar mi propuesta y suscribió aquel decreto.

Desde entonces el Ecuador Ha defendido todavía con mayor ahínco su mar territorial de 200 millas. Ya lo había hecho, con heroica firmeza, desde el día mismo de la Declaración de Santiago, como subscriptor de la misma. Y como tal fue dinámico actor en el desarrollo del nuevo derecho del mar y, en las varias sesiones de la conferencia que culminó en la Convemar. Correspondió al ilustre ex-Canciller Dr. Luis Valencia Rodríguez presidir el grupo de países que sostenían un mar territorial de 200 millas, postura de la que nuestro país no defeccionó.

La acción del Ecuador, que a la postre quedó solo en aquel enunciado, si bien no logró una definición general de mar territorial de esa anchura, sí alcanzó que el concepto básico de 200 millas de dominio del Estado ribereño fuese admitido mediante el reconocimiento de, al menos, de la denominada Zona Económica Exclusiva, con una extensión de 188 millas adicionales a las 12 de mar territorial, con lo que se completaban las 200 millas.

Es generalmente admitido que la tesis de 200 millas, aunque no en forma total, triunfó en la Convención de Montego Bay, aunque con limitaciones. Dicha convención ha alcanzado un reconocimiento generalizado por los Estados miembros de la Comunidad internacional. Ecuador no la ha suscrito todavía, y aunque, según la opinión de muchos, es conveniente firmarla, mi criterio personal es que, por prudencia nacional, no debemos hacerlo mientras los Estados Unidos no suscriban.

La experiencia demuestra el sostenido afán de grandes potencias pesqueras en lograr normas internacionales que favorezcan su política de libre explotación del mar; o, cuando las normas vigentes no estuvieren claramente definidas en su beneficio, interpretar las normas existentes en forma restrictiva, favorable a sus intereses. Se opusieron a la Convemar y solamente al evidenciar que la comunidad internacional era mayoritariamente partidaria de suscribirla, la aceptaron, pero imponiendo una extensión del mar territorial restringida a 12 millas, uniforme en el planeta -no obstante la diversidad de realidades geográficas-, aunque admitiendo algunas competencias del Estado ribereño sobre las 188 millas de la Zona.

Las últimas posturas del Comando de los Estados Unidos en relación con periódicos ejercicios conjuntos de las fuerzas navales de los Estados americanos del Pacífico Sur, que unilateralmente cambia el escenario marino de tales ejercicios, convocándolo no en el Ecuador, como correspondía, sino en Colombia, y la negativa de que los navíos involucrados presenten un protocolario saludo de cortesía al Ecuador al atravesar el mar territorial ecuatoriano para aquellas prácticas conjuntas, demuestran cuan delicada y peligrosa es la conducción parcializada de esos ejercicios por la gran potencia norteamericana, que obra exclusivamente en servicio de sus particulares intereses aún a riego de provocar fricciones entre los Estados del Pacífico Sur.

El Comandante Goyes hace un servicio positivo al Ecuador -y le felicitamos calurosamente por ello- al estudiar y dar a conocer, de modo general, las bases del nuevo Derecho del Mar y, de manera particular, todo lo referente al límite meridional de nuestro mar territorial. Para el suscrito es privilegio singular poner estas letras como premio al estudio Límite Marítimo Ecuador-Perú, que en estos días sale a conocimiento y cosideración de la comunidad internacional, y dejar pública constancia de su admiración y aplauso a este distinguido Oficial Superior, valor auténtico de la Armada Nacional.

Jorge Salvador Lara
Ex-Canciller de la República del Ecuador

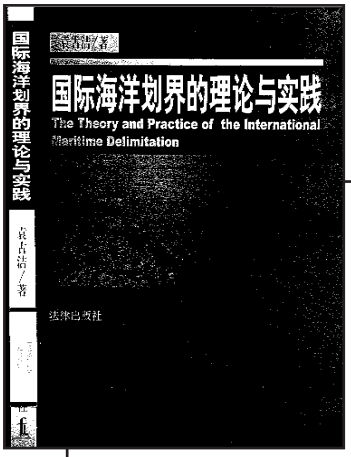
[…]

According to this Agreement, the maritime frontier [*frontera marítima*] between Ecuador and Peru and Chile and Peru was explicitly defined as the parallel that commences on the point where the land frontier [*frontera terrestre*] touches the Pacific Ocean, a rule that has lasted for several decades and that has had more than half a century of unquestioned validity for Peru, although currently a dangerous interpretation regarding the maritime boundary with Chile is being advanced.

[…]

Annex 270

Yuan Gujie, *The Theory and Practice of International Maritime Delimitation*, 2000



者远离本国领土的岛屿，常获得部分效力；那些主权尚有争议的岛屿，常获零效力。总之，岛屿在划界实践中的作用，受到位置、面积、人口、总体地理、政治、经济等多种因素的制约影响，视不同情况享有全效力、部分效力或零效力。

第三节　大陆架划界与专属经济区划界的关系

随着专属经济区法律概念在第三次联合国海洋法会议上的确定，传统的大陆架划界协定也发生了改变，从单纯的只涉及大陆架划界发展到也包括专属经济区划界。一般来讲，70 年代中期前的海洋边界协定主要是大陆架划界协定，事实上在 1975 年前只有 9 个协定考虑了经济区或渔区的划界问题，[①] 其中四个协定是在南美国家之间签订的，包括 1952 年秘鲁——智利、秘鲁——厄瓜多尔，[②] 1972 年巴西——乌拉圭，1973 年阿根廷——乌拉圭海洋划界协定。其余五个协定为：挪威——苏联关于划分瓦朗格尔峡湾海域边界的协定，1957；阿布扎比——迪拜岸外疆界协定，1968；阿布扎比——卡塔尔，1969；澳大利亚——印度尼西亚，1973；前联邦德国——前民主德国，1974。[③]

与此相反，在 1974 年以后，涉及大陆架划界的协定只有 10 个左右，其中 8 个是在 70 年代签订的，1 个是在 80 年代签订的，1 个是在 90 年代签订的。摩洛哥——毛里求

① 科尔森：《海洋边界协定的法律体制》，载查奈和亚历山大主编：《国际海洋边界》，1993 年，第 45 页。

② 1952 年的智利、厄瓜多尔和秘鲁关于领海的圣地亚哥宣言，确定了智利——秘鲁、厄瓜多尔——秘鲁的海上分界线。

③ 上述协定，见国家海洋局政策研究室编：《国际海域划界条约集》，1989 年。

[…]

Before 1975, there were only 9 agreements dealing with delimitation issues in respect of economic zones or fishing areas, of which 4 were made by and between South American countries, including those in 1952 between Peru and Chile [and] Peru and Ecuador.[2]

[…]

2 The Santiago Declaration on the Maritime Zone of 1952 determined the maritime boundaries between Chile and Peru, and Ecuador and Peru.

Annex 271

R. Hodgson and R. Smith, "Boundaries of the Economic Zone", in E. Miles and J. K. Gamble, Jr. (eds), *Law of the Sea: Conference Outcomes and Problems of Implementation*, 1977, p. 183

Law of the Sea:
Conference
Outcomes and
Problems of
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Chapter Ten

Boundaries of the Economic Zone

Robert D. Hodgson and **Robert W. Smith**
Office of the Geographer
U.S. Department of State

INTRODUCTION

Before World War II, few state boundaries existed in the waters adjacent to continental masses. Of the few, most were situated in Northern Europe. Typical ones were established by the Norwegian-Swedish Boundary Agreements of 1661, 1897, 1904, and 1909 and the Fenno-Swedish Agreement of 1811. The first extensive sea boundary was created in 1942 when the United Kingdom and Venezuela delimited a continental shelf boundary in the Gulf of Paria between Trinidad and the South American mainland; the boundary extended beyond the territorial sea claim of either state.

The delimitation of maritime boundaries reflects a continuum of experience gained from state practice relating to land boundaries, thence to nearshore limits, and finally to those further offshore. As a result, the concepts of boundary delimitation have undergone gradual evolutions as new environments were divided. Relevant experiences gained on land were often utilized for territorial sea boundaries. These were adapted for wider limits of the continental shelf. A transition period, which again will be evolutionary, will follow with the new concept of the economic zone. Certain old practices may be retained but changes in emphasis and technique must be anticipated.

The Truman Proclamation of September 28, 1945 opened a new era of national interest in the continental shelves adjacent to mainland territory. Subsequent activity by states led to a need for determination of submarine boundaries in the area of ocean space.

The Truman Proclamation created a general but fair basis for boundaries between adjacent and opposite states by declaring that boundaries "shall be determined by the United States and the State concerned in accordance with equitable principles."[1]

Thus, there are 151 "opposite" territorial sea or continental shelf boundaries and 136 "adjacent" limits.

About 21 percent of the potential maritime territorial sea and continental shelf limits have been negotiated; 79 percent are either in dispute, in some stage of negotiation, or not being discussed.[23] In North America, for example, only two continental shelf boundaries have been negotiated, and one of these—Trinidad-Venezuela—predates the 1958 Convention.[24] The other boundary, Canada-Greenland, is equidistant in the south (with an interesting provision which may modify the limit) and negotiated in the north.[25]

While no "adjacent" shelf limit has been delimited in North America, four territorial sea boundaries fall in that category.

In South America, five adjacent boundaries have been negotiated which extend 200 nautical miles seaward from the national baselines. The limits between Colombia and Ecuador, Ecuador and Peru, and Peru and Chile[26] all follow the parallel of the land boundary terminus. On the east coast, the Argentina-Uruguay maritime boundary coincides with the main navigational channel of the Rio de la Plata to the bilaterally declared "closing line" of the estuary. From there, the limit extends equidistant to this "line" and the national baselines.[27]

In Africa, only three broad maritime limits have been negotiated; Senegal is involved in all three delimitations. Two boundaries define maritime limits with Gambia and one with Guinea-Bissau.[28] The former two follow parallels of latitude, and the last name follows an azimuth to the coastal terminus of the land boundary.

Sixty-three African maritime limits remain to be negotiated. Several, of course, constitute active territorial disputes.

Most of the world's delimited nautical boundaries are situated in the maritime areas adjacent to Europe and to Asia, as Table 10-1 indicates. Nearly 100 maritime boundaries are still to be delimited in the waters adjacent to the two continents.

The negotiated boundaries, as can be seen, follow a distinct distributional pattern and are situated primarily in narrow, semienclosed seas, i.e., Baltic, North, Mediterranean, Persian Gulf, Malacca-Andaman, South China Sea, etc. However, one may question if there is a pattern to the principle or principles that were followed. Obviously, the boundaries all have been negotiated and, as a result, meet the first requirement of the convention.

The extended maritime boundaries of Europe and Asia may be examined by utilizing the various theories, principles, or criteria developed above, which stem from the Truman Proclamation, the ILC discussions, and the report of the group of experts. True and simplified equidistant boundaries can be grouped together for practical purposes. Results for adjacent and opposite maritime boundaries are shown in Table 10-2.

An analysis of these results and the maritime boundaries of North and South

10. *Report of the International Law Commission Covering the Work of its Fifth Session, 1 June–14 August 1953*, U.N. Gen. Ass. Off. Rec. 8th Sess., Supp. No. 9 (A/2456), p. 13

11. Ibid.

12. Summary Record, A/CN. 4/SR. 69, p. 9, quoted in Whiteman, *op. cit.*, p. 896.

13. Whiteman, *op. cit.*, p. 904, Article 6 (1).

14. Ibid., Article 6 (2).

15 *Report of the International Law Commission, 8th Sess., 1956,* U.N. Gen. Ass. Off. Rec. 11th Sess., Supp. No. 9 (A3159), p. 44.

16. *North Sea Continental Shelf* (*cf.* footnote #29) *Judgment, 1969*, p. 3

17 Ibid., para. 83, p. 46.

18. Ibid., para. 36, p. 28.

19 516 UNTS 205, Article 12 (1).

20. Comment to the author by Papua New Guinea official.

21 U.S. Department of State, *Limits in the Seas* No. 45, "Maritime Boundary· Mexico–United States," Office of the Geographer, August 11, 1972.

22. U.S. Department of State, *Limits in the Seas* No. 12, "Continental Shelf Boundary· Bahrain-Saudi Arabia," Office of the Geographer, March 10, 1970.

23 It should be noted that not all of the negotiated boundaries have been completed. For example, the Norway-U.K. boundary is listed as negotiated, even though both states are in diplomatic contact to extend the existing limit. It is assumed, correctly or incorrectly, that a partial agreement implies the ability to complete the delimitation.

24. U.S. Department of State, *Limits in the Seas* No. 11, "Continental Shelf Boundary· Trinidad and Tobago-Venezuela," Office of the Geographer, March 6, 1970.

25 U.S. Department of State, *Limits in the Seas* No. 72, "Continental Shelf Boundary· Canada-Greenland," Office of the Geographer, August 4, 1976.

26. U.S. Department of State, *Limits in the Seas* No. 69, "Maritime Boundary· Colombia-Ecuador," Office of the Geographer, April 1, 1976. Ecuador-Peru and Chile-Peru boundaries were established by agreements resulting from two conferences of the Permanent Commission of the South Pacific: the 1952 Santiago Declaration on the Maritime Zone, and the 1954 Agreement Relating to a Special Maritime Frontier Zone.

27 U.S. Department of State, *Limits in the Seas* No. 64, "Continental Shelf Boundary· Argentina-Uruguay," Office of the Geographer, October 24, 1975.

28. U.S. Department of State, *Limits in the Seas* No. 68, "Territorial Sea and Continental Shelf Boundary· Guinea-Bissau–Senegal," Office of the Geographer, March 15, 1976. It is understood that a Cameroon-Nigeria maritime boundary has been agreed upon, but details are not available.

29 *North Sea Continental Shelf Judgment, op. cit.*

30. Ibid., para. 12, pp. 19–20.

31. Ibid., para. 15, pp. 21–22.

32. Ibid., para. 46, p. 32.

33 Ibid., para. 47, pp. 32–33.

Annex 272

R. Hodgson, "The Delimitation of Maritime Boundaries between Opposite and Adjacent States through the Economic Zone and the Continental Shelf: Selected State Practice", in T. A. Clingan, Jr. (ed.), *Law of the Sea: State Practice in Zones of Special Jurisdiction*, 1982, p. 281

Law of the Sea: State Practice in Zones of Special Jurisdiction

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Thomas A. Clingan, Jr.

However, if the intent was not to divide equally the area contained within equidistant lines, the Court-selected lines should have been designated what they were -- artificial limits of a disputed area as defined by the court. This is not to insist that technical terms be used only within the limits of their technical definition. Certainly the legal definition of the continental shelf takes precedence over any geologist's or geographer's definition. However, the equidistant line is legally defined in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone [47] and it would be reasonable to assume that the Court would abide by this definition or at least not to undermine it by the loose usage of language in its Decision.

II. Selected State Practice

As I originally noted, there is no intent to deliver a litany of maritime boundary delimitations categorized in one or two words according to my conceptions. Rather, it appears more reasonable to examine a limited number of agreements which appear to reflect the close and essential geographic relationships of the ultimate boundary to the landward margins forming the perimeters of the maritime area. Some have been reasonably simple and yet reflect a relatively sophisticated view of the geographic facts. Others, of course, have been very complicated and they often mirror the political realities combining a chance for reasonable development, the maintenance of good neighborly relations and the absence of a desire to litigate the issues due to potentially damaging effects on other interests.

A limited number of maritime boundary agreements have been selected for the purpose of this review. Several are illustrative of methodologies which delimit coastal facades and which relate to the general direction of the coasts. Another has been chosen to reflect respective lengths of the coastal margins from which the boundary has been delimited. The Japan-Korea agreement, in contrast, illustrates the development of a seabed area without the delimitation of a single boundary between jurisdictions. Finally, an agreement has been negotiated to allocate functional competences without restriction by the limits of other rights.

A. Chile-Peru-Ecuador-Colombia Maritime Limits

These three maritime boundaries have been delimited by a series of declarations and a bilateral international agreement. The west coast of the continent of South America is constituted by a pair of relatively direct north-south lines. Several variations do occur in the general continuous trend; they, however, do not detract from the longitudinal expression of the coast and hence the lateral expression of the coastal fronts which the parallels of latitude create.

They form the landward margins of the maritime boundaries. The primary proclamation in 1952 of Chile, Peru and Ecuador comprised an assertion of jurisdiction (and in certain instances sovereignty) "over the area of the sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast."[48] Article IV declared the boundaries of the zones to be formed "... by the parallel of latitude drawn from the point of which the land frontier between the two countries reaches the sea."[49]

The use of the parallels of latitude was continued in the Ecuador-Colombia agreement of August 23, 1975 [50] and by the boundary between Colombia and Panama [51]. The latter utilizes, in part, equidistance methodology and a negotiated boundary, for a distance of approximately 177.42 miles from the land terminus of the mutual boundary. The parallel of 5° North then forms the limits between the maritime jurisdiction of the two states seaward. Thus, from 5° North latitude to 18° 23' 03" South latitude, the maritime frontiers between all west coast Latin American states follow parallels of latitude, a north-south distance slightly in excess of 1,400 miles. The coastal facades reflect the geography of the west coast area. The facade methodology is thus relatively consistent although not so unique that a reflection of coastal front may be utilized only in the region.

It may also be added that both the Argentina-Uruguay and the Brazil-Uruguay maritime boundaries, which are generally perpendicular to its coasts [52], roughly parallel each other. These boundaries delimit again coastal fronts even though these limits do not coincide with lines of latitude. (The azimuths of the boundaries vary by less than 10° of the arc.)

B. Franco-Spanish Territorial Sea and Continental Shelf Boundary

In the North Sea Cases, the ICJ stated that a maritime boundary should reflect to a reasonable degree the proportionality between the respective coastline of the adjacent states. The Governments of France and Spain have negotiated a territorial sea and continental shelf boundary in the Bay of Biscay which carries out this edict in a sophisticated manner [53]. The Spanish coastline extends nearly west-east from the land boundary terminus while the French coastline projects first northward and then northwestward. The French shore on the Bay is considerably longer than the Spanish. In their negotiations, the states developed the first sector, i.e., to point Q 13, on the basis of equidistance. This point is approximately 68.4 miles from the baselines of both states. Furthermore, the delimitation process utilized nearly equal lengths of coastal baselines in the development of the equidistant portion of the boundary.

Annex 273

A. Jaffe Carbonell, *Venezuela y la Evolución del Derecho del Mar en Materia de Delimitación Marítima*, 1996

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ANGELINA JAFFE CARBONELL

VENEZUELA Y LA EVOLUCION DEL DERECHO DEL MAR EN MATERIA DE DELIMITACION MARITIMA

SERIE ESTUDIOS
Caracas / 1996

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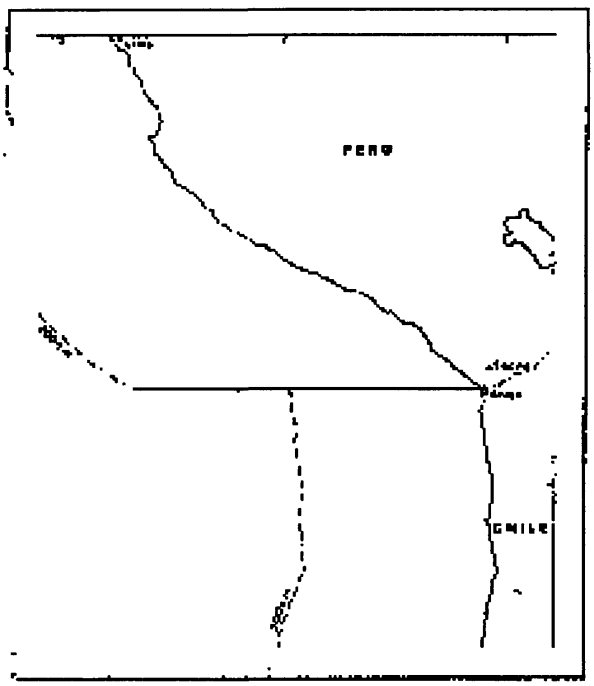
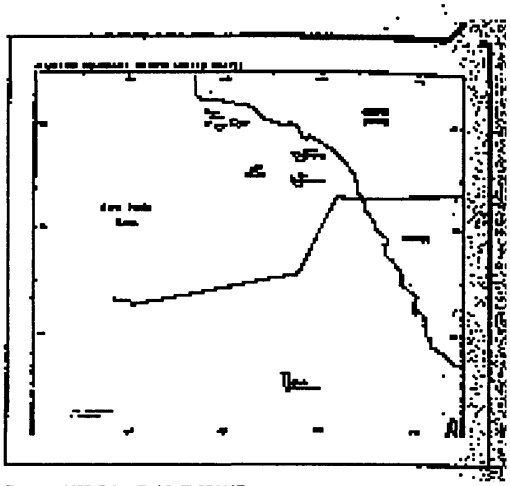
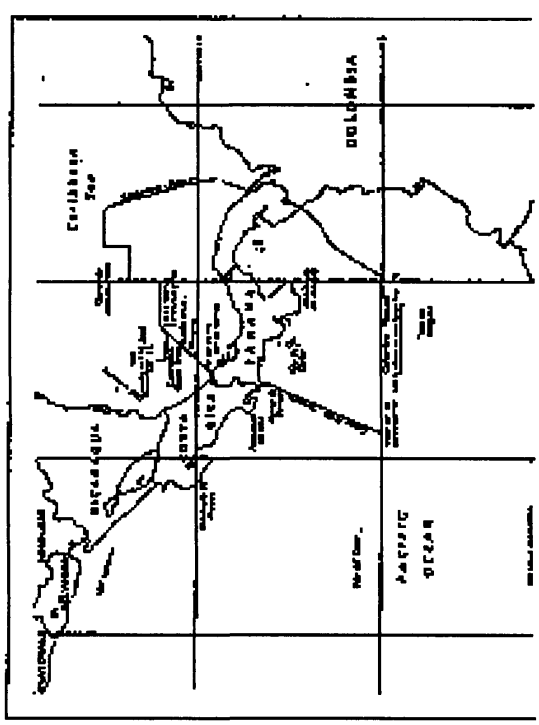
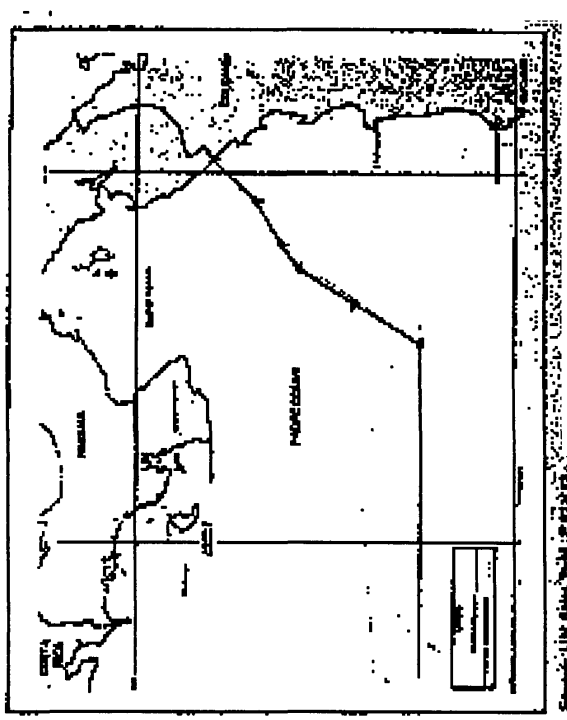


Source: Pinochet, 1983



Source: UN Sales Publ. E.81.V.12





Annex 274

S. P. Jagota, "Maritime Boundary", *Recueil des cours, Vol. 171*, 1981-II, p. 83

ACADÉMIE DE DROIT INTERNATIONAL
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DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

RECUEIL DES COURS

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1981

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MARITIME BOUNDARY

by

S. P. JAGOTA

THE HAGUE ACADEMY OF INTERNATIONAL

nation of the boundary line in relation to the maritimes zones of the parties.

Agreements in Latin America including Inter-Regional Agreements

75. A sample of 16 Latin American Agreements has been surveyed in this Chapter, which includes four inter-regional Agreements[26]. Six of these Agreements are among the States of South America, eight relate to Central America and the Caribbean Sea, and two are between the USA and Mexico. Eight of the Agreements relate to States with adjacent coasts, the other eight have opposite coasts. Thirteen of the Agreements relate to a continental shelf boundary, whereas one relates to a territorial sea boundary.

76. From the documents consulted, it was not clear whether 7 of them, which had been signed subject to ratification, had entered into force. Most of the Agreements (13 out of 16) have been concluded in the 1970s and therefore reflect the current developments in international law following the Judgment of the International Court of Justice in the *North Sea Continental Shelf* cases, 1969, and the developments at the United Nations Conference on the Law of the Sea since 1973. However, the first accord on maritime delimitation was also concluded in the region (Trinidad and Tobago-Venezuela, 1942). In this Agreement, the seabed and subsoil outside the territorial sea and underneath the Gulf of Paria was called a "submarine area" which was divided between the parties partly by following the median line and partly by a negotiated line. The legal status of the continental shelf as the natural prolongation of land boundary had not yet emerged in international law. Accordingly, the 1942 Agreement appears to regard the submarine area as *res nullius*, which could be claimed by effective occupation. The Agreement provides for the mutual recognition of each other's claims to the submarine areas outside the territorial sea and mutual abstention in exercising any rights across the boundary line[27].

77. On 28 August 1952, Chile, Peru and Ecuador signed the Santiago Declaration on the Maritime Zone claiming "as a principle of their international maritime policy", sole sovereignty and jurisdiction over at least a 200-nautical-mile area, including its seabed and subsoil. The maritime boundary between the parties to this Declaration was to follow the parallel of latitude drawn

from the point where the land frontier between them reaches the sea. This principle and practice were followed in South America in the Maritime Boundary Agreement between Chile and Peru (1954), Peru and Ecuador (1954) and Colombia and Ecuador (1975). A combination of latitude and longitude was also followed for settling the boundary in the Agreement between Colombia and Costa Rica (1977). In the Agreement between Colombia and Panama (1976), the boundary line followed in part the median line and in part the latitude and longitude.

78. On the eastern side of South America, the Agreements between the adjacent States, namely, Argentina and Uruguay (1973) and Brazil and Uruguay (1972) determined the boundary line by drawing a perpendicular from a pre-determined point. In the Argentina-Uruguay Agreement, this point was the mid-point of the straight line enclosing the mouth of the Rio de la Plata. In this Agreement, the boundary is defined "by an equidistant line, determined by the adjacent coasts methods" (Art. 70).

79. In the ten Agreements concerning the boundary in the Caribbean Sea, the Gulf of Mexico and the Pacific Ocean, generally the median or equidistant line was used, whether the States had opposite coasts or adjacent coasts. In some cases, the principle of the median line was mentioned in the Agreements (Colombia-Haiti (1978); Colombia-Dominican Republic (1978)). In other cases, reference was made to "precise and equitable maritime boundary" and to "delimitation in accordance with international law" (USA and Venezuela (1978)). In the Agreement between the USA and Mexico on the territorial sea boundary (1970), reference was made to equidistance in accordance with Articles 12 and 24 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958. In the Agreement between Mexico and the USA on the continental shelf boundary (1978), reference was made to a delimitation line which is "practical and equitable". In the two Agreements signed by the Dominican Republic, the principle indicated in the Agreement with Colombia (1978) is the median line, whereas in the Agreement with Venezuela (1979) the preamble refers to delimiting "justly, accurately, and on the basis of equitable principles". In the Agreement between Haiti and Cuba (1977), delimitation is to be made "on the basis of the principle of equidistance or equity, as the case requires" (Art. 1). The boundary line appears to be the median line.

80. Thus the State practice in Latin America reflected in these Agreements is varied. The States which follow the provisions of the 1952 Santiago Declaration have established their maritime boundary along a latitude or longitude starting from the international land boundary point. In other cases, generally the median or equidistance line has been followed either in its entirety or with some simplification or modification as by drawing a perpendicular from a point along the general direction of the coastline. In some cases the median line and the parallel or the meridian have also been used in combination.

81. No distinction has been made between the States with opposite or adjacent coasts, or between the territorial sea boundary, the continental shelf or the economic zone boundary, regarding the applicable delimitation principles.

82. The following special provisions have also been made in these maritime boundary agreements:

(1) In the Agreement between Argentina and Uruguay (1973) the parties established a common fishing zone comprising a 200-mile arc drawn from the respective terminal points of the closing baseline on the Rio da la Plata. Provisions were also made regarding the regulation of joint fisheries in this zone.

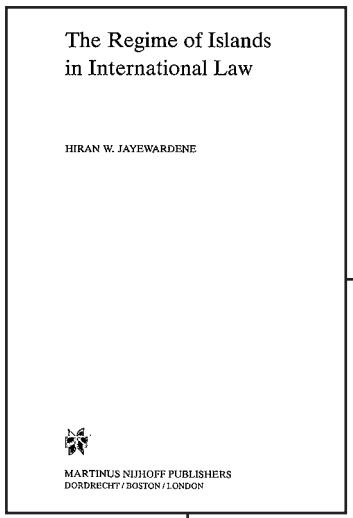
In the same Agreement, a pollution control zone was also established.

(2) In the Agreements following the latitude as the boundary line, a zone comprising 10 nautical miles on either side of the boundary line was also established. This zone was, however, not a common fishing zone. Exclusive fishery rights in the zone on either side of this boundary line remained with the States concerned. The zone was established only to ensure that accidental trespassers will not be punished for violation of the respective maritime zones.

83. A word may also be mentioned about the title and scope of the Agreements. Following the 1942 Agreement between Trinidad and Tobago and Venezuela, Colombia has throughout continued to refer to "marine and submarine areas" in its boundary agreements rather than to the fishery zone, the exclusive economic zone or the continental shelf even when the other party called it the exclusive economic maritime zone and the continental shelf boundary (Colombia-Haiti (1978)). In the US-Mexico Agreement of 1978, both parties noted the establishment of the exclusive

Annex 275

H. W. Jayewardene, *The Regime of Islands in International Law*, 1990



distance from the coast.[81] In other situations where a straight coastline is not available, a straight baseline or closing line, as in the case of an indented coastline, bay or estuary, would determine the perpendicularity.[82]

Prolongation of the Land Boundary. Another method based on the same premise as in the case of a boundary perpendicular to the coast is the technique of prolonging the land boundary seaward through the shore terminus. Much depends on the vector of the land boundary as it approaches the shore terminal point and in all situations this may not lead to a satisfactory result.[83]

Straight Line Azimuth. Several lateral territorial sea boundaries run along a defined straight line azimuth from the land boundary terminus.[84]

Geographical Parallel. Another variant of a straight line boundary utilised by some States is to establish the lateral boundary along the parallel of latitude passing through the point at which the land boundary reaches the sea.[85] This solution may not be applicable in all situations.

Equidistance. In the case of a straight coastline at the point of a land boundary terminus, an equidistance line, as pointed out above, would closely approximate a line perpendicular to the coastline. Even in other situations, it may be stated in a general sense that minor local coastal aberrations would have little appreciable impact on the course of an equidistance line, given the limited length of territorial sea boundaries – maximum 12 miles – and the usually small number of turning points which would be used to define the boundary on account of administrative convenience. The equidistance method has found application in some adjacent State situations.[86]

Other Techniques and Negotiated Settlements. All adjacent State territorial sea delimitations do not readily fall within the methods referred to above. Often such boundaries represent the outcome of long historic processes such as successive treaty regimes which have constituted a particular settlement.[87] Negotiated boundaries sometimes utilise particular local criteria such as the course of a navigation channel.[88] Unstable coastal features at the point of the 'land boundary' terminus have in some instances necessitated special accommodation.[89] In some cases different claimed territorial sea limits have been taken account of, while the seaward terminus of lateral territorial sea boundaries may be fixed at the point of intersection of the respective limits.[90]

equidistance boundary is partially negotiated to provide for various local factors.[308]

Straight line lateral boundaries projected from the land boundary terminus follow the perpendicular to the general direction of the coast,[309] a geographic parallel,[310] or an azimuthal line.[311] In other negotiated settlements States have partially utilised these methods in a composite boundary settlement.[311] Of a total of twenty-three adjacent State delimitations analysed, nine are based wholly or partly on the equidistance principle. In three instances, islands are treated as special circumstances in order to reach a solution.[312]

Situations where Coasts are both Opposite and Adjacent. There are several situations where lateral boundaries between adjacent States assume the character of opposite State boundaries on account of the configuration of the respective coasts and the intervening body of water. In almost all these situations, the equidistance principle has been used for all or part of the boundary.[313]

(4) The Rule for Inter-State Delimitation of the Exclusive Economic Zone

The concept of the exclusive economic zone is a direct product of the Third Conference on the Law of the Sea. The regime provided for in the basic negotiating text of the Conference reflects a compromise between the 'territorialist' claims of some Latin American countries for 200-mile zones and others principally concerned with preservation of the regime of the high seas, in particular the right of free navigation.[314] Founded in the idea of a patrimonial sea,[315] the EEZ regime evolved as a functional zone within which coastal States have jurisdiction over all economic resources, while the freedom of navigation is assured for other States.[316] Consequent on this development at the Law of the Sea Conference, it was found necessary to provide rules for delimitation of economic zones between States where they overlapped. The innovation of the economic zone has greatly increased the number of maritime boundaries to be delimited, as well as the complexity of issues pertinent to such delimitation. As one observer has pointed out, perhaps the main issue which is likely to cause difficulty in determining economic zone boundaries is the presence of islands and their entitlement to an economic zone.[317]

(i) The Third United Nations Conference on the Law of the Sea and the Rule for Delimitation of the Exclusive Economic Zone

Following were the 'main trends' in the matter of Exclusive Economic Zone delimitation as identified by the Conference:[318]

82. E.g. the Argentina–Uruguay maritime boundary off the Rio de la Plata, which is described as 'an equidistant line' determined from the closing line between the Punta del Esta (Uruguay) and Punta Rasa del Cabo San Antonia (Argentina). An equidistant line would be perpendicular to the straight line on which its first terminal point lies. See I.B.S., Ser. A, No. 64, for Agreement which entered into force on 12 February, 1974.
83. See for example the Colombian–Venezuelan problem relating to the maritime boundary between the two countries which involves delimitation in the Gulf of Venezuela. The alignment of the land boundary and the extent of Colombian sovereignty over the Guajira Peninsula possibly precludes this method on equitable grounds. See also the Agreement between Brazil and Uruguay of 21 June, 1972 relating to the maritime boundary between the two countries, where the Parties have agreed on a line 'running in a direction nearly perpendicular to the general direction of the coast', see I.B.S., No. 73 for text. This line can only be used if the land frontier meets the coast at a right angle; if the angle is acute, the result is impracticable.
84. A straight line azimuth lateral boundary sometimes closely approximates a perpendicular to the general line of the coast. See, for instance, the Brazil–Uruguay maritime boundary referred to above, and the Guinea Bissau–Senegal territorial sea boundary established pursuant to an exchange of Notes of 26 April, 1960, see the French Governmental Decree in Journal Officiel de la Republique Francais of 31 May, 1960. The settlement is analysed in I.B.S., No. 68, pp. 4 ff. See also Article 1 of the Protocol of 17 April, 1973 between Turkey and the Soviet Union establishing the territorial sea boundary in the Black Sea.
85. See, for instance, the Agreement between the Gambia and Senegal of 4 June, 1975 relating to the maritime boundary between the two countries, Article 2, for text and analysis, see I.B.S., No. 85; Article IV of the Santiago Declaration on the Maritime Zone (Chile, Ecuador and Peru) of 18 August, 1952, which provides that the maritime boundaries between the States are to be constituted by the 'parallel of latitude drawn from the point of which the land frontier between the two countries reaches the sea', for text, see Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Agreements and Other Documents 1952–1966 (English Version). Lima, Peru; General Secretariat, 1967. These boundaries have been established by the States concerned, see the analysis of the U.S. Geographer in I.B.S., No. 86 Chile–Peru maritime boundary and I.B.S., No. 88 Ecuador–Peru maritime boundary.
86. See, for instance, the Colombia–Panama maritime boundary, both in the Caribbean Sea and the Pacific Ocean, Agreement of 20 November, 1976, Article 1, A.1 and B.1 which expressly indicate the use of the equidistance method. For text, see I.B.S., No. 79; the Mexico–United States territorial sea boundary in the Gulf of Mexico and the Pacific Ocean, Agreement of 23 November, 1970, Article V, A and B, which stipulate the use of the equidistance principle, but subject to 'a practical simplicication' of the line. The France–Spain territorial sea boundary in the Bay of Biscay has also been developed on the basis of equidistance and commences at the mid-point of the negotiated closing line across the Bidossa estuary. See the Convention of 29 January, 1974 and the analysis in I.B.S., No. 83, at pp. 10–11. A similar settlement in a situation having the characteristics of both opposite States and adjacent States is the India–Sri Lanka maritime boundary in the Bay of Bengal, *loc. cit.*
87. See, for instance, the Norway–Sweden international maritime boundary delimited pursuant to the Agreements of 1661, 1897, 1904 and the *Grisbadarna* Arbitration Award of 23 October, 1909; and the Finland–U.S.S.R. international boundary extending 30 miles into the Gulf of Finland, see I.B.S., No. 74, 1 February, 1967, Finland–U.S.S.R. boundary.
88. E.g. the F.R.G.–G.D.R. maritime boundary delimited by the Agreement of 29 June, 1974 as analysed by the U.S. Geographer in I.B.S., No. 74, p. 2, where the boundary coincides with the southeastern edge of a shipping route.

Annex 276

R. Jennings and A. Watts (eds), *Oppenheim's International Law, Vol. 1: Peace, Parts 2 to 4*, 9th edn, 1992

OPPENHEIM'S INTERNATIONAL LAW

NINTH EDITION

Volume I

PEACE

PARTS 2 TO 4

Edited by

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artillery about the close of the 18th century. Accordingly, at the Hague Codification Conference of 1930 the majority of states, despite the increased range of guns, still adhered to the limit of three miles;[4] though many of them made this dependent upon the recognition of a further protective contiguous zone.[5] It was because of disagreement on the extent of the maritime belt and of a contiguous zone that the Codification Conference of 1930 failed to produce a convention on territorial waters, as the territorial sea was then called.

The 1958 Geneva Conference on the Law of the Sea also failed to reach agreement on the breadth of the territorial sea; as did likewise the Second United Nations Conference on the Law of the Sea called at Geneva in 1960 for the specific purpose of attempting to agree a breadth. The years following the 1958 and 1960 Geneva Conferences saw an increasing number of states claiming, and enforcing, often without protest, territorial seas of 12 miles breadth or more; and there were also some very much larger claims, notably in South America, but also in Africa, where some territorial seas of 200 miles were established.[6]

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and a Memorandum prepared by the Royal Norwegian Committee in November 1924 and entitled *The Principal Facts concerning Norwegian Territorial Waters.* As regards Sweden, see Gihl, RI, 3rd series, 7 (1926), pp 525–54; *Till Fragan om Gransen för Sveriges Territorialvattan* (1928) (a publication of the Swedish Foreign Office); Gihl, *Gransen för Sveriges Territorialvatten* (1930); Söderqvist, *Droit international maritime suédois* (1930). See also generally on the Scandinavian claims, Kalijarvi, AJ, 26 (1932), pp 57–65. As to Iceland, with regard to fisheries, see Böhmert, ZV, 20 (1936), pp 385–433; and as regards Denmark, Norway, and Sweden, Staël-Holstein, RI, 3rd series, 5 (1924), pp 630–79, and ZV, 13 (1926), pp 321–23. As to Russian claims in the Baltic, see Schapiro, BY, 27 (1950), pp 432–80. For an extract from the minutes of the Second Committee of the Codification Conference showing the claims of the various states at that time, see AJ, 24 (1930), Suppl, pp 253–57; and the answers of various states in *Bases of Discussion*, ii, pp 22–3. As to Greenland fisheries, see Böhmert, ZV, 21 (1937), pp 18–85.

4 Among those adhering to the three-mile limit at that time were Great Britain and the British Dominions, the USA, France, Germany, Japan, Belgium, the Netherlands, China, and Poland; among the states claiming a six-mile limit were Italy, Brazil, Spain, Persia, Roumania, Turkey, and Yugoslavia. It may be helpful to reproduce here the statistical estimate made in 1953 by M Francois, the Rapporteur of the International Law Commission, on the subject of the position then prevailing with regard to the claims of various states:

(*1*) Countries following the three-mile rule either alone or in combination with a contiguous zone for customs, fiscal or sanitary control not exceeding 12 miles: Australia, Belgium, China, Denmark, Germany, India, Indonesia, Israel, Japan, Liberia, Netherlands, New Zealand, Pakistan, Poland, Union of South Africa, UK, USA.

(*2*) Countries following the four-mile rule: Finland, Iceland, Norway, Sweden.

(*3*) Countries claiming the six-mile rule: Colombia, Cuba, France (3–6 miles), Greece (10 miles for security purposes), Iran (12 miles for security purposes), Italy (12 miles for security purposes), Lebanon (20 kilometres for fishing purposes), Portugal, Saudi Arabia, Spain, Syria, Turkey (30–60 kilometres for certain purposes), Uruguay, Yugoslavia (10 miles for fishing purposes).

(*4*) Countries claiming 12 miles: Bulgaria, Ecuador, Egypt, Guatemala, Roumania, USSR.

The following states raised claims, by reference to the continental shelf, to special rights concerning navigation and/or fishing: Argentina, Chile, Costa Rica, Honduras, Iceland, Korea (South), Mexico, Nicaragua, Panama, Peru.

5 These included Germany, Belgium, France, and Poland.

6 See, on the growth of 12-mile claims, Bardonnet, RG, 66 (1962), p 34.

The 200 nautical mile claims were: Argentina, 4 January 1967; Brazil, 25 March 1970; Ecuador, 10 November 1966; Peru, 1 August 1947; El Salvador, 7 September 1950; Panama, 2 February 1967; Sierra Leone, 19 April 1971; Somalia, 10 September 1972; Uruguay, 3 December 1969; Chile, Ecuador and Peru, by a Declaration of 18 August 1952, proclaimed as a 'principle of

The great majority of states, however, claim territorial seas of 12 miles or less; and the 1982 United Nations Convention on the Law of the Sea provides in Article 3 that:

> 'Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.'

§ 197 Territorial sea boundaries Where the territorial seas of opposite or adjacent coasts of different states meet, the question may be the correct location of the international boundary between the territorial seas. Article 15 of the 1982 Convention on the Law of the Sea provides, under the rubric of 'Delimitation of the territorial sea between States with opposite or adjacent coasts', as follows:

> 'Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.'[1]

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their international maritime policy each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast'. This, however, was a precursor of the Exclusive Economic Zone, rather than a 200-mile territorial sea claim: see US State Department Bureau of Intelligence and Research, *Limits in the Seas*, No 88.

For a list of claims, still of considerable variety, see list as at 30 March 1989, in *Ocean Development and International Law*, 20 (1989), pp 100–3.

A list of territorial sea and fisheries jurisdiction claims, compiled in 1988, is at UKMIL, BY, 59 (1988), pp 519–21.

An important change from a three-mile territorial sea was enacted in the UK Territorial Sea Act 1987, which provided that 'the breadth of the territorial sea adjacent to the United Kingdom shall for all purposes be 12 nautical miles', and thus repealed the three-mile limit set by the Territorial Waters Jurisdiction Act 1878. See also UKMIL, BY, 58 (1987), p 592 for a statement in Parliament on the purposes of the Bill (the Act speaks of the territorial sea 'adjacent to the United Kingdom' and therefore did not itself affect eg the territorial sea round the Channel Islands which are not part of the United Kingdom). One immediate reason for the change was the proposed Channel Tunnel: see *Parliamentary Debates (Lords)*, vol 484, cols 381–82, 5 February 1987. See UKMIL, BY, 58 (1987), pp 592–603. See also note in ICLQ, 37 (1988), pp 412–15. For an official view of the relationship between the 1958 and 1982 conventions see UKMIL, BY, 58 (1987), p 612. For controversy about the effect of the 1987 Act upon access by European Community fishermen, see BY, 58 (1987), p 610. For later extension of the 12-mile limit to Bermuda, by the Bermuda (Territorial Sea) Order in Council 1988 (Statutory Instruments 1988 No 1838), see UKMIL, BY, 59 (1988), at p 522; and also p 523 for the Anglo-French Agreement of 2 November 1988 about territorial sea delimitation in the Straits of Dover.

[1] See also Art 12 of the 1958 Geneva Convention. The ILC 1956 draft Art 12 (YBILC (1956), ii, p 271) had employed for the territorial sea a formula similar to that used for boundaries of the continental shelf boundaries between opposite or adjacent coasts, ie agreement, but failing agreement, the equidistance/special circumstances rule. See § 325. The classical work on the median line is Kennedy, *Brief Remarks on Median Lines and Lines of Equidistance and on the Methods Used in their Construction* (1958), but now also see Beazley, *Maritime Limits and Baselines – A Guide to their Delimitation* (3rd ed, 1987).

'Special circumstances' are not defined in the convention but might presumably include, for example, the presence of islands[2] or navigable channels, or historic fishing rights. What is, however, clear beyond doubt is that the boundary is prima facie the median, or equidistant line, failing either agreement to the contrary, or the demonstration of an historic title or other special circumstances necessitating a different delimitation. There is a further consideration worthy of mention. In a strait, or other narrow waters between states whether adjacent or opposite, the adoption, by one only of the two states concerned, of a straight baseline for its territorial sea could obviously make an important difference to the location of the resultant median, or other equidistance, line. It might be for consideration, therefore, whether this could of itself sometimes constitute a special circumstance.[3]

§ 198 Navigation within the territorial sea Although the territorial sea is part of the territory of the coastal state and therefore under its territorial sovereignty, the territorial sea is nevertheless open to merchantmen of all nations for innocent navigation, cabotage excepted. And it is the common conviction that every state has by customary international law the *right* to demand that in time of peace its merchantmen may inoffensively pass through the territorial sea of every other state. This is a corollary of the freedom of the open sea.

In consequence, no state can levy tolls for the mere passage of foreign vessels through its territorial sea. Although the littoral state may spend money on the erection and maintenance of lighthouses and other facilities for safe navigation within its territorial sea, it cannot make foreign vessels merely passing pay for such outlays;[1] or, indeed, impose any requirements 'which have the practical effect of denying or impairing the right of innocent passage'. Any attempt on the part of a coastal state to prevent or to hamper innocent passage through the territorial sea in time of peace is unlawful, nor may the coastal state 'discriminate in form or in fact against the ships of any State or against ships carrying cargoes

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[2] See Evans, *Relevant Circumstances and Maritime Delimitation* (1989). On the effects of islands on territorial sea boundaries, see Bowett, *The Legal Regime of Islands in International Law* (1979), especially pp 34–44; Symmons, *The Maritime Zones of Islands in International Law* (1979); on artificial islands; Papadakis, *The International Regime of Artificial Islands* (1977); Jayewardene, *The Regime of Islands in International Law* (1990).

[3] The recognition of the need for some flexibility in the choice of basepoints of a median line, in order to satisfy equitable principles, seems to be implicit in the passage in the *English Channel Award* between France and the UK in 1977 (ILR, 54 (1977), pp 6–213): 'In narrow waters such as these, [the waters between the Channel Islands and France] strewn with islets and rocks, coastal States have a certain liberty in their choice of basepoints; and the selection of basepoints for arriving at a median line in such waters which is at once practical and equitable appears to be a matter peculiarly suitable for determination by direct negotiations between the Parties.'

[1] See Art 26 of the 1982 Convention on the Law of the Sea:

> '1. No charge may be levied upon foreign merchant ships by reason only of their passage through the territorial sea.
>
> 2. Charges may be levied upon a foreign merchant ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.'

Article 18 of the 1958 Geneva Convention is identical.

Annex 277

Zhou Jian, *International Law Case Studies on Island Sovereignty and Maritime Delimitation*, 1999

5 其他划界方法

一、纬度平行线和经线

在其他方法中最常见的是运用纬度平行线和经线。在相邻国家之间，这一方法采取一条自陆地边界入海处起画的纬度平行线或经线形式。还有一种办法是在接近海岸的部分采用等距离线，再向海延伸用纬度平行线和经线。

运用纬度平行线和经线的例子有：智利和秘鲁 1952 年 8 月 18 日《关于海洋边界的协定》；秘鲁和厄瓜多尔 1952 年 8 月 18 日《关于海洋边界的协定》；厄瓜多尔和哥伦比亚 1975 年 8 月 23 日《关于海洋边界协定》；西班牙和葡萄牙 1976 年 2 月 12 日《关于大陆架划界的协定草案》；毛里塔尼亚和摩洛哥 1976 年 4 月 14 日《关于建立正式边界的协定》；塞内加尔和冈比亚 1975 年 6 月 4 日《海上分界线协定》①。在秘鲁和厄瓜多尔 1952 年协定中，双方采用了一条纬度平行线作为边界线，此线自陆地边界终点起向西延伸，同假设的等距离线相比更偏南些。这一划界使厄瓜多尔在瓜亚基尔湾中的岛屿未能起作用。在塞内加尔和冈比亚 1975 年协定中，双方确认了冈比亚以纬度等分线将其海洋区域范围一直延伸到大西洋的公海海域。

在接近海岸的部分采用等距离线，再向海延伸用纬度平

① 国际海域划界条约集，1989 年海洋版，第 584～588 页，第 584，589 页，第 580～583 页，第 409～411 页，第 386～388 页，第 383～385 页。

行线和经线方法的例子有：哥伦比亚和巴拿马 1976 年 11 月 26 日《海上分界线协定》；肯尼亚和坦桑尼亚 1976 年 7 月 9 日《关于划定两国疆界的换文》①；坦桑尼亚和莫桑比克 1988 年协定。在肯尼亚和坦桑尼亚 1976 年换文中，双方选择以一条纬度平行线作为边界，把坦桑尼亚的奔巴（Pemba）岛留在边界线以南，未使它产生任何作用。

在相邻国家之间，运用纬度平行线和经线方法，可以避免在海岸凹陷或凸出或者在存在岛屿的区域运用等距离划界可能产生的阻断效果。在有几个国家同处在一个大陆海岸线上时，例如在南美洲的太平洋海岸或非洲的印度洋海岸，阻断现象是一个特别难以解决的问题。尽管如此，纬度平行线和经线方法实际上只限于有关海岸的一般走向大致呈南北或东西向的情况。在其他情况下，这一方法恰恰会产生它原应该避免的结果：不公平地阻断了一个或多个当事国的海洋管辖线扩展。如果某一特定的海岸沿岸国不是全都采纳这一方法，这种不理想的效果也可能产生，使一条等距离的边界线可能阻断一条按照纬度平行线和经线方法的边界线。

杰梅内兹·德·阿雷夏加法官在对南美洲海洋边界的地区实践进行概括的文章中认为，在现代国家实践中，运用纬度平行线和经线的起源，从表面上看，不能被解释为是致力于克服由等距离方法可能造成的不公平效果："在 1952 年，发表三方声明的当事国（智利，秘鲁和厄瓜多尔）通过提出 200 海里海洋权主张，在海洋法中开创了一个新领域。当时由于没有众所周知的划界原则或被接受的划界规则，它们选择了由陆地边界入海处起画的纬度平行线方法。这一方法对于它们支持

① 国际海域划界条约集，1989 年海洋版，第 532～534 页，第 377～380 页。

主张海洋权的基础而言是当然的逻辑，名义上说即它们陆地边界和陆地领土向毗邻的海域直接的、直线的延伸。”①

二、“飞地”方法

另一项既可以独立运用又可以结合其他诸如等距离等方法一起运用的方法是赋予岛屿以“飞地”的处理方法，即自岛屿有关突出的点起画一条由一系列圆弧构成的边界线并以此赋予一个岛屿以一定的海域。这一方法一成不变的结果是，相对将有关岛屿作为基点适用等距离方法而言，对岛屿拥有主权的国家因对有关“岛屿”已作“飞地”处理，所获得的海域要相应减少。

运用“飞地”方法可以产生完全飞地或半飞地。完全飞地是指，赋予岛屿的一定海域同对岛屿拥有主权的国家以陆地海岸为基础的管辖海域完全分离，它处在等距离边界线另一侧，更靠近另一国家的陆地海岸，在后者的管辖海域包围之中。半飞地是指，岛屿更接近对岛屿拥有主权的国家的陆地海岸，因此，赋予岛屿的一定海域同对该国以陆地海岸为基础的管辖海域是相连的。半飞地的效果是在岛屿位置在等距离线上或者接近等距离线时产生的。

尽管在原则上飞地的宽度不限，但实践中，它们一般为距离有关岛屿 3 至 12 海里不等，以代表领海宽度，也有的给予 13 海里，允许岛屿在领海之外有象征性的专属经济区和大陆架。

完全飞地的例子如下：(1)澳大利亚和巴布亚新几内亚

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① E. Jimenea de Arechaga, South American Maritime Boundaries, in Charney & Alexander, International Maritime Boundaries, p. 285～292.

[…]

Other Delimitation Methods

1. Parallels of Latitude

[…]

Examples in which the method of the parallel of latitude is applied: the "Convention on the Maritime Boundary" between Chile and Peru of 18 August 1952 and the "Convention on the Maritime Boundary" between Peru and Ecuador of 18 August 1952.

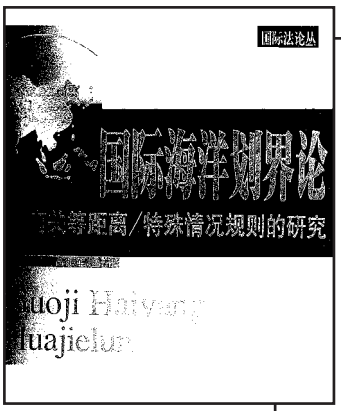
[…]

In an article summarizing the regional practice in South America relating to maritime boundaries, Judge Jiménez de Aréchaga is of the opinion that in modern national practices, the use of parallels of latitude as delimitation lines cannot be construed as a commitment to overcome the unfair consequences that may be caused by the equidistant line. "In 1952, the countries involved in making the Tripartite Declaration (Chile, Peru and Ecuador) created a new chapter in maritime law by claiming the 200-nautical mile territorial sea rights. Due to the lack of well-known delimitation principles or recognised delimitation rules at that time, they chose the method of the parallel of latitude, which involves tracing a line from the point at which the land frontier meets the sea…"

[…]

Annex 278

Gao Jianjun, *International Maritime Delimitation Study – Study on the Rule of Equidistance/Special Circumstances*, 2005



个，占总量的0.05%。包括1977年科特迪瓦、1981年多米尼加、[1] 1983年美国[2]，以及1998年中国。

就1982年以后制定的34个专属经济区立法而言，17个提及等距离，其中14个沿袭了《大陆架公约》第6条的模式；罗马尼亚等8国立法反映了《海洋法公约》在划界问题上的规定；而只有美国和中国的立法提及公平原则。

2.2.3 专属经济区和渔区划界协定

第一个划分专属经济区边界的条约应当是1952年智利、厄瓜多尔和秘鲁三个相邻的南美国家所发表的《圣地亚哥宣言》。[3] 然而，根据该宣言的规定，三国划分的是彼此间的200海里领海边界，而非专属经济区边界。[4] 直到20年后的1972年才出现第二例划分专属经济区边界的个案，但根据该条约，巴西和乌拉圭当时划分的仍然是它们主张的200海里领海边界。[5] 根据两国1969年发表的联合宣言，划界是基于等距离原则实现的，而作为界线的方位线大致垂直于海岸一般方向。[6] 一年后，阿根廷和乌拉圭虽然宣称划分他们之间的"侧向海洋边界和大陆架边界"，但两国当时都主张200海里领海。界线是一条从两国间拉普拉塔河(River Plate)封口线中心点开始的等距离线。[6]1974年印度和斯里兰卡决定"以对双方公正与公平的方式"划分保克湾(Palk Bay)和保克海峡(Palk Strait)内的历史性水域。结果是一条调整的中间线，所有6个点的位置与真正等距离点的偏差都不超过0.7

① Territorial Sea, Contiguous Zone, Exclusive Economic and Fishery Zones Act of 25 Aug. 1981. 第11条规定，划界应"在公平原则的基础上同有关国家进行谈判，以便达成友好协议"。

② Proclamation 5030, 10/3/1983, by the President of the USA. "专属经济区的边界应由美国和有关国家根据公平原则加以确定"。

③ 然而，在其2001年1月9日写给联合国秘书长的照会中，秘鲁认为他同智利"尚未缔结专门的海洋划界条约"，并主张同智利就此展开谈判。

④ 由于200海里的领海主张没有获得多数国家的承认，因此本书将国家间划分200海里领海的划界都视为专属经济区划界。

⑤ 1972年7月21日《巴西和乌拉圭关于订立最终确定朱伊河河岸和侧向海洋边界的协定的换文》，1975年6月12日生效。"两国之间的海上侧向分界线将沿着128/60度的倾斜(从正北开始计算)伸展到两国领海的外界"。乌拉圭1969年12月3日，巴西1970年3月25日主张200海里领海。1 International Maritime Boundaries (Martinus Nijihoff Pub. 1993), p. 785.

⑥ 1973年11月19日《乌拉圭和阿根廷关于划定拉普拉塔河及其两国间海洋边界的条约》，1974年2月12日生效。第70条。阿根廷1967年1月19日主张200海里领海。1 International Maritime Boundaries (Martinus Nijihoff Pub. 1993), p. 757.

[...]

2.2.3 Convention on the delimitation of the exclusive economic zone and fishing area

The first treaty that delimited the exclusive economic zone was the Santiago Declaration of 1952 concluded by three neighbouring South American countries, i.e. Chile, Ecuador and Peru.

[...]

的影响——两国有关的海岸线长度分别为 73 和 163 海里。[②]1997 年土耳其和格鲁吉亚的划界主要是为了确认土耳其和前苏联在黑海划定的海洋边界，而并未产生新的边界。[③]

2000 年中国/越南在北部湾的划界是否采用了某种等距离线则不清楚。[④]该协定共包括 11 个条款：第 1 条确定了双方的划界根据和范围；第 2 条至第 5 条确定了一条包括 21 个转折点和端点的长约 500 公里的领海、专属经济区和大陆架界线；第 6 条和第 9 条重申了双方有关海洋法的立场；第 7 条规定了双方合作开发跨界单一地质构造的石油、天然气等矿藏的原则；第 8 条规定了双方对北部湾生物资源的养护、管理和利用等事项的合作原则；第 10 条规定了争端解决程序；第 11 条规定了协定的生效程序。按照协定第 1 条的规定，双方是"根据一九八二年《联合国海洋法公约》，公认的国际法各项原则和国际实践，在充分考虑北部湾所有有关情况的基础上，按照公平原则"完成的划界。就划界结果而言，双方获得的海域面积大体相当。[⑤]

相邻划界有 21 例，其中 9 例采用等距离线或调整等距离线为界[⑤]；2 例部分使用等距离线；2 例使用方位角线；5 例使用经纬线为界。[⑥]1988 年莫桑比克和坦桑尼亚同时划分内水、领海和专属经济区边界。内水、领海以及点 C-D 之间的经济区边界为等距离线，此后，界线基于公平原则，沿点 D 所在纬线前进。[⑥]5 例使用纬线或经线的划界包括 1952 年《圣地亚哥宣言》[⑦]1975 年塞内加尔/冈比亚、1975 年哥伦比亚/厄瓜多尔、1984 年智利/阿根廷、2000 年也门/沙特。同等距离线相比，纬线使 1952 年秘鲁和 1975 年厄瓜多

① 1996 年 8 月 2 日《大不列颠及北爱尔兰联合王国政府和多米尼加共和国政府关于划分多米尼加共和国和特克斯和凯科斯群岛海洋边界的协定》。3 International Maritime Boundaries (Martinus Nijhoff Pub. 1998), pp. 2235, 2239.

② 1997 年 7 月 14 日《土耳其共和国政府和格鲁吉亚政府关于确认两国间在黑海的海洋边界的议定书》，1999 年 9 月 22 日生效。

③ 2000 年 12 月 25 日《中华人民共和国和越南社会主义共和国关于在北部湾领海、专属经济区和大陆架的划界协定》，2004 年 6 月 30 日生效。

④ 《王毅谈中越北部湾划界协定和渔业合作协定生效》，载于 http://news.sohu.com/2004/06/30/36/news220793672.shtml.《中越划定北部湾边界，领土海域争议只剩下南海》，载于 http://mil.fjii.com/2004-07-01/12739.htm.

⑤ 其中 6 例采用等距离线，包括 1973 年阿根廷/乌拉圭、1976 年斯里兰卡/印度（补充协定）、1980 年巴布亚新几内亚/印度尼西亚、1980 年缅甸/泰国、1985 年前苏联/波兰、1997 年土耳其/保加利亚。3 例采用调整的等距离线，包括 1980 年哥斯达黎加/巴拿马、1986 年朝鲜/前苏联、1996 年荷兰/比利时。

⑥ 1988 年 12 月 28 日《坦桑尼亚联合共和国政府和莫桑比克人民共和国政府关于两国间边界的协定》。第 4 条。1 International Maritime Boundaries (Martinus Nijhoff Pub. 1993), pp. 893—894.

There are in total 21 cases of adjacent delimitation. In 9 of these cases the equidistant line or adjusted equidistant line is used as a boundary; the equidistant line is partially used in 2 cases; the azimuth line is used in 2 cases; and the parallel or meridian method is used in 5 cases.

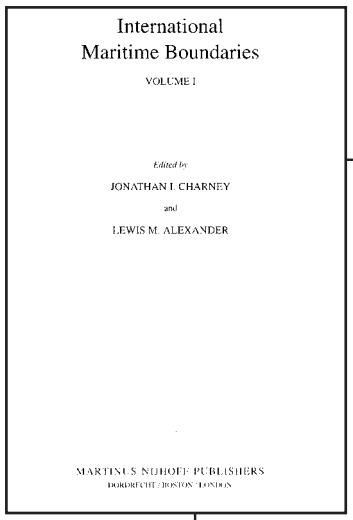
[…]

The 5 cases in which the parallel or meridian is used for delimitation include, *inter alia*, the 1952 Santiago Declaration.

[…]

Annex 279

E. Jiménez de Aréchaga, "South American Maritime Boundaries", in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries, Vol. I*, 1993, p. 285



REGION III

South American Maritime Boundaries

EDUARDO JIMÉNEZ DE ARÉCHAGA

There is a striking difference between the South American maritime delimitations in the Pacific Ocean and those in the Atlantic. The maritime delimitations in the Pacific, between Chile and Peru (1952, No. 3 –5) and Peru with Ecuador (1952, No. 3 –9), followed the method of fixing the boundary by a parallel of latitude drawn from the point where the land frontier between the respective countries reached the sea. This method of delimitation by a parallel was adopted in a tripartite joint declaration issued by the three above-mentioned states on 18 August 1952. This was six years before the 1958 United Nations Conference on the Law of the Sea proposed the equidistant line as the general rule for the delimitation of adjacent coasts, in the absence of special circumstances. Colombia adhered later, in 1979, to the tripartite declaration of 1952 and consequently accepted, in respect to its coast in the Pacific, the same method of delimitation by parallel in its treaty with Ecuador (1975, No. 3–7).

These three delimitation treaties in the Pacific have another common feature. They establish, beyond 12 miles from the coast, a special maritime frontier zone, 10 miles in width, on each side of the line, for the purpose of insuring that the accidental presence of local fishermen of the other country would not be considered a violation of the boundary.

On the other hand, the South American maritime delimitation treaties in the Atlantic Ocean, between Argentina and Uruguay (1973, No. 3–2), Uruguay and Brazil (1972, No. 3–4) and Brazil with France (French Guiana) (1981, No. 3–3), all concluded after the 1958 Conference, follow the method of equidistance. The Argentina–Uruguay maritime boundary is the equidistant line, determined by the adjacent coasts. The France–Brazil delimitation fixes a boundary closely approaching the equidistant line and effecting an exchange of areas of approximate equivalence. In the treaty between Brazil and Uruguay, the parties adopted a line nearly perpendicular to the general direction of the coasts. It achieved substantially the same result as the equidistant line which had been originally agreed to in a joint declaration. In none of these delimitations were there special circumstances justifying a departure from the equidistant line based upon the geography of these areas.

The reason for the fundamental difference in the methods employed between the Atlantic and Pacific delimitations is easy to explain. In 1952 the states

J.I. Charney and L.M. Alexander (eds), International Maritime Boundaries, 285–292.

that were party to the tripartite declaration were opening entirely new ground in the Law of the Sea by making their 200-nautical mile (n.m.) claims. In the absence at that time of known principles or agreed rules of delimitations, they chose the method of the parallel of latitude drawn from the point where the land frontier reaches the sea. Such a method would seem to be the logical corollary of the fundamental ground invoked in support of their maritime claims, namely, the direct and linear projection of their land boundaries and land territories into the adjacent seas. Also, the fact that the South American countries in the Pacific have no physical continental shelf in the geological sense, or a very narrow one, may have encouraged the adoption of a solution as the one agreed.

The South American states in the Atlantic, on their part, concluded their treaties after the 1958 Conference on the Law of the Sea and had in mind, when negotiating their delimitations, Article 12 of the 1958 Convention on the Territorial Sea, which provides for delimitation on the basis of equidistance. Even if they were not parties to that Convention, the said Article provided guidance for an equitable delimitation, by means of equidistance or the median line in the absence of special circumstances. And these special circumstances were not deemed to exist in the area. Consequently, they adopted the method of the equidistant line between adjacent coasts, with certain minor adjustments to balance the areas attributed to each party, thus fixing a simplified equidistant line so that each state gives or takes an equal area either side of the strict equidistant line. The above legal considerations appear to have been paramount in determining the difference between the maritime delimitations in the Pacific and in the Atlantic.

A confirmation of the preceding explanation results from a joint declaration issued on 10 May 1969 by Brazil and Uruguay, agreeing to utilize the equidistant line (No. 3–4). This declaration invoked in support of the method of equidistance 'the precedents established by international doctrines and practices, multilateral conventions, and particularly Article 12 of the Geneva Convention on the Territorial Sea and Contiguous Zone for the purpose of determining the lateral border between maritime jurisdictions of neighbouring countries.'

The preceding joint declaration might have been intended to express the strong view of both parties that in the still pending delimitation between Argentina and Uruguay, the method of the parallel, adopted in the Pacific Ocean, should not be applied since it would reduce inequitably the maritime area belonging to Uruguay. It is understood that originally the Argentine authorities preferred to establish the delimitation line by means of a parallel from the midpoint of the closing line of the River Plate, thus adopting the method followed in the Pacific Ocean South American maritime delimitations. That method would have reduced considerably the area corresponding to Uruguay (see 1973, No. 3–2).

It should be pointed out at this stage, that all the six delimitations referred to in the preceding paragraphs concern adjacent coasts.

The maritime delimitation between Argentina and Chile (1984, No. 3–1) is a special case because it deals with an area where the Atlantic and the Pacific meet, and communicate through the Straits of Magellan. It comprises the Sea of the Southern Region (Mar de la Zona Austral) and the eastern extremity of the Straits of Magellan. The majority of the points in this delimitation keep no relation to any consideration of equidistance. The line in the Sea of the Southern Region is established by joining points determined by coordinates designed to recognize the jurisdiction of each state with respect to various islands in the area belonging to one or the other country. After joining certain points so defined, the line continues towards the south along certain meridians and parallels. The maritime areas of Argentina and Chile extend respectively to the east and to the west of the boundary line so determined. The Antarctic claims of both countries remain unaffected under Article 15 of the treaty, and played no role in the delimitation. Likewise, the so called bi-oceanic principle did not influence the delimitation.

In this case, as it is well known, the complicated geography of the area led to an acute dispute which could only be resolved as a result of the mediation of the Pope. The treaty complements the Beagle Channel arbitration award by starting the maritime boundary from the termination of the delimitation established by this award and projecting the maritime extension of certain islands which were awarded to Chile in such a way as to avoid a major cut-off of the Argentina maritime extensions in the Atlantic Ocean.

The remaining two treaties, both involving a Central American state, were concluded by Costa Rica with Ecuador (1985, No. 3–8) and with Colombia (1984, No. 3–6). These treaties are *sui generis* since they involve countries which do not have a common land frontier. Obviously, their coasts are not adjacent. These two delimitations were required by the existence of the islands of El Coco and Dos Amigos, off the coasts of Costa Rica. These islands are opposite to the archipelago of Colon (province of Galapagos) belonging to Ecuador. They also face a part of the mainland coast of Colombia in the Pacific Ocean. In both cases the boundary was established by a line of equidistance between the two countries in the area where their respective 200-n.m. claims overlap. The Costa Rica–Ecuador treaty also provides for a 10-n.m. wide special frontier zone similar to the one established by the tripartite declaration of 1952 discussed above.

The nine South American maritime delimitation treaties establish single boundary lines applicable to the continental shelves, exclusive economic zones, and fishery zones. These all-purpose delimitation lines result from the fact that the maritime claims made by the South American states comprised the area of sea adjacent to their coasts as well as the floor and subsoil thereof.

It may be asked whether the individual considerations other than geography, specially studied in this project, influenced the agreements to delimit the maritime boundaries in South America. The answer must be largely negative. Only rarely were some of those considerations taken into account to influence the establishment of the boundary.

The South American states envisaged their maritime delimitations as negotiations between equals, designed to determine the geographical scope of their respective territorial sovereignties. Consequently, there was no room for trade-offs, nor for attributing any influence to political or strategic considerations, so as to modify the line resulting from the application of the method of delimitation which had been agreed. On the other hand, politics played a major role in the 200-mile claims. Since the countries in the Pacific decided to make these claims they had to come up with the boundary lines quickly, without protracted negotiations. The choice of the parallel satisfied that political requirement.

Economic considerations were at the basis of the maritime claims made by the South American countries and such considerations were extensively invoked in the various decrees, declarations, and treaties as the main reason for the extension of sovereignty over adjacent maritime areas up to 200 n.m. However, these economic considerations did not influence the method of delimitation adopted, nor the delimitation line itself.

Only one South American treaty, that between Argentina and Uruguay (1973, No. 3–2), contemplates the possibility of exploitation of a bed or deposit extending on either side of the line. In such a case, the bed or deposit is to be exploited in such a way that the distribution of the volume of the resources extracted should be proportional to the volume of the resources located on each side of the line. The same treaty between Argentina and Uruguay establishes a common fishing zone for both parties beyond the agreed boundary. This common fishing zone is based on the fact that during the summer months the main species of fish used for commercial exploitation move towards the south to seek cooler waters.

Rocks, reefs, and low-tide elevations did not influence the delimitation lines and these features are clearly irrelevant when the method adopted is that of a parallel. Islands were taken into consideration in the Costa Rican delimitations of the opposite boundaries with Ecuador (1985, No. 3–8) and Colombia (1984, No. 3–6) and were attributed full effect. Isla de Lobos in the coast of Uruguay was taken as a basepoint for the line of equidistance in the treaty with Argentina projecting that line in favor of Argentina (1973, No. 3–2). In the Argentina–Chile treaty, certain islands in the area were taken into account as basepoints, but the parties agreed that, in their mutual relations, the legal effect of the territorial sea shall be restricted to 3 n.m. (1984, No. 3–1). But each party may invoke the maximum breadth of territorial sea allowed by international law in regard to third party states. This signifies that the parties enjoy the high seas freedom of navigation beyond three miles from the islands while third states only enjoy that freedom beyond 12 miles.

Baselines influenced certain delimitations. The maritime delimitation between Argentina and Uruguay started at the midpoint of the straight baseline, 118 n.m. long, drawn in the mouth of the River Plate by agreement between both riparian countries (1973, No. 3–2). This baseline has been the object of reservations by certain maritime powers but the riparian countries maintain

the legitimacy of this baseline, on the grounds that the River Plate has fluvial characteristics. Also, in the France (French Guiana)–Brazil delimitation, the starting point of the line was established at the intersection of the boundary in the Bay of Ciapock and the outer limit of the bay (1981, No. 3–3). This signifies that a closing line was established at the mouth of the binational Bay of Ciapock by agreement of both parties. In the treaty between Chile and Argentina, straight baselines which had been established by Chile were recognized by Argentina (1984, No. 3–1). This country, thus, withdrew the objections it had made earlier with respect to the Chilean baselines. A system of straight baselines was used by Ecuador in its treaty with Costa Rica (1985, No. 3–8). Baselines were drawn by Ecuador between the extreme north of Genovesa and Pinta Island and the extreme east of Darwin Island in the Colon archipelago (province of Galapagos).

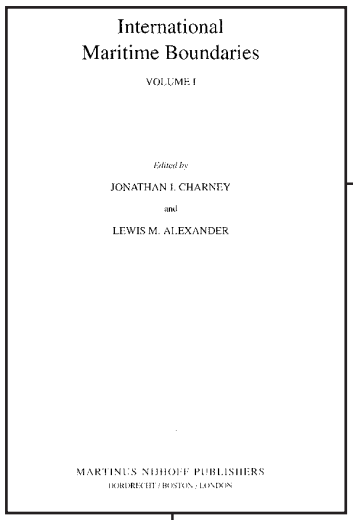
The South American countries in the Pacific have no physical continental shelf in the geomorphological or geological sense, or have only a very narrow one, owing to the fact that the sea reaches oceanic depths at a very short distance from the shore. In the South Atlantic the situation is completely different. In front of the coasts of Argentina, and also those of Uruguay, there is a broad shelf, extending to the outer edge of the continental margin which continues beyond 200 miles in certain areas. There is the possibility that para. 4 of Article 76 of the Law of the Sea Convention may be applicable in some of those areas. This is the reason why the Argentina–Uruguay delimitation treaty does not state that the rights of the parties end at 200 miles from the baselines (1973, No. 3–2).

It does not, however, appear that any other geological or geomorphological considerations, or any distinct seabed features, have had any influence on the maritime boundaries drawn between the South American countries. However, the boundary in the treaty between Argentina and Chile was drawn in a manner such that the geological continental shelf appurtenant to the Chilean islands in the area would remain under Chilean jurisdiction, thereby assigning greater weight to the continental shelf criteria over that of the exclusive economic zone in the compromise formula attained (1984, No. 3–1).

Only two of the agreements, those between Argentina and Chile (1973, No. 3–2) and between Argentina and Uruguay (1984, No. 3–1) contain compulsory provisions for dispute settlement. The Argentina–Uruguay treaty provides for conciliation and eventually unilateral recourse to the International Court of Justice. The Argentina–Chile treaty provides for conciliation and arbitration procedures in an annex containing 41 articles. While these two treaties establish an obligation to submit to judicial settlement or to arbitration, respectively, the Brazil–France (Frence Guiana) treaty (1981, No. 3–3) creates no such obligation, stating simply that all disagreements that could occur between the parties on the interpretation or application of the treaty will be resolved by peaceful means recognized by international law.

Annex 280

E. Jiménez de Aréchaga, "Chile-Peru", in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries, Vol. I*, 1993, p. 793



Chile–Peru

Report Number 3–5

Agreement between the Government of Chile and the Government of Peru Relating to the Maritime Boundary between Chile and Peru

Signed: 18 August 1952

Entered into force: 23 September 1954

Published at: Limits in the Seas No. 86 (1979)
I Canadian Annex 69 (1983)
II Libyan Annex No. 2 (1983)
II Conforti & Francalanci 199 (1987)

I SUMMARY

In a tripartite joint declaration issued on 18 August 1952 by Chile, Peru, and Ecuador it was declared that the general maritime zone of their countries shall be bounded by the parallel of latitude drawn from the point where the land frontier between the respective countries reaches the sea (Article IV).

This delimitation line divides both the area of sea adjacent to the coasts of these countries and the sea floor and subsoil thereof (Articles II and III). It is an all-purpose delimitation line, extending not less than 200 nautical miles (n.m.) from the coast (Article II).

There is some ambiguity in the wording of Article IV of the declaration which provides for the maritime zone of an island or group of islands. That the maritime boundary is, in fact, constituted by a parallel of latitude from the mainland was confirmed by the parties in an agreement signed on 4 December 1954. The first article of that agreement refers to the parallel which constitutes the maritime boundary between the two countries.

The coasts of Chile and Peru are adjacent.

J.I. Charney and L.M. Alexander (eds), International Maritime Boundaries, 793–800.

II CONSIDERATIONS

1 *Political, Strategic, and Historical Considerations*

On 18 August 1952, Chile, Ecuador, and Peru issued at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, the Joint Declaration on the Maritime Zone in which they proclaimed that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 n.m. from their coasts (Article II). The declaration added that their claim included their sole jurisdiction and sovereignty over the sea floor and subsoil thereof.

The adoption of the method of parallels for purposes of delimitation may be explained by the fact that in 1952 the states that were parties to the tripartite declaration opened entirely new ground in the Law of the Sea by claiming a 200-mile territorial sea. In the absence of known principles or agreed rules of delimitation, they chose the method of the parallel of latitude drawn from the point where the land frontier reaches the sea. Such a method would seem to be the logical corollary to the fundamental argument invoked in support of their maritime claims, namely, the direct and linear projection of their land territories and land boundaries into the adjacent seas.

2 *Legal Regime Considerations*

The parties to the joint declaration made it clear that the claim was not to be construed as disregarding the necessary limitations on the exercise of sovereignty and jurisdiction required by international law in order to permit the innocent and inoffensive passage of vessels of all nations through the zone.

The declaration and the previous claims both by Chile and Peru were the objects of protests and reservations from several countries, in particular the great maritime powers.

Prior to 1952, on 23 June 1947, Chile claimed a national maritime zone for the purpose of resource exploitation, not affecting its long-standing claim to a 3-n.m. territorial sea. On 1 August 1947 Peru declared national sovereignty and jurisdiction over the continental shelf and adjacent sea (Presidential Decree No. 781). In 1965 Peru implemented a law creating a 200-n.m. territorial sea. The boundary agreement makes no provision for changes in the legal character of the waters being delimited.

Today, in the light of the developments in the law of the sea, the line may be considered an all-purpose delimitation line, dividing both the exclusive economic zone and the continental shelf. There are no provisions for dispute settlement nor for cooperation in the event of discovery of joint resource deposits.

Complementing the maritime delimitation based on a parallel of latitude,

the parties have established a special maritime frontier zone. On 4 December 1954, Chile, Ecuador, and Peru issued a second tripartite declaration creating a special maritime frontier zone of 10-n.m. breadth on each side of the parallel of latitude forming the maritime boundary between their respective states. The zone commences 12 n.m. from the coast of each state. The purpose of the zone is to avoid inadvertent violations of the maritime boundaries by national fishermen.

Within 12 n.m. from the coast, however, no buffer zone has been created, and fishing and hunting are reserved exclusively for the nationals of each state on their respective sides of the boundary. Both Chile and Peru have ratified the agreement.

The outer limits of the special maritime frontier zone are not clearly defined because of the coastal configuration at the boundary. The Peruvian 200-mile wide zone extends approximately 160 n.m. farther seaward than the western end of the Chilean zone.

3 *Economic and Environmental Considerations*

The tripartite declaration bases the maritime claims on the argument that the former extent of the territorial sea and the contiguous zone is insufficient to permit the conservation, development, and use of the resources of the marine fauna to which the coastal countries are entitled. The declaration also asserts that it is necessary to prevent these resources from being used outside the area so as to endanger their existence, integrity, and conservation to the prejudice of people so geographically situated that their seas serve as irreplaceable sources of essential food and economically important materials. While these considerations explain and support the maritime claims advanced, they had no influence on the method of delimitation or on the boundary line adopted by the parties.

4 *Geographic Considerations*

The boundary established in this case differs substantially from a hypothetical equidistant line, as may be clearly seen from the attached map. By reason of the configuration of the coast, which follows a course towards the northwest, north of the land frontier, the maritime area of Peru established by this agreement is much smaller than the one which would have resulted from an equidistant line. For this reason, a book published by a Peruvian expert, Admiral Guillermo Faura, suggests that the delimitation by a parallel is unfair to Peru and is not applicable to its continental shelf, which should extend 200 n.m. from the Peruvian coast.[1]

Although according to the 1952 Declaration the maritime zone of each

[1] G. S. Faura Gaig, El Mar Peruano y sus Limites, 181 and 195 (1977).

state is to be bounded by the specific parallel of latitude on which the seaward terminus of the land territory is situated, the agreed upon parallel is actually located slightly to the north of the land boundary terminus.

The seaward limit of the maritime boundary is not clearly defined in the declaration but, in view of the claim to 200 n.m., it must be considered as extending 200 n.m. from each coast. Owing to coastal configurations, the Peruvian segment of the boundary extends further seaward than the Chilean segment. The Peruvian coast follows a northwest–southeast direction, as opposed to the north–south direction of the Chilean coast. Point C on the accompanying map is situated 200 n.m. from Chile (i.e., from the land boundary terminus that is the nearest point on the Chilean coast). However, this point is approximately 120 n.m. from the nearest point on Peru's coast. The point on this parallel of latitude 200 n.m. from Peru (i.e., from Punta San Juan) is not reached until Point P, which is more than 360 n.m. from the land boundary terminus.

5 *Islands, Rocks, Reefs, and Low-Tide Elevations Considerations*

Both coasts are relatively free from any marked promontories or other irregular features. No islands appear to have been involved in the particular delimitation.

6 *Baseline Considerations*

This is a boundary drawn between states with adjacent coasts based on a parallel of latitude. No straight baselines or closing lines drawn across mouths of rivers were taken into account.

7 *Geological and Geomorpholgical Considerations*

The seabed in the vicinity of the Chile–Peru maritime boundary plunges rapidly to depths in excess of 6000 meters (m), in the Peru–Chile trench which parallels the west coast of South America in this area. Areas of less than 100 fathoms are virtually non-existent along this portion of the South American coast. There do not, however, appear to be any marked troughs or other features which might have influenced the boundary.

8 *Method of Delimitation Considerations*

The method used to delimit the boundary line was to fix that line along the parallel of latitude drawn from the point at which the land frontier between the two countries reaches the sea. The relationship of the coasts of the states in the boundary area is one of adjacency. The line is not based on the equidistance method, as may be seen from the accompanying map.

9 *Technical Considerations*

The maritime boundary extends along the 18° 23′ 03″ S parallel, which coincides with the parallel of latitude on which the Peru–Chile land boundary marker No. 1 has been placed. Marker No. 1 lies a short distance to the north-east of the Chile–Peru coastal boundary point. In 1969 the Joint Chilean Peruvian Boundary Commission established two land alignment towers to help mariners establish their position with respect to the maritime boundary. Both towers have been placed on the 18° 23′ 03″ S parallel of latitude. One tower has been placed 6 m west of marker No. 1, in Peruvian territory, while the other tower has been placed 1.843 m east of marker No. 1, in Chilean territory.

10 *Other Considerations*

None.

IV RELATED LAW IN FORCE

A *Law of the Sea Conventions*

B *Maritime Jurisdiction Claimed at the Time of Signature*

Chile: 3-mile territorial sea, 200-mile exclusive sovereignty zone
Peru: 200-mile territorial sea

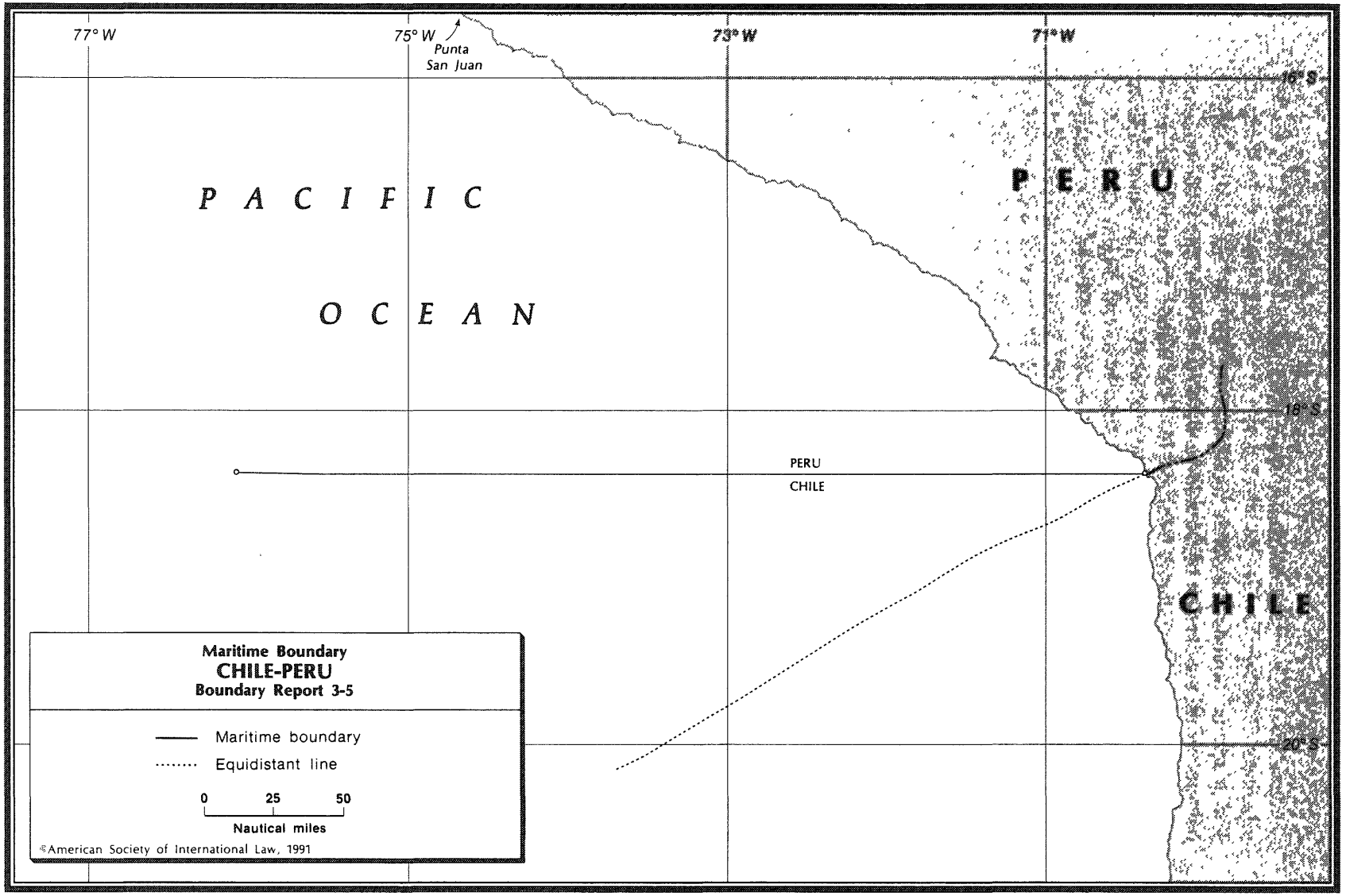
C *Maritime Jurisdiction Claimed Subsequent to Signature*

Chile: 12-mile territorial sea

REFERENCES AND ADDITIONAL READINGS

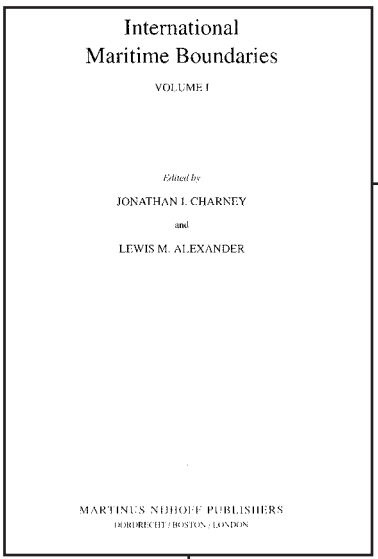
E. F. Costa, *Los Intereses Maritimos del Perú y los Países del Pacífico Sur*, in RELACIONES DEL PERU CON LOS PAISES VERCINOS, Centro Peruano de Estudios Internacionales at 167
G. S. Faura Gaig, EL MAR PERUANO Y SUS LIMITES, (1977)
US Department of State, LIMITS IN THE SEAS No. 86 (1979)

Prepared by Eduardo Jiménez de Aréchaga


77° W
75° W
Punta
San Juan
73° W
71° W
16° S
18° S
20° S
PACIFIC
OCEAN
PERU
PERU
CHILE
CHILE
Maritime Boundary
CHILE-PERU
Boundary Report 3-5
Maritime boundary
Equidistant line
0
25
50
Nautical miles
©American Society of International Law, 1991

Annex 281

E. Jiménez de Aréchaga, "Colombia-Ecuador", in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries, Vol. I*, 1993, p. 809



Colombia–Ecuador

Report Number 3–7

Agreement between the Government of Colombia and the Government of Ecuador Relating to the Maritime Boundary between Colombia and Ecuador

Signed: 23 August 1975

Entered into force: 22 December 1975

Published at: Limits in the Seas No. 69 (1976)
Maritime Boundary Agreements (1970–84) 254 (1987)
I Canadian Annex 381 (1983)
II Libyan Annex No. 44 (1983)
II Conforti & Francalanci 195 (1987)

I SUMMARY

In this agreement the parties determined the maritime boundary between their respective marine and submarine areas which are now established or that may be established in the future. The line that was adopted is the geographical parallel intersecting that point at which the international terrestrial border line between Ecuador and Colombia reaches the sea (Article 1).

It is a single all-purpose delimitation line, applicable today to Ecuador's mainland coast and to Colombia's Pacific Ocean coast, and applicable both to the exclusive economic zone and the continental shelf, although it does not refer specifically to these areas and zones. This line of delimitation extends seaward to 200 nautical miles (n.m.) from the coast of each party (Article 3). Colombia and Ecuador have adjacent coasts.

II CONSIDERATIONS

1 *Political, Strategic, and Historical Considerations*

This agreement adopts the method of delimitation which had been agreed

J.I. Charney and L.M. Alexander (eds), International Maritime Boundaries, 809–817.

upon by three South American countries with coasts on the Pacific Ocean, Chile, Peru, and Ecuador, in their tripartite Joint Declaration of 18 August 1952. Although Colombia was not an original party to that declaration, it adhered to it in 1979 and, with respect to its Pacific Ocean coast, agreed to follow the same method of fixing the boundary on a parallel of latitude drawn from the point at which the land frontier between the two countries reaches the sea. One of the reasons why Colombia accepted the method of the parallel of latitude and adhered to the tripartite declaration may be that through the use of this method it gained a larger maritime area than it would have acquired from an equidistant line.

2 *Legal Regime Considerations*

Article 3 of the agreement provides for the recognition of procedures used by each country for the exercise of its sovereignty, jurisdiction, or supervision in the marine and submarine areas which are adjacent to its coast as far as 200 n.m. The article refers both to the procedures used by each state at present, and those that may be used in the future.

Ecuador claimed on 11 November 1966 a 200-n.m. territorial sea (Decree Law No. 1542) while Colombia, a party to the 1958 Convention on the Continental Shelf, claims a 12-n.m. territorial sea. On the official map attached to the agreement, the zone between the outer limit of Colombia's territorial sea and its 200-n.m. limit is shaded and labeled 'continental shelf or special jurisdiction zone to be established by Colombia.' On 4 August 1978 Colombia claimed a 200-n.m. exclusive economic zone. On 9 August 1979 Colombia adhered to 'the principles and fundamental rules of the Santiago Declaration issued by Chile, Peru and Ecuador on 18 August 1952.' These principles and rules include a claim to a 200-n.m. territorial sea in the Pacific.

Today, in the light of the developments in the law of the sea, the line may be considered an all-purpose delimitation line, dividing both the exclusive economic zone and the continental shelf. There are no provisions in the agreement for dispute settlement or for cooperation in the event of joint resource deposits discoveries.

To complement the agreement the parties established a fishing 'buffer zone,' 10 n.m. wide on either side of the parallel which is the maritime boundary between the two countries. The purpose of this zone is to insure that the accidental presence of local fishermen of either country on the wrong side of the boundary should not be considered a violation of the marine boundary and give rise to a conflict between the parties. It is not a recognition of any right to engage in fishing or hunting activities within the special zone on the wrong side of the boundary line. This corresponds to the similar frontier zone established in the Chile–Peru and Peru–Ecuador delimitations (Nos. 3–5 and 3–9).

The agreement is not entirely clear with regard to the landward terminus of this zone. The treaty states that the zone is to be established beyond

12 n.m., measured 'from the coast.' On the attached map, Point B is located on the boundary 12 n.m. seaward from the boundary starting point A. If Point A is to be interpreted to mean 'the coast,' then the area within the dashed lines on the attached map should also be considered the 'buffer zone.' If, however, 'the coast' means the closest territory of each country, then the 'buffer zone' begins at two different places along the boundary. Under both of these interpretations, part of the Ecuador 'buffer zone' is landward of its straight baseline and is in an area claimed as Ecuadoran internal waters.

3 *Economic and Environmental Considerations*

In the agreement the parties refer to the need to take adequate measures for the preservation, conservation, and rational utilization of the resources existing in their marine and submarine areas. They also refer to their duty to insure for their peoples the necessary conditions for subsistence; and to provide them with the means for their economic development, for which reason they are entitled to use for their benefit the resources owned by them and to prevent their depredatory exploitation. While these considerations explain and support the maritime claims advanced, they had no influence on the method of delimitation or on the location of the boundary line adopted by the parties.

4 *Geographic Considerations*

The coasts of Colombia and Ecuador are adjacent to each other. The boundary established in this case differs considerably from a hypothetical equidistant line, as may be clearly seen from the accompanying map. By reason of the configuration of the coast of the parties the maritime area of Ecuador is smaller than would have resulted from the equidistant line. It is only towards the end of the boundary line that Ecuador gains a small area, but it does not compensate that gained by Colombia.

On the accompanying map, line ABC depicts the maritime boundary. The boundary begins at the sea terminus of the Colombia–Ecuador land boundary (Point A) which is situated approximately 1° 27′ 24″ N lat., 78° 57′ 12″ W long. The maritime boundary extends 200 n.m. seaward along the 1° 27′ 24″ N parallel. Point C is 200 n.m. along the boundary from Point A. Measured from the coastlines of the two countries the 200 n.m. area would extend beyond Point C.

5 *Islands, Rocks, Reefs, and Low-Tide Elevations Considerations*

There are no special or unusual geographical characteristics in the boundary area, such as islands, rock, reefs, etc., that called for special treatment or consideration in establishing the boundary, particularly in view of the method of delimitation which was adopted.

6 *Baseline Considerations*

In Article 4 of the agreement the parties recognized the right of each country to determine its baselines from which the width of the territorial sea should be measured. Such straight baselines may join the outermost points of their coasts. They agreed to abide by the provisions now adopted or to be adopted by each country for this purpose.

In 1971 Ecuador proclaimed a system of straight baselines along the mainland and around the Galapagos islands (see LIMITS IN THE SEA No. 42). On the mainland, the baselines were established by a Supreme Decree dated 28 June 1971, starting from the intersection of the maritime frontier with Colombia, in Punta Manglares (Colombia), to Punta Galera in Ecuador. Colombia, for its part, established by Decree 1436 of 13 June 1984 straight baselines in the Pacific from Bay San Ignacio to Cape Manglares. The straight baselines adopted by both countries do not appear to have affected the delimitation line, particularly in view of the method of delimitation which was adopted.

7 *Geological and Geomorphological Considerations*

The seabed descends rapidly from the coast to a depth of over 3500 meters. There do not appear to be any distinct troughs or trenches. The bathymetric contours, which run roughly parallel to the coast, do not influence the boundary line.

8 *Method of Delimitation Considerations*

The maritime boundary extends the land frontier along a parallel of latitude in a similar fashion to the maritime boundaries between Ecuador and Peru and Peru and Chile (Nos. 3–5 and 3–9).

The relationship of the coasts of the states in the boundary area is one of adjacency. The boundary is not based on the equidistance method, as is illustrated by the attached map.

9 *Technical Considerations*

The maritime boundary between Colombia and Ecuador was plotted on US Naval Oceanographic Chart No. 21033 (41st edition).

10 *Other Considerations*

None.

IV RELATED LAW IN FORCE

A *Law of the Sea Conventions*

Colombia: Party to the 1958 Geneva Convention on the Continental Shelf

B *Maritime Jurisdiction Claimed at the Time of Signature*

Colombia: 12-mile territorial sea
Ecuador: 200-mile territorial sea

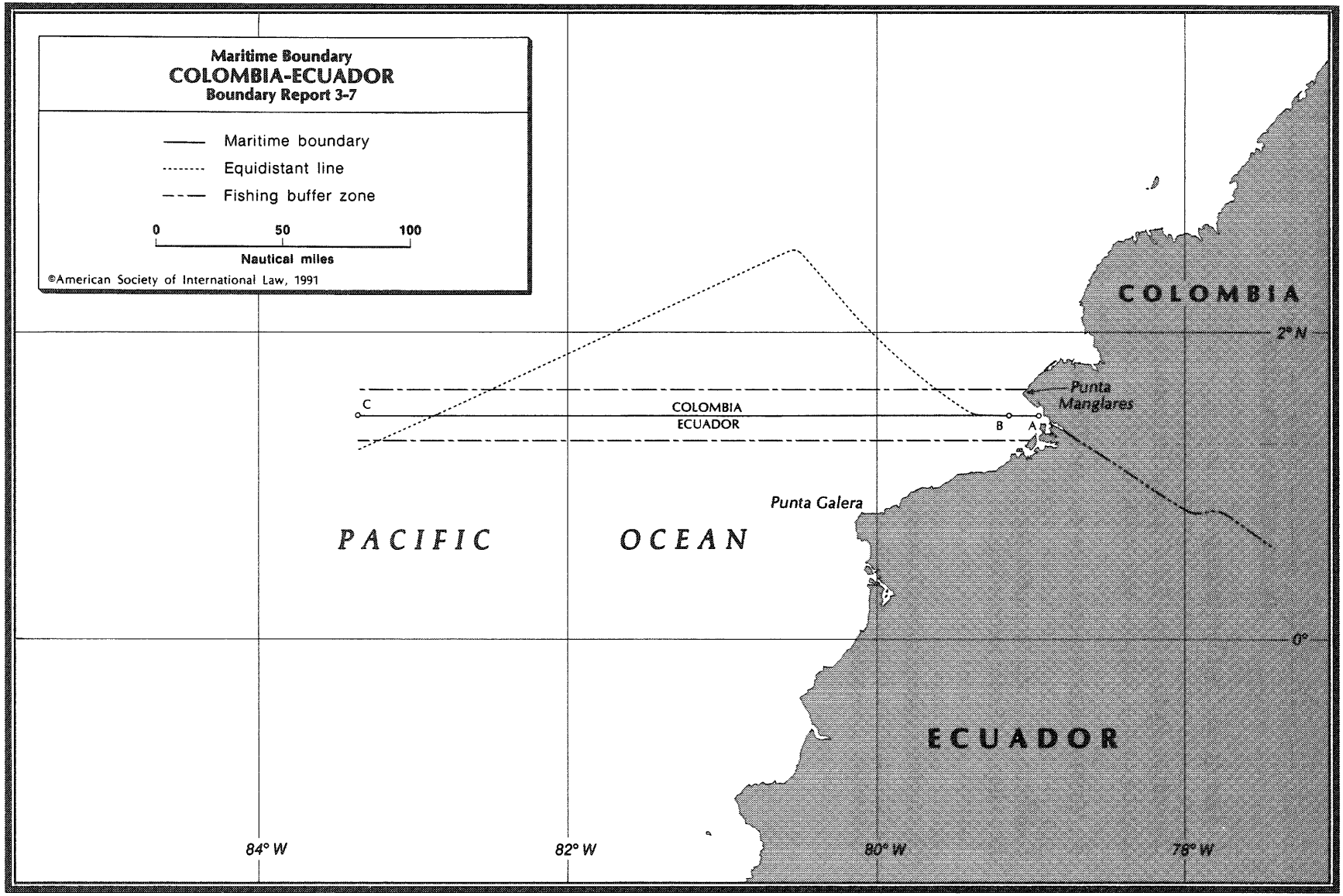
C *Maritime Jurisdiction Claimed Subsequent to Signature*

Colombia: 200-mile exclusive economic zone

V REFERENCES AND ADDITIONAL READINGS

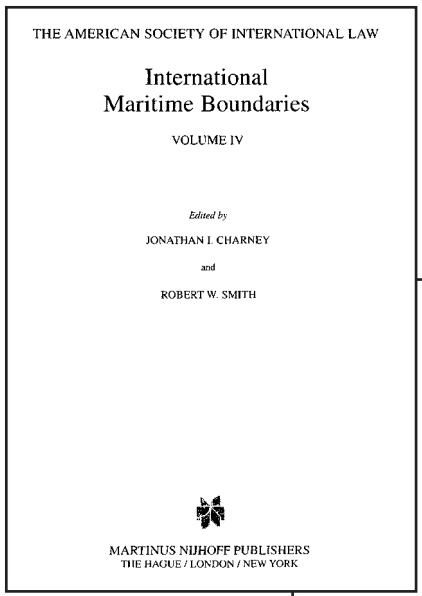
None.

Prepared by Eduardo Jiménez de Aréchaga


Maritime Boundary
COLOMBIA-ECUADOR
Boundary Report 3-7
Maritime boundary
Equidistant line
Fishing buffer zone
0
50
100
Nautical miles
©American Society of International Law, 1991
COLOMBIA
2° N
Punta Manglares
C
COLOMBIA
ECUADOR
B
A
Punta Galera
PACIFIC
OCEAN
0°
ECUADOR
84° W
82° W
80° W
78° W

Annex 282

E. Jiménez de Aréchaga, "Chile-Peru – Report 3-5 (Corr. 1, Add. 1)", in J. I. Charney and R. W. Smith (eds), *International Maritime Boundaries, Vol. IV*, 2002, p. 2639



Chile–Peru

Report 3-5 (Corr. 1, Add. 1)

As noted in the report, this is a tripartite declaration by Chile, Ecuador, and Peru agreeing to delimit their maritime boundaries within 200-nautical-miles from their respective coastlines along "the parallel of latitude drawn from the point at which the land frontier between the ... countries reach[] the sea." (Art. IV). Thus, on page 793 the report should be entitled "Chile–Ecuador–Peru" and the subtitle should be "Declaration on Maritime Zones by the Governments of Chile, Ecuador, and Peru." The same change should be made to the title on page 799.

However, in a communication to the United Nations Secretary-General of 9 January 2001, Peru transmitted a statement that "[t]o date Peru and Chile have not concluded a specific maritime delimitation treaty...." It offered to commence negotiations with Chile to delimit this international maritime boundary. This communication calls into question the existence of a binding maritime boundary delimitation between the two states.[1]

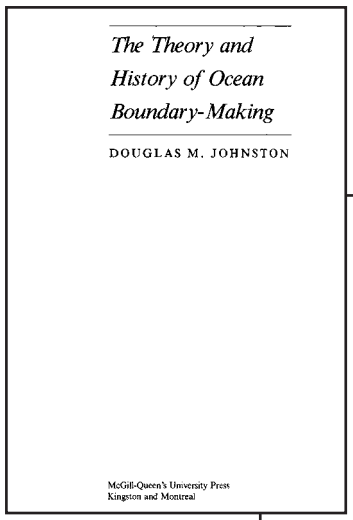
The Editors

1 Office of Legal Affairs of the United Nations Division for Ocean Affairs and the Law of the Sea, LAW OF THE SEA INFORMATION CIRCULAR 19, 20 (Item III) (LOSIC No. 13, March 2001).

J.I. Charney and R.W. Smith (eds.), International Maritime Boundaries, 2639.

Annex 283

D. M. Johnston, *The Theory and History of Ocean Boundary-Making*, 1988



volved in litigation or arbitration of the need to have a judicial delimitation effected with a high degree of technical precision. Especially when the tribunal is assigned a close-to-maximal facilitative role, as in the *Anglo-French* and *Gulf of Maine* adjudications, some care is taken to specify the desired level of geodetic and cartographic precision, and to provide the tribunal with technical assistance.

19 Despite the important changes that have taken place in the law of the sea since 1969, and despite the demise of the natural prolongation doctrine in the context of ocean boundary delimitation, the ICJ and other adjudicative bodies are reluctant to deny the juridical significance of many of the dicta offered in the *North Sea Continental Shelf* case. Most lawyers still look upon that decision as a landmark.

MODERN DELIMITATION TREATIES AND THE PATTERN OF STATE PRACTICE

Delimitation Agreements and State Practice

The post-classical period of international law has been a period of phenomenal growth in the treaty system of the world community. Since the end of the Second World War tens of thousands of agreements of every possible form and nomenclature have been concluded on virtually every subject matter of public concern, cutting across cultural, ideological, political, and economic lines. Consent, as expressed through treaty-making, has become the dominant value in bilateral diplomacy, binding states together in an ever-widening global network of negotiated settlements and arrangements.[261] In the post-classical period the nation-state system has become, in effect, a system of official transactions assisted in various ways by consensus-based outcomes of global and regional organizations.

Before the beginning of continental shelf doctrine, ocean boundary delimitation was limited to narrow areas of territorial sea between neighbouring states. Prior to the Second World War relatively few delimitation agreements were concluded: most sources refer to only two territorial sea boundary agreements – between Denmark and Sweden (Limits in the Sea 26) and between Italy and Turkey, both concluded in 1932.[262] Significantly, the first "early modern" ocean boundary treaty, concluded ten years later by Venezuela and the United Kingdom (for Trinidad and Tobago), concerned the delimitation of the continental shelf (LITS 11). In the following twenty-two years only six more ocean boundary agreements were negotiated. But beginning in 1965, when no fewer than seven were concluded in the same year, the resort to treaty for ocean boundary-making purposes accelerated. Fourteen treaties were concluded in 1971,

and eleven in 1974; and by the end of 1980 at least 80 had been negotiated in the preceding sixteen years. By the end of 1987 it appeared that over 130 ocean boundary agreements were in existence, including the early listed ones dating from 1932.

In the history of ocean boundary delimitation nothing is more dramatic than this proliferation of (mostly) bilateral agreements. Almost 300 bilateral ocean boundary issues remain to be dealt with solely or partly through agreement with neighbouring states. Even allowing for the intractability of many of these issues, it is conceivable that well over 200 delimitation agreements may be in existence by the year 2000. Whatever the figure, it is likely that the final third of the twentieth century will be regarded by posterity as the golden age of boundary-making.

Even now, the mounting volume of delimitation agreements signifies that treaties provide the principal evidence of state practice in the delimitation of "lateral" boundaries, just as national promulgations provide the principal evidence of state practice in baseline delineation and the determination of seaward limits. As noted above, some recent trends in the adjudication of delimitation disputes have raised concern precisely because they constitute a divergence from the pattern of state practice as reflected in contemporary treaty-making. Unfortunately, it is not possible, at least in a monograph of this sort, to trace the diplomatic history of all delimitation agreements in existence, and the texts themselves reveal only part of the story.[263] Indeed, most of the texts are so sparsely written that the reader is left to guess which considerations carried the most weight during the process of negotiation. Until a more revealing history can be put together from many case studies focused on different countries and regions, only a few general trends in this form of treaty-making and patterns of state practice can be discerned.

Types and Variations

Of seventy-six delimitation treaties examined, all except four are bilateral.[264] The near-monopoly of the bilateral approach to ocean boundary delimitation may not be surprising, but, particularly in view of the trend in the adjudicative process toward taking judicial notice of third-party interests, excessive bilaterialism in boundary-making can aggravate the problem of promoting regional or subregional arrangements in ocean development and management.[265]

Most of the early modern delimitation agreements, from the period beginning in 1942, were concerned exclusively with delimitation of the continental shelf. Of the 76 instruments examined, 36 were exclusively or mainly concerned with the shelf. Of those 36 agreements, 3 also dealt with non-shelf matters. In addition, 10 others dealt mainly with the delimitation

diction and as a technical means to indicate the direction of the delimitation line. It does not matter whether the claim of the third State is *prima facie* not unreasonable, or that the parties did not comment on the claims. These points were not among the factual and legal questions involved in the dispute. The competence of the Court to decide on the delimitation of the area lying between the coasts of the Parties cannot depend on the pretensions of a third State brought to the Court's notice. On the contrary, the Court, in my view, has no power to take into account a line which it is not even entitled to examine. The legitimate goal of not prejudicing Italy's rights must not have the effect that not the whole of the case of the Parties is decided." Ibid., 117.

258 Ibid., dissenting opinion of Judge Schwebel, 172–87. Judge Schwebel was especially critical of the majority's apparent but unacknowledged use of the "proportionality" criterion in an opposite-state situation in a manner he found inconsistent with the chamber's treatment of the adjustment problem in the *Gulf of Maine* case.

259 Ibid., dissenting opinion of Judge Oda, 123–71.

260 Johnston and Saunders, *Ocean Boundary Making*, passim. For commentaries on this case, see entries in Wiktor and Foster, *Marine Affairs Bibliography*, passim.

261 For a recent evaluation of treaty-making from a legal perspective, see Simma, "Consent."

262 This latter agreement concerned the Dodecanese Islands. Greece seems to have accepted this treaty-based boundary when it acquired sovereignty over these islands. The treaty data analysed in this section of the monograph are derived from two listings, namely those in McDorman, Beauchamp, and Johnston, *Maritime Boundary Delimitation*, 157–95, and Jagota, *Maritime Boundary*, 331–44. However, no treaty listing is totally comprehensive. It is certain that more than two ocean boundary delimitation agreements were negotiated before the Second World War, and it is arguable that they are still in existence, though they are rarely, if ever, referred to in official records or communications. For example, on 18 January 1908 Italy and France signed a partial boundary agreement designed to delimit fishery zones between Corsica and Sardinia. Moreover, many old boundary agreements chiefly applicable to land territory also extend explicitly to territorial waters, or may be interpreted to do so. For several examples and sources, see Chircop, *Co-operative Regimes in Ocean Management*, passim.

263 For a detailed treatment of most existing agreements, see Prescott, *Maritime Political Boundaries*, passim. For a shorter account, see Jagota, *Maritime Boundary*, 69–124.

264 The exceptions are the tripartite boundary provisions adopted by Chile, Ecuador, and Peru in 1952 and 1954 (*LITS* 86 and 88), the 1971 trilateral boundary agreement concluded by Thailand, Indonesia, and Malaysia

(*LITS* 81), the 1976 trilateral agreement signed by India, Sri Lanka, and the Maldives (*New Directions VIII*, 102), and the 1978 trilateral agreement signed by India, Indonesia, and Thailand (*LITS* 93, 1981).

265 Already it is apparent that it is only a matter of time before the facts of geography accelerate the trend to plurilateral ocean boundary agreements in circumstances where three neighbouring coastal states have to negotiate the trijunction points for their offshore boundaries. This point is illustrated in various regions in Johnston and Saunders, *Ocean Boundary Making*, passim.

266 The five ocean boundary agreements with an arbitration clause are three between the Federal Republic of Germany and the Netherlands (1964), Denmark (1965), and the United Kingdom (1971), one between Japan and Korea (1974), and one between France and Spain (1979). The three providing for reference to the ICJ are two between Italy and Spain (1974) and Greece (1977), and one between Saudi Arabia and Sudan (1974). The two providing for peaceful settlement according to article 33 of the UN Charter are between Haiti and Cuba (1977) and Colombia (1978). The agreement between Colombia and the Dominican Republic (1978) calls for disputes to be settled peacefully through means recognized in international law.

267 Francalanci et al., *Atlas of Baselines*, 50, 55.

268 Ibid., 42, 34.

269 Lay et al., *New Directions*, 215.

270 See Prescott, *Maritime Political Boundaries*, 190–1; Jagota, *Maritime Boundary*, 90–2; and Prescott, *Australia's Maritime Boundaries*, 119–23. For evaluation, see Ryan and White, "Torres Strait Treaty," and Burmester, "Torres Strait Treaty."

CHAPTER TWELVE: THE THEORY

1 This is disputed by some scholars, however. See, for example, Tringham, "Territorial Demarcation."

2 For strictures on the "mystique of the frontier," see Falk, *This Endangered Planet*.

3 Gottman, ed., *Centre and Periphery*, passim.

4 See generally Clingan, ed., *Law of the Sea*.

5 See, for example, Young, *Resource Regimes*.

6 The term "co-operative ethic" encompasses the entire range of "expectations" of co-operative action generated by the UNCLOS III Convention, whether in the form of "obligations," "responsibilities," or some other type of commitment by contracting parties. For a deep analysis of the implications of the co-operative ethic in the new law of the sea, see Chircop, *Cooperative Regimes*.

Annex 284

D. M. Johnston and M. J. Valencia, *Pacific Ocean Boundary Problems – Status and Solutions*, 1991

Pacific Ocean
Boundary Problems
Status and Solutions

DOUGLAS M. JOHNSTON
and
MARK J. VALENCIA

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silent on the question whether Indonesia could allow another party access to the same area.[126]

D. Southwest and Central Pacific

There are nine maritime boundary agreements in this region: between Australia and Papua New Guinea (1978); Australia and France (New Caledonia) (1982); France and Tonga (1980); Indonesia and Papua New Guinea (1982); Tokelau and American Samoa (1980); American Samoa and the Cook Islands (1980); France and Fiji (two), separating Fiji from Wallis and Futuna, and from New Caledonia (1983); and Australia and the Solomon Islands (1988).[127]

In December 1978, Australia and Papua New Guinea agreed on the boundary through Torres Strait and the Coral Sea. Papua New Guinea argued that the chain of Australian islands in Torres Strait would produce an inequitable boundary, if they were given full effect. In the seas west and east of Torres Strait the same boundary separates the continental shelves and fishing zones of the two countries. But in Torres Strait the two boundaries separate, with the fishing zone limit lying north of the continental shelf boundary, much closer to Papua New Guinea. The western terminus of this boundary had been settled by Indonesia and Australia in 1971 and accepted by Papua New Guinea, when it became independent. The eastern terminus lies close to the trijunction with equidistance claims from both countries and the Solomon Islands. In fact the last few miles of the joint boundary apply only to the continental shelf, because there is a small triangle of waters around the trijunction more than 200 nm from the nearest country.

Australia made many concessions during the negotiations which led to this agreement.[128] First, Australia conceded it had never claimed three islands in the north of the Strait, and that it had no objection to Papua New Guinea acquiring these islands. Second, Australia yielded its legitimate claim to 8,800 nm^2 of seabed and to fishing rights in 5,650 nm^2 of water. Third, Australia agreed that, if its territorial waters were increased to 12 nm, it would not make that increase effective for those islands north of the continental shelf boundary. This imaginative treaty also created a protected zone within the Strait to preserve the traditional way of life for Torres Strait Islanders and inhabitants of the coast of Papua. Mineral exploration is prohibited for ten years within this zone.

On 4 January 1982, France and Australia agreed on a maritime boundary between Australia and the French colony of New Caledonia, separating France's EEZ and seabed from Australia's fishing zone and seabed. It appears that the line is based on the criterion of equidistance except for one segment of a boundary east of Fraser Island. For that segment, it is possible that Middleton Reef was used as a basepoint, even though it does not have any features which stand above high tide. Part of the boundary apparently separates only the seabed areas claimed from the two territories.

On 11 January 1980, France and Tonga agreed on an equidistance boundary line separating the EEZs of Tonga and Wallis and Futuna. Equidistance lines

were also used in the agreements between the United States and Tokelau and the Cook Islands. On 2 December 1980, the boundary between Tokelau and American Samoa was defined by eight points. In the agreement the United States recognized that the islands called Atafu, Nokunonu and Fakaofo form part of Tokelau, pending an act of self-determination in accordance with the Charter of the United Nations. On 11 June 1980, the boundary between the United States and the Cook Islands was defined by twenty-five points. In this agreement the United States abandoned claims to the islands of Manihiki, Penrhyn, Pukapuka and Rakahanga. In both these agreements, full effect was given to all the islands of the parties involved. At the beginning of 1983 France and Fiji agreed on equidistance boundaries between the EEZs of Fiji, Wallis and Futuna, and New Caledonia. The bonus for Fiji in this agreement is that Ceva-i-Ra, formerly called Conway Reef, was recognized as an island.

On 9 September 1982, Indonesia and Papua New Guinea ratified a boundary agreement extending a short maritime boundary which Australia and Indonesia had settled prior to Papua New Guinea's independence. The new boundary segment passes through three points and terminates at a point which appears to be 200 nm from the nearest territory of Indonesia and Papua New Guinea.

On 13 September 1988, Australia and the Solomon Islands signed a continental shelf delimitation agreement after ten years of negotiation. The agreed boundary lies between Australia's Coral Sea Islands and the Solomon Islands' Indispensable Reefs, and connects with Australia's other shelf boundaries with Papua New Guinea and New Caledonia.[129]

E. East and Southeast Pacific

In the Central American sector of this region two international maritime boundaries have been negotiated: between Panama and Colombia (1976), and between Panama and Costa Rica (1980).[130] The first of these, which applies to the Caribbean as well as the Pacific coastal areas, extends downward through the water column to the seabed and subsoil. The Pacific boundary is described as a median line, but in the interest of simplicity it deviates from a true equidistance line. Only limited effect is given to Colombia's Isla de Malpelo, with the result that the final segment of the boundary is 20 nm closer to that island than to any territory of Panama. This bilateral boundary stops at a hypothetical trijunction point, where third party interests are presumed to take effect.

Panama's boundary with Costa Rica is a single-segment line extending 200 nm from the land terminus at Punta Burica. Costa Rica's Isla Coco has been discounted, but it is not clear whether Colombia will accept the seaward terminus of the Panama-Costa Rica boundary as the trijunction point.

In the South American sector four ocean boundaries have been established: between Colombia and Ecuador (1975)' between Ecuador and Peru (1954); between Peru and Chile (1954); and, at the southern extremity, between Chile and Argentina (1984).[131] The first three of these agreements draw artificial,

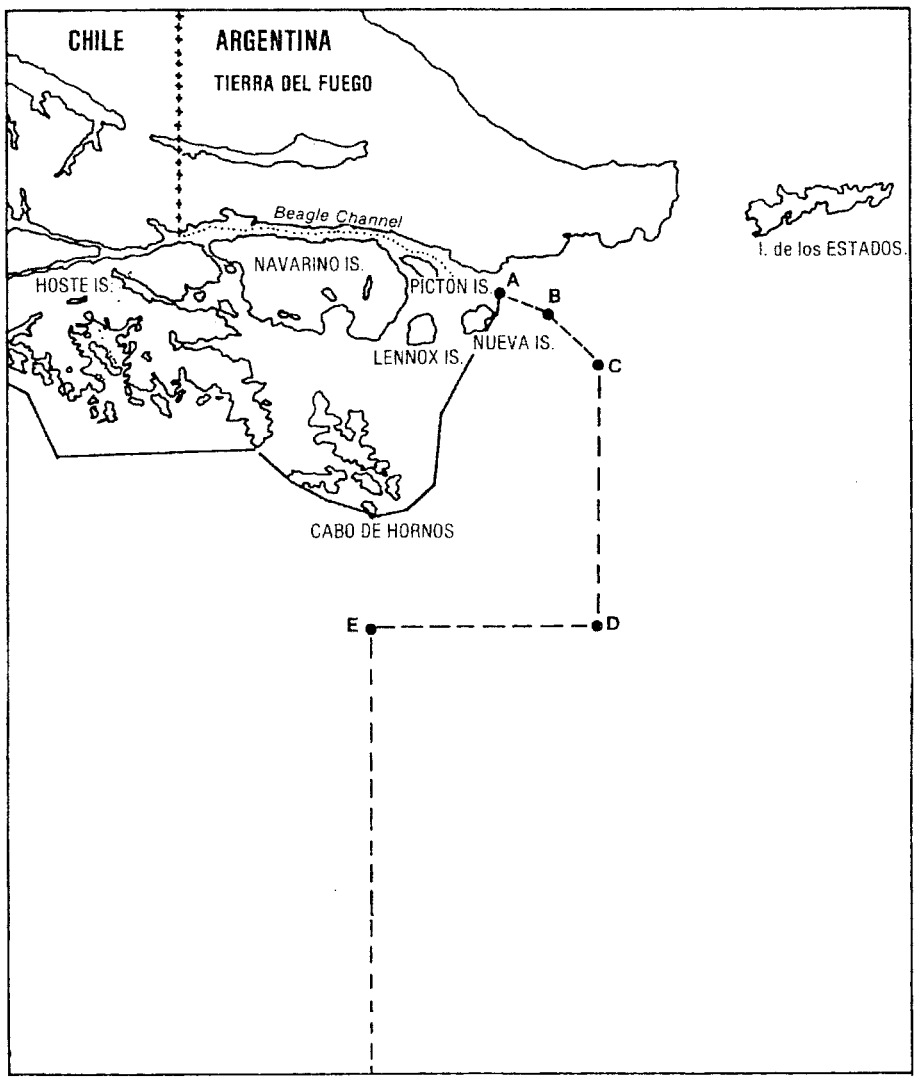


Fig. 3. Beagle Channel and adjacent waters covered by 1984 Treaty of Peace and Friendship between Argentina and Chile.
(*Source:* Johnston, *Theory and History of Ocean Boundary-Making.*)

'geometric' boundaries of the astronomical kind, simply following the parallel of latitude which passes through the terminus of the parties' land boundary. This common method of delimitation was agreed upon in the 1952 Declaration on the Maritime Zone proclaimed jointly by Chile, Ecuador and Peru, which provided that each country should possess control over its adjacent waters to a distance of 200 nm and that these maritime zones should be divided by the appropriate parallels of latitude. In the case of the Chile-Peru boundary, the joint boundary commission has erected towers to mark the parallel.

In all three agreements a buffer zone is established, extending 10 nm on each side of the boundary to prevent vessels of the neighboring states from being prosecuted for accidental trespass, but it is stipulated that this conflict avoidance provision is not to be construed as creating a right to fish or hunt intentionally within the 200 nm zone on the other side of the line. In the case of the Colombia-Ecuador agreement, the buffer zone commences 12 nm from the coast.

The fourth maritime boundary in the South American sector of the East and Southeast Pacific, between Argentina and Chile, is the happy outcome of an extremely bitter dispute over the Beagle Channel and the neighboring islands of Lennox, Picton and Nueva, which brought these states close to the brink of war several times in the period between 1967 and 1984. The first joint effort to resolve the impasse was by referring the matter to an *ad hoc* arbitration tribunal. Relying on a boundary treaty of 1881, the Court of Arbitration decided in 1977 that all three islands belonged to Chile, and that the waters to the north of the line belonged to Argentina and those to the south to Chile.[132]

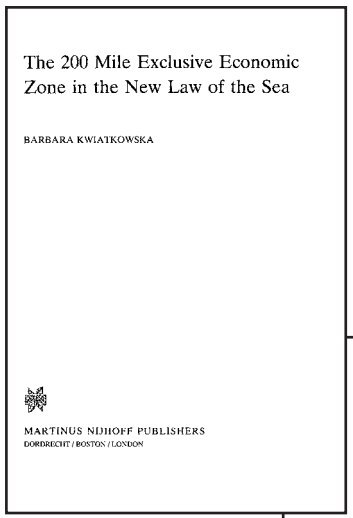
Public and governmental reaction to the award in Argentina was extremely negative. Following the latter's rejection of the Beagle Channel award,[133] both governments struggled to find a new approach, and in 1979 finally agreed to accept the mediation of the Holy See in the person of Cardinal Samore, special representative of Pope John Paul II. Despite great difficulties, Cardinal Samore was able to persuade both governments to negotiate a maritime boundary treaty based on his proposal for resolution of the Beagle Channel dispute,[134] which in turn was based in part on the previously rejected arbitration award of 1977.

The 1984 Treaty of Peace and Friendship[135] goes beyond a linear settlement of the delimitation issue in the Beagle Channel and of the territorial issue over the three disputed islands. The treaty also draws a line of division between the parties' exclusive economic zones in the 'Southern Sea', at the extreme southeastern corner of the Pacific Ocean (Figure 3); designates a dispute settlement procedure; and establishes a permanent joint commission to work cooperatively in various sectors. It will be interesting to see whether this bold experiment in cooperation will succeed after a long history of conflict over transboundary problems between these two countries.

In the case of the mid-ocean islands of this region, difficulties have arisen in the determination of continental shelf limits, but these island groups are too remote from other territories to give rise to the need for internationally negotiated boundaries.[136]

Annex 285

B. Kwiatkowska, *The 200 Mile Exclusive Economic Zone in the New Law of the Sea*, 1989



> Law of the Sea relating to zones of coastal State jurisdiction (emphasis added).[39]

The concern of maritime states was justified by the actual practice of the Latin American states specified above which in their 1952 Santiago Declaration adhered to the 200 mile territorial sea.[40] A tendency to depart from that policy was to some extent evidenced by proposals submitted by Chile, Ecuador and Peru during UNCLOS III.[41] Nevertheless, it has to be emphasized that, although Chile and Peru recognized the freedom of navigation in their 200 mile zones in their 1947 legislation, Peru explicitly claimed 'a sole sovereignty' over the air space above that zone.[42] The same claim to air space may be found in the legislation of Ecuador which, in addition, is unclear what regime of navigation applies to the Ecuadorian 200 mile TS.[43] In 1980 Ecuador also unilaterally established mandatory navigational routes off the coast of the Galapagos.[44] So, in fact, only the 200 mile established by Chile resembled the exclusive fisheries zone. At the same time the recent amendments to the Chilean civil code clearly provided for the establishment of an exclusive economic zone extending 'beyond' the 12 mile TS up to 200 miles from the territorial sea baselines.

As in the case of Chile, the freedoms of navigation and overflight apply also to the 200 mile TS of Uruguay, in particular to the area beyond the first 12 miles of Uruguayan territorial sea.[45] Therefore, Uruguay – which like Chile also made a statement as to the *sui generis* status of the EEZ – declared upon signing the LOS Convention that:

> The provisions of the Convention concerning the territorial sea and the exclusive economic zone are compatible with the main purpose and principles underlying Uruguayan legislation in respect of Uruguay's sovereignty and jurisdiction over the sea adjacent to its coast and over its bed and subsoil up to a limit of 200 miles.

While the basic rules established in the TS legislation of Uruguay indeed correspond to the regime of communications freedoms in the EEZ, a similar declaration on compatibility of national legislation with the LOS Convention made upon signing the LOS Convention by Brazil remains in clear contradiction to the purpose and object of its territorial sea legislation,[46] because Brazilian legislation expressly provides for the innocent passage of foreign ships through the TS and requires prior authorization for the passage of warships, which additionally must comply with other restrictive conditions, including those relating to the navigation of submarines on the surface. In addition, Brazil is, as already noted earlier, the only state which advocates within the ICAO subjecting overflight of the EEZ/CS to the same rules which apply to the air space over state territory.[47] Since Brazil is a leader of the territorialists, it would seem to be of interest to mention that the rapid conversion to their most extreme 200 mile territorial sea claim occurred in

Brazil's policy only in the early 1970s, and was a remarkable turn about from its previously moderate and cautious approach to Latin American revisionism.[48]

In accordance with its practice and position taken during UNCLOS III, Brazil also declared upon signature of the LOS Convention that:

> The Brazilian Government understands that the provisions of Article 301 . . . apply, in particular, to the maritime areas under the sovereignty or the jurisdiction of the coastal State,

and that:

> The Brazilian Government understands that the provisions of the Convention *do not authorize other States to carry out in the exclusive economic zone military exercises or manoeuvres*, in particular those that imply the use of weapons or explosives, *without the consent of the coastal State* (emphasis added).[49]

Moreover, similar declarations were made by Cape Verde and Uruguay, both proclaiming that 'the enjoyment of the freedoms of international communication' in the EEZ 'excludes any *non-peaceful use* without the consent of the coastal state', as exemplified by military exercises and 'other activities which may affect the rights or interests' of the coastal state (emphasis added), as well as exclude threat or use of force against the coastal state. At the same time, Cape Verde, like Uruguay, made a declaration as to the *sui generis* character of the EEZ and the compatibility of its legislation with the LOS Convention.[50] Apart from that, all three states made, as has already been noted in Subsection 3.3 of Chapter III above, declarations with regard to Article 60 of the Convention, construing that article as permitting the construction and use of all types of installations and structures (presumably also military ones) to be subject to the consent of the coastal state. Cape Verde and Uruguay also made declarations that the residual rights (examined further in Subsection 3.4 below) 'related to' sovereign rights and jurisdiction of the coastal state in its EEZ, fall within the competence of that state, provided that it 'does not hinder the enjoyment of the freedoms of international communication.'[51] The only other state which has made a declaration in this latter respect is Italy which stated that, according to the LOS Convention, the coastal state does not enjoy residual rights in the EEZ, in particular 'the right to obtain notification of military exercises or manoeuvres or to authorize them.'[52]

In view of the content and legislative history of Articles 58, 88 and 301 of the LOS Convention referred to earlier in Subsection 2.1, there is no doubt that the position of Brazil, Cape Verde and Uruguay clearly contradicts those provisions which do not imply any obligation of third states to obtain authorization from the coastal state for naval manoeuvres or other military activities related to navigation and overflight.[53] In this context it may also be noted that the territorialist approach of Brazil and other states from the region could

strengthen their position in favour of a broader scope of application of the 1967 Treaty of Tlatelolco which prohibits testing, deployment and use of nuclear weapons on the sea-bed and in the superjacent waters falling within the sovereignty of Latin American states.[54]

Furthermore, it should be observed that, even if the clause 'other internationally lawful uses' had not been added in Article 58, para. 1 of the LOS Convention, military uses of the sea compatible with the UN Charter remain to be covered by the scope of the basic freedoms of navigation, overflight and the laying of submarine cables and pipelines.[55] For this reason, the lack of reference to such 'other' uses in the legislation of some states cannot be invoked as evidence of the restrictive approach of those states to military uses in their 200 mile zones.[56]

In spite of the illegality of the Brazilian contention (and of those states which joined with Brazil), the Conclusions from the 1984 Workshop of the Law of the Sea Institute express a concern as to the possibility of development of such practice in the light of the U.S. decision not to sign the Convention.[57] Were this to be the case and any dispute relating to the conduct of foreign military manoeuvres or other activities in the EEZ/CS were to arise, the compulsory dispute settlement established in the LOS Convention might not be applicable because of the possibility granted to states by Article 298, para. 1(b) to declare, when signing, ratifying or acceding to the Convention, that they do not accept such procedures for disputes concerning military activities.

3. Balancing the Communications Freedoms and the Coastal State Rights

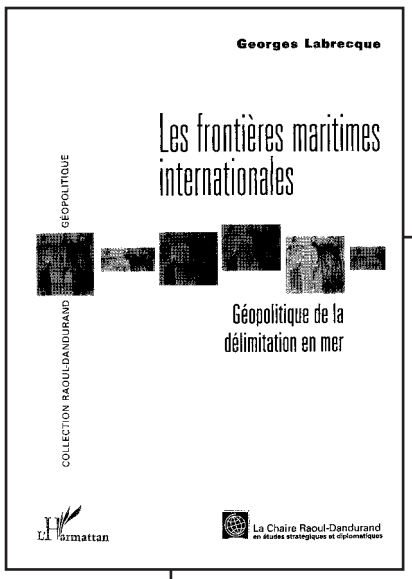
The scope of the communications freedoms enjoyed by third states in the exclusive economic zone, and likewise within the continental shelf, depends ultimately on the maintenance of a proper balance between those freedoms and the rights granted to the coastal state.

3.1. Principle of equivalence and reasonableness of competing uses

The general principle established in the LOS Convention to serve such balance is that of equivalence and reasonableness of exclusive (coastal state) and inclusive (third state) uses within the EEZ and the CS. This principle is reflected by reciprocal basic obligations of the coastal and third state to have 'due regard' to their respective rights and duties (Article 56, para. 2 and Article 58, para. 3),[58] and the parallel obligation of the third state to have 'due regard' to the interests of other states exercising communications freedoms (Article 87, para. 2).[59] Those basic obligations are further reaffirmed by

Annex 286

G. Labrecque, *Les frontières maritimes internationales – Géopolitique de la délimitation en mer*, 2004



4

LES FRONTIÈRES MARITIMES EN AMÉRIQUE

Pour ce qui concerne le processus de délimitation des frontières maritimes, les États qui se trouvent en Amérique, considérée dans son ensemble (figure 4.1), offrent, à première vue, très peu d'éléments en commun, tant du point de vue de la géographie que de la politique, sauf que c'est dans ce continent qu'ont été délimitées les toutes premières frontières au delà de la mer territoriale : celle du plateau continental en 1942, entre Trinité et Tobago et le Venezuela; les deux frontières *multifonctionnelles*, délimitées en 1952, entre le Chili et le Pérou, de même que le Pérou et l'Équateur; bien avant, la «limite» *interrégionale* tracée, en 1867, entre la Russie et les États-Unis, et entérinée, plus d'un siècle après, en 1990.

Si certaines caractéristiques communes peuvent être décelées, c'est à une plus grande échelle qu'on peut tenter de les chercher — celle des trois sous-ensembles que constituent l'Amérique du Sud (section 4.1), l'Amérique centrale (4.2) et l'Amérique du Nord (4.3). On peut alors observer que le processus de délimitation est fort avancé en Amérique du Sud, en dépit des dissymétries exprimées par des revendications sur les mers territoriales (tableau 3), que ce processus l'est beaucoup moins en Amérique centrale, où les conditions géographiques sont complexes et les acteurs nombreux, qu'il est loin d'être achevé en Amérique du Nord, où le Canada et les États-Unis n'ont délimité que l'une seule de leurs quatre frontières maritimes.

4.1 LES FRONTIÈRES MARITIMES EN AMÉRIQUE DU SUD

Le processus de délimitation maritime du sous-continent sud-américain est non seulement ancien, mais aussi fort avancé : à l'exception, bien sûr, de la frontière *virtuelle* entre l'Argentine et le Royaume-Uni qui ont pourtant réussi, en dépit des séquelles de la guerre des Falklands, à signer, le 27 septembre 1995,

un accord relatif à l'exploration des ressources offshore[363], les seules frontières non délimitées concernent les Guyanes entre elles, de même que celle entre le Venezuela et la Colombie, sans compter la frontière *interrégionale* Colombie/Costa Rica dans le Pacifique (figure 4.2). Il appert donc que les longs et persistants conflits frontaliers terrestres (par exemple entre le Chili et l'Argentine) n'ont pas toujours empêché pour autant la délimitation des frontières maritimes.

Il est vrai que l'Amérique du Sud, à l'instar de l'Afrique, est largement ouverte sur de vastes espaces océaniques, abstraction faite de la mer des Caraïbes et de l'isthme de Panama. Dans la plupart des cas, les côtes sont adjacentes et il se trouve au large peu de voisins pour compliquer le processus bilatéral de délimitation. Sur la carte des frontières maritimes en Amérique du Sud, c'est la ligne *astronomique* qui prédomine.

Du côté du Pacifique, le processus est amorcé dès 1952 par la délimitation *synchrone* des frontières Chili/Pérou (section 4.1.1) et Équateur/Pérou (4.1.2). L'Équateur délimitera ensuite ses frontières respectives avec la Colombie en 1975 (4.1.3) et le Costa Rica en 1985 (4.1.4). La Colombie fait de même avec le Panama en 1976 (4.1.6) et le Costa Rica en 1984 (4.1.5). La même année, la frontière « bi-océanique » Argentine/Chili fait l'objet d'un accord de délimitation conclu en conformité avec les propositions du médiateur pontifical, émises quatre ans auparavant (4.1.7). Dans l'Atlantique, l'Uruguay délimite sa frontière avec le Brésil en 1972 (4.1.8) et l'Argentine l'année suivante (4.1.9). Enfin, le Brésil est à nouveau impliqué en concluant un accord avec la Guyane française en 1981 (4.1.10).

4.1.1 Chili/Pérou

C'est à double titre que la frontière Chili/Pérou, de même que celle entre le Pérou et l'Équateur, sont tout à fait remarquables : elles peuvent être considérées, dix ans après l'accord de délimitation du plateau continental entre le Royaume-Uni (Trinité et Tobago) et le Venezuela, comme les deux premières frontières maritimes — *multifonctionnelles* — au monde, au delà de la mer territoriale ; en outre, ces frontières-lignes sont assorties de *zones de tolérance.*

Dans le cadre de la première conférence sur l'exploitation et la conservation des ressources maritimes du Pacifique Sud, le Chili, le Pérou et l'Équateur signaient conjointement, le 18 août 1952, une déclaration selon laquelle « chaque gouvernement a l'obligation d'assurer à son peuple les conditions de subsistance qui lui sont nécessaires et de lui donner les moyens de se développer économiquement[364] »

363. Joint declaration : Cooperation over offshore activities in the South-West Atlantic between the United Kingdom of Great Britain and Northern Ireland and Argentina. 30 *Law of the Sea Bulletin* (1996) pp. 62-65. L'accord est aussi reproduit dans 35 *International Legal Materials* (1996) n° 2, pp. 301-307. L'accord prévoit la création d'une commission mixte devant superviser l'octroi des permis et la protection de l'environnement. Par ailleurs, il est stipulé que cet accord ne comporte aucun changement aux positions respectives des deux États quant à leur souveraineté sur l'archipel et leurs juridictions exclusives sur les espaces maritimes.

364. Déclaration sur la zone maritime. Date d'entrée en vigueur : 18 avril 1952. *Les accords de délimitation des frontières maritimes (1942-1969)*, pp. 89-92.

Figure 4.1

LES FRONTIÈRES MARITIMES EN AMÉRIQUE

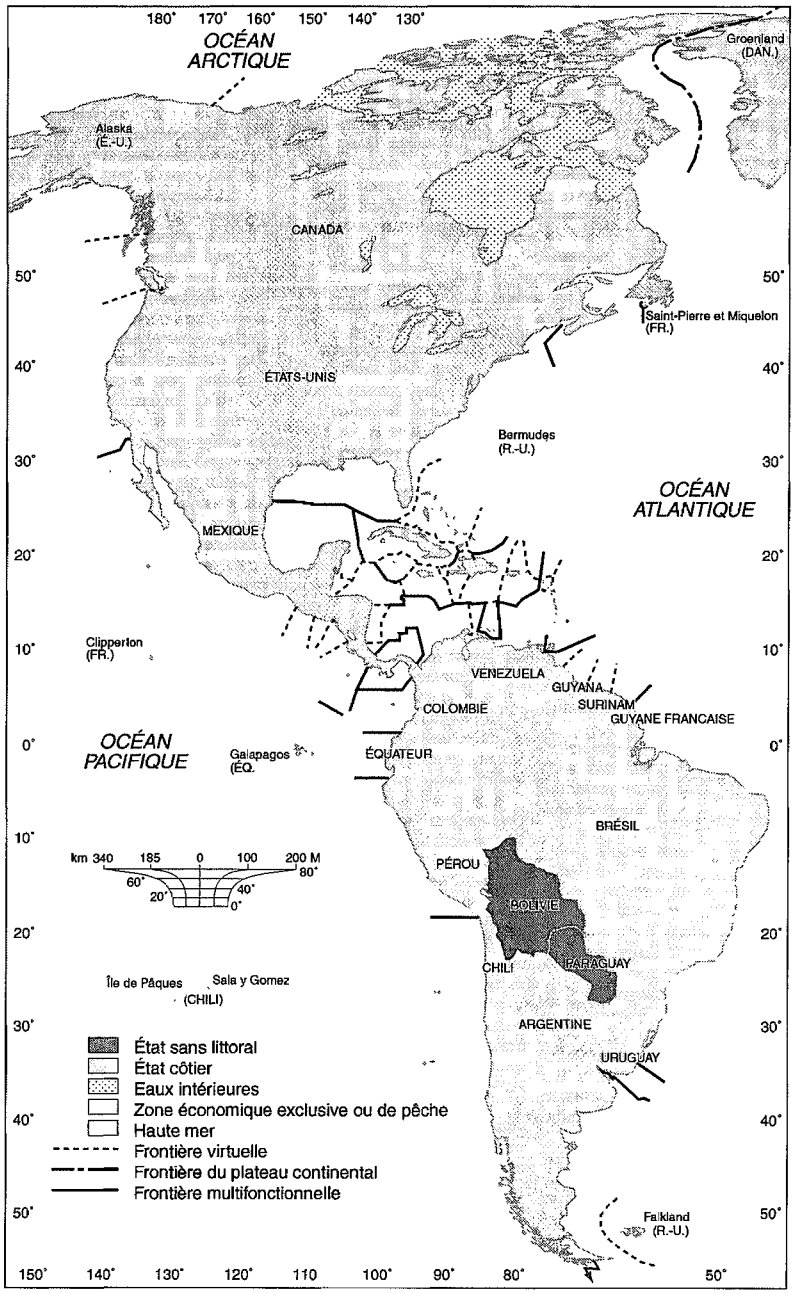


TABLEAU 3

ÉTENDUE DES ZONES MARITIMES SOUS JURIDICTION NATIONALE EN AMÉRIQUE*

États	mer territoriale		zone contiguë		ZÉE ou de pêche**		plateau continental	
Antigua	12	(1982)	24		200	(1982)	200/mc	
Argentine	12	(1967)	24		200	(1989)	200m/mc	(1966)
Bahamas	12	(1993)			200	(1993)	200m/exp	(1977)
Barbade	12	(1977)			*200*	(1978)		
Belize	3/12	(1878)			200			
Brésil	12	(1993)	24	(1993)	200	(1993)		
Canada	12	(1985)	24	(1997)	200	(1997)	200/mc	(1997)
Chili	12	(1986)	24	(1986)	200	(1986)		
Colombie	12	(1970)			200	(1978)	200m/exp	(1978)
Costa Rica	12	(1975)			200	(1975)	200m/exp	(1972)
Cuba	12	(1977)			200	(1977)		
République Dominicaine	6	(1977)	24	(1977)	200	(1977)	200/mc	(1977)
Dominique	12	(1981)	24		200	(1981)		
El Salvador	200	(1950)						
Équateur	200	(1970)					200	(1985)
Etats-Unis	12	(1988)	24	(1999)	200	(1983)		
Grenade	12	(1978)			200	(1978)		
Guatemala	12	(1976)			200	(1976)	200m/exp	(1965)
Guyana	12	(1977)			*200*	(1977)	200/mc	(1977)
Haïti	12	(1977)	24	(1977)	200	(1977)	exp	(1977)
Honduras	12	(1965)	24		200	(1980)	200m/exp	(1965)
Jamaïque	12	(1996)	24	(1996)	200	(1991)	200/mc	
Mexique	12	(1986)	24	(1986)	200	(1986)	200/mc	(1986)
Nicaragua	200	(1979)			200	(1979)	pn	
Panama	12	(1967)	24		200		200/mc	
Pérou	200	(1979)					200	(1952)
Saint-Kitts-et-Nevis	12	(1984)	24	(1984)	200	(1984)	200/mc	(1984)
Saint-Vincent	12	(1983)	24	(1983)	200	(1983)	200	(1983)
Sainte-Lucie	12	(1984)	24	(1984)	200	(1984)	200/mc	(1984)
Suriname	12	(1978)			*200*	(1978)	*200m/exp*	(1968)
Trinité-et-Tobago	12	(1969)	24		200	(1986)	200m/exp	(1969)
Uruguay	12	(1969)	24		200	(1998)	200/mc	
Venezuela	12	(1956)	15	(1956)	200	(1978)	200m/exp	(1956)

*En milles marins, sauf indications contraires. Les années entre parenthèses sont celles de la dernière modification législative, lorsqu'elle est connue.
**Les zones de pêche sont mentionnées en italique.

Abréviations : *coo* : coordonnées géographiques; *dél* : délimitation avec autre État; *mc* : marge continentale; *méd* : médiane; *pn* : prolongement naturel; *200/mc* : 200 milles marins plus marge continentale; *200m/exp* : profondeur en mètres ou exploitabilité.

Sources : Nations Unies (2001) *Droit de la mer, bulletin numéro 45*, pp. 87-94; Nations Unies (2004) *Maritime Space : Maritime Zones and Maritime Delimitation. State Practice on the Internet* (www.un.org).

figure 4.2

LES FRONTIÈRES MARITIMES EN AMÉRIQUE DU SUD

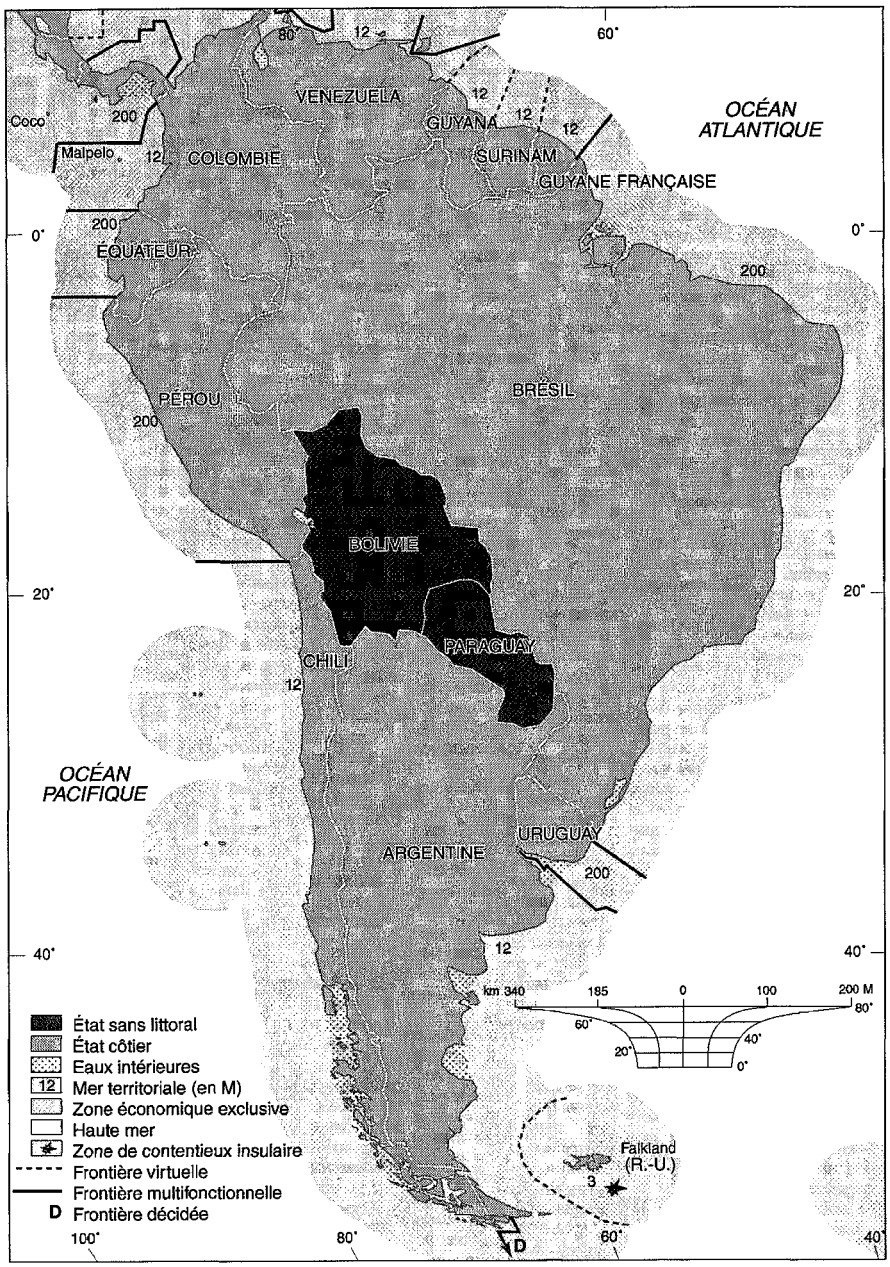
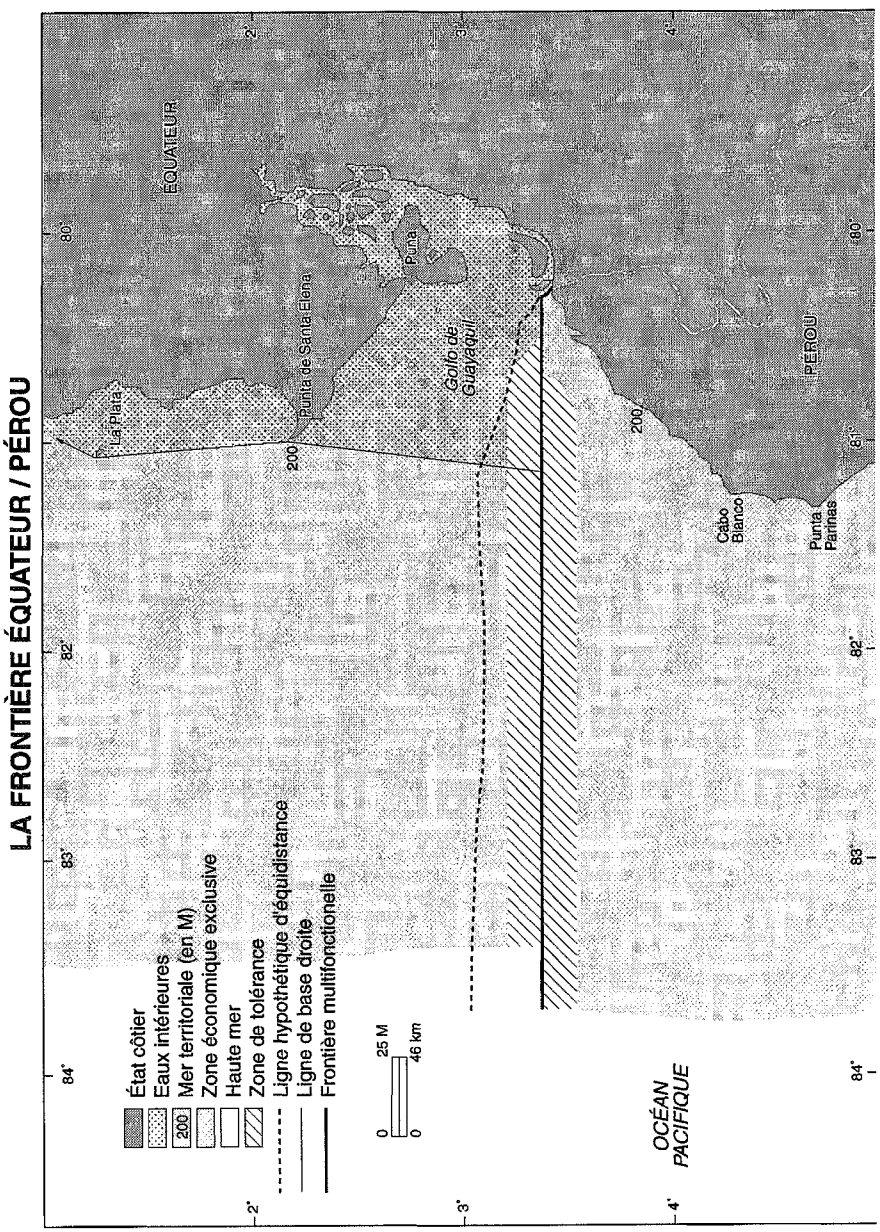


Figure 4.3


LA FRONTIÈRE ÉQUATEUR / PÉROU
État côtier
Eaux intérieures
200 Mer territoriale (en M)
Zone économique exclusive
Haute mer
Zone de tolérance
Ligne hypothétique d'équidistance
Ligne de base droite
Frontière multifonctionnelle
0 25 M
0 46 km
ÉQUATEUR
PÉROU
OCÉAN PACIFIQUE
La Plata
Punta de Santa Elena
Puna
Golfo de Guayaquil
Cabo Blanco
Punta Parinas
200
80°
81°
82°
83°
84°
2°
3°
4°

(préambule). Les trois États reconnaissent aussi le devoir de chaque gouvernement « d'empêcher qu'une exploitation desdits biens en dehors de sa juridiction ne mette en péril l'existence, l'intégrité et la conservation de ces ressources au détriment des peuples qui, par leur situation géographique, possèdent dans leurs mers des moyens de subsistance irremplaçables et des ressources économiques qui leur sont vitales » (*ibid.*) Or, poursuivent les signataires, « les facteurs géologiques et biologiques [...] sont tels que l'étendue première des eaux territoriales et de la zone contiguë ne suffisent pas à la conservation, au développement et à l'utilisation de ces ressources, auxquelles les pays côtiers ont droit » (article 1). En conséquence, le Chili, l'Équateur et le Pérou « fondent leur politique internationale maritime sur la souveraineté et la juridiction exclusives qu'a chacun d'eux sur la mer qui baigne les côtes de son pays jusqu'à 200 milles marins au moins à partir desdites côtes » (article 2). Cette souveraineté et cette juridiction exclusives sont étendues au sol et au sous-sol (article 3), de même qu'autour des îles (article 4).

C'était là, bien avant que le concept de zone économique exclusive ne fût reconnu, vouloir profiter des importantes ressources halieutiques que le courant de Humboldt met à la disposition de ces régions ; c'était aussi compenser le faible développement du plateau continental et de ses richesses. Par ailleurs, la déclaration reconnaît que la souveraineté est sans préjudice du « droit de passage inoffensif des navires de toutes les nations » (article 5).

Étant donné la configuration particulière du littoral, qui change de direction au point terminal de la frontière terrestre, les 200 milles de frontière maritime se trouvent « prolongés », en quelque sorte, de 160 milles, pour délimiter latéralement la zone dévolue au Pérou. L'accord prévoit que la frontière maritime — qui s'éloigne considérablement d'une ligne d'équidistance stricte à l'avantage du Chili — coïncide avec le *parallèle* de latitude tiré du point terminal de la frontière terrestre où elle atteint la mer (article 4). Pourtant, la ligne actuelle (18° 23' 3' de latitude sud) se trouve approximativement à un mille au nord de ce point terminal, depuis qu'une commission conjointe en a décidé ainsi, en 1969, par la construction de deux tours — exemple de démarcation en matière maritime[365]. Soulignons aussi que la frontière est *dissymétrique*, le Pérou revendiquant une mer territoriale de 200 milles, tandis que celle du Chili n'est que de 12 milles[366].

Deux ans après l'accord de délimitation, le Chili et le Pérou (de même que l'Équateur et le Pérou) décident, le 4 décembre 1954, d'instaurer une zone[367] d'une largeur de dix milles marins, de part et d'autre de la ligne-frontière, mais à partir seulement des douze milles de la côte. Les deux pays conviennent qu'il est inapproprié de faire exécuter, à l'intérieur de cette *zone de tolérance*, les règlements de leurs gouvernements respectifs, dans les cas de présences accidentelles de

365. Prescott, J.R.V. (1985) *The Maritime Political Boundaries of the World*, p. 205.
366. Le Chili a revendiqué, de 1947 à 1952, une mer « patrimoniale » de 200 milles.
367. Agreement relating to a Special Maritime Frontier Zone. *Limits in the Seas*, n° 88, pp. 1-4 et annexes.

« petits bateaux dotés d'équipages insuffisamment instruits des règles de navigation ou sans les équipements nécessaires leur permettant de déterminer avec précision leur position en haute mer »[368] (préambule). Le Chili et le Pérou estiment en effet que l'application de pénalités en pareilles occasions est contraire à l'esprit de coopération entre les deux pays, risque plutôt de créer des frictions et provoque un ressentiment chez les pêcheurs (*ibid.*).

4.1.2 Équateur/Pérou

La ligne et la zone instaurées entre l'Équateur et le Pérou procèdent, avons-nous dit, des mêmes instruments que ceux qui ont présidé à la ligne et à la zone entre le Chili et le Pérou. Pourtant, la ligne et la zone *synchrones* Équateur/Pérou offrent une allure fort différente, étant donné la configuration du littoral et la présence d'une ligne de base droite de l'Équateur qui intersecte la frontière loin au large, si bien que celle-ci sépare les eaux intérieures de l'Équateur et la zone économique exclusive du Pérou (figure 4.3). Qui plus est, une partie de la *zone de tolérance* se trouve dans les eaux intérieures de l'Équateur.

Contrairement à la frontière Chili/Pérou, la frontière Équateur/Pérou est *symétrique* — les mers territoriales des deux pays ayant 200 milles marins —, encore que la projection du littoral péruvien produit une discontinuité dans les limites extérieures des zones économiques exclusives (celles du Pérou étant 22 milles au-delà). L'utilisation d'un *parallèle* avantage l'Équateur par rapport à une ligne hypothétique d'équidistance. Il subsiste par ailleurs une ambiguïté quant au choix de ce parallèle. Dans un aide-mémoire distribué à certains pays, l'Équateur distingue entre la frontière *de jure* — qui coïncide avec le parallèle 3° 23' 33,96' dans la bouche de la Tumbes — et la frontière *de facto* — qui correspond au parallèle de Boca Capones (3° 13' 33,96') établi par le protocole de Rio de Janeiro de 1942 et dont la validité est contestée par l'Équateur.

4.1.3 Colombie/Équateur

Plus de 20 ans après les accords conclus entre le Chili, le Pérou et l'Équateur, la Colombie et l'Équateur signent, le 23 août 1975, un traité[369] stipulant une méthode de délimitation et une *zone de tolérance* de même type. La Colombie fut sans doute facile à convaincre de l'utilisation du *parallèle*[370], puisque cette méthode l'avantage considérablement par rapport au tracé d'une ligne d'équidistance stricte.

Plus explicite que l'accord de 1952, celui de 1975 stipule que l'Équateur et la Colombie « reconnaissent et respectent les modalités selon lesquelles

368. Traduction libre.
369. Accord entre la République de Colombie et la République de l'Équateur relatif à la délimitation des zones marines et sous-marines et à la coopération maritime entre les deux États. Date d'entrée en vigueur : 22 décembre 1975. *Les accords de délimitation des frontières maritimes (1970-1984)*, pp. 256-257.
370. Prescott, J.R.V. (1985) *op. cit.*, p. 205.

Annex 287

C. Lara Brozzesi, *La Delimitación Marítima entre el Ecuador y el Perú: Nuevas Aclaraciones*, 2005

Website of Asociación de Funcionarios y Empleados del Servicio Exterior Ecuatoriano (AFESE)

La Delimitación Marítima entre el Ecuador y el Perú:

Nuevas Aclaraciones

*Doctor Claude Lara Brozzesi**

Acerca de este tema, la delimitación entre el Ecuador y el Perú, habíamos afirmado ya: «Consecuentemente con los tratados mencionados de 1952 y 1954, las legislaciones internas, la codificación marítima mundial y la jurisprudencia internacional existe una frontera marítima delimitada que se acordó bilateral y multilateralmente al adoptar el método del paralelo, tanto con el Perú como entre los miembros del SMPSE; podemos añadir, gracias a este original y convincente estudio, que la delimitación en el Pacífico Sudeste mediante el paralelo geográfico es también una costumbre regional o particular entre Colombia, Chile, Ecuador y Perú»[1]. Nuestra demostración se basaba en esos cuatro puntos:

- La línea del paralelo a la luz de algunos antecedentes históricos.
- La línea del paralelo: existencia, reconocimiento y vigencia como frontera marítima actual.
- El límite del paralelo y la CONVEMAR.
- El derecho de la delimitación marítima[2].

Frente a otro intento doctrinario de impugnar la delimitación vigente en el SMPSE[3], al indicar que: «... hasta el momento el Perú no ha suscrito con Ecuador ni con Chile tratados específicos de delimitación marítima...»[4], disiparemos esas dudas con la presentación de nuevos documentos que se refieren a ciertos antecedentes históricos olvidados o desconocidos, la misma jurisprudencia peruana y los convenios o reglamentos adoptados en las Conferencias sobre Explotación y Conservación de las Riquezas Marítimas del Pacífico Sur, de los años 1952 y 1954.

Los documentos muestran que,

* Ministro del Servicio Exterior del Ecuador.

1 Revista de la Asociación de Funcionarios y Empleados del Servicio Exterior Ecuatoriano (AFESE), 2001 Nº 37, Quito-Ecuador; pág. 76. Ver: www.afese.com (publicaciones).

2 Ibid.; págs. 73-76.

3 Revista de AFESE, enero-abril 1999 No. 33, nota 2, Quito-Ecuador; pág.101. Ver: www.afese.com (publicaciones). Sistema Marítimo del Pacífico Sudeste (SMPSE).

4 Marisol Agüero Colunga: CONSIDERACIONES PARA LA DELIMITACIÓN MARÍTIMA DEL PERÚ, Fondo editorial del Congreso del Perú, Lima; pág. 38.

desde el siglo XIX, el Ecuador, para protegerse del contrabando marítimo, había escogido ya los meridianos y el paralelo frente a sus costas y con los países vecinos: Colombia y Perú, al adoptar el «Reglamento de medidas para evitar el contrabando marítimo», del 15 de abril de 1836, promulgado durante la presidencia de Vicente Rocafuerte:

Artículo 1º. Las embarcaciones que salgan de las costas del Perú, o cualquier otra parte, y se dirijan a la costa abajo, ya sea al Chocó, Panamá, Costa Rica, etc., y tengan a bordo mercancías susceptibles de desembarcarse furtivamente en las costas correspondientes al territorio, no podrán traspasar los límites que a continuación se expresan...

Artículo 3º. Las embarcaciones indicadas deberán pasar dos millas al Oeste de la Punta de Santa Elena, y por ningún motivo podrán apartarse de este meridiano; y si fuesen encontradas más al Este en las varias ensenadas que forman la costa desde el punto indicado al cabo de San Lorenzo, serán consideradas como contrabandistas, y remitidas al mismo punto para ser juzgadas.

Artículo 10º. Deberán pasar tres millas al Oeste del cabo San Francisco, y conservar este meridiano hasta llegar al paralelo del estado limítrofe...

Artículo 28º. Este reglamento empezará a tener efecto a los quince días de su publicación en Guayaquil, para los buques que salgan de Paita; a los treinta para los que salgan del Callao; a los cincuenta a los que salgan de Valparaíso. Para los procedentes de Méjico y Costa Rica a los cincuenta días; para los de Panamá cuarenta; para los de los puertos de Chocó treinta días...

Artículo 29º. Por el ministerio respectivo se harán las comunicaciones convenientes a los gobiernos vecinos, para que puedan hacer saber este decreto a sus respectivos súbditos, que trafican en los puertos del Ecuador.[5] (ver anexo 1)

Sin pretender ser exhaustivo[6], antes de la Declaración de 1952 que

5 Como bien lo había manifestado Rubén Rivadeneira Suárez: «Este constituye uno de los primeros actos de soberanía marítima del Ecuador con el fin de regular y controlar el contrabando, y el primer antecedente de una referencia al paralelo del Estado limítrofe, como elemento demarcatorio de la frontera marítima con los países vecinos», en EL ECUADOR Y EL DERECHO DEL MAR, VISIÓN HISTÓRICA DE LA POSICIÓN JURÍDICO-MARÍTIMA DEL ECUADOR, Imprenta del Ministerio de Relaciones Exteriores, Quito-Ecuador, 1987; pág. 21. Ver también: Fernando Pavón Egas: LOS PROBLEMAS DE SOBERANÍA TERRITORIAL Y LIMÍTROFE DEL ECUADOR, editorial universitaria, Quito-Ecuador, 1988; págs. 929-930 y Alfredo Luna Tobar: DERECHO TERRITORIAL ECUATORIANO, imprenta del Ministerio de RR.EE., Quito-Ecuador, 4ª edición; págs. 484-485.

6 En efecto, no conviene repetir aquí la enumeración de otros documentos legales de 1938 a 1950 que se refieren a este método al definir nuestra mar territorial, realizada por el Embajador Alfredo Luna Tobar en su obra: DERECHO TERRITORIAL ECUATORIANO, imprenta del Ministerio de RR.EE., Quito-Ecuador, 4ª edición; págs. 484-488 y Rubén Rivadeneira Suárez, págs. 21-26, Ibid.

codificó en forma multilateral este método de delimitación para el SMPSE, observamos que el país mantuvo este principio básico de delimitación, tanto al nivel internacional como nacional.

Para el siglo XX, he allí esos nuevos textos:

- La Declaración de Panamá del 3/10/1939.
- El Decreto Presidencial Nº 53 sobre la Declaración de Panamá del 7/10/1939.
- El Decreto Ejecutivo del 29/01/1952.

En la Declaración de Panamá, tomada durante la Primera Reunión de Consulta de Ministros de Relaciones Exteriores, se precisó: «...Por estas consideraciones, los Gobiernos de las Repúblicas Americanas resuelven y por la presente declaran que: ...desde allí hacia el este a lo largo del paralelo 44º 46` 36`` hasta un punto a 60º al oeste de Greenwich...» [7]. Y, el Decreto Presidencial Nº 53, titulado «Amplíase el decreto de neutralidad del Ecuador, determinando la zona marítima de seguridad» que interpretó la Declaración de Panamá como una confirmación del método del paralelo entre los Estados adyacentes, al estipular:

«Artículo 1º. Considerase como zona marítima de seguridad adyacente al territorio ecuatoriano la comprendida entre dos líneas que se tirarán imaginariamente desde los extremos norte y sur de la costa ecuatoriana hasta los grados respectivos de longitud oeste de Greenwich que, corresponden conforme al artículo 1º de la Declaración de Panamá de modo que dentro de este espacio queden incluidas también todas las islas del archipiélago de Colón y sus aguas adyacentes...» [8].

Finalmente, el Decreto Ejecutivo Nº 0160 de 29/01/1952, al señalar:

«Artículo 1º. Prohíbese la pesca a naves de bandera extranjera en las Aguas Territoriales Continentales a lo largo de la faja comprendida entre el límite con las aguas de Colombia, por el norte, y el límite con las del Perú, por el sur, entendiéndose éstas como la zona comprendida dentro de las 12 millas náuticas medidas desde la línea de la más baja marea en las puntas más salientes de la costa ecuatoria-

7 DERECHO DEL MAR, volumen I, Comité Jurídico Interamericano, OEA/Ser.Q.II.4 CJI-7, Río de Janeiro, Secretaría General de la Organización de los Estados Americanos, diciembre de 1971; pág. 3.

8 LEGISLACIÓN MARÍTIMA Y PESQUERA VIGENTE Y OTROS DOCUMENTOS REFERENTES AL DERECHO DEL MAR. ECUADOR, Santiago, Secretaría General de la Comisión Permanente del Pacífico Sur, diciembre de 1974; págs. 127-128 o Registro Oficial, Administración del Sr. Dr. A. Arroyo del Río, encargado del Poder Ejecutivo. Año I, Quito, jueves 16 de noviembre de 1939-Número 287; pág. 1419.

[…]

Without meaning to be exhaustive ([6]), before the Declaration of 1952 which codified multilaterally this method of delimitation for the SMPSE [Maritime System of the South Pacific], we note that [our] country [Ecuador] maintained this basic principle of delimitation, at both the international and the national levels.

By the twentieth century, there were the following new texts:
- The Declaration of Panama of 3/10/1939.
- The Presidential Decree No. 53 on the Declaration of Panama of 7/10/1939.
- Executive Decree of 29/01/1952.

In the Declaration of Panama, taken during the First Meeting of Consultation of Ministers of Foreign Affairs, it was stated: "... For these reasons, the Governments of the American Republics hereby resolve and declare that: '... from there [the point of the land boundary on the coast] towards the east along parallel 44° 46' 36" to a point 60° west of Greenwich ...'" ([7]). And, Presidential Decree No. 53, entitled "Extension of the decree of neutrality of Ecuador, by determining the maritime security zone", which interpreted the Declaration of Panama as a confirmation of the method of the parallel between adjacent States, by stipulating:

"Article 1. The following is considered to be a maritime zone of security adjacent to Ecuadorean territory: the zone included between two imaginary lines drawn from the north and south extremities of the Ecuadorean coast to the degrees of longitude west of Greenwich which correspond respectively to Article 1 of the Declaration of Panama so as to include in this space all the islands of the Colón [Galápagos] Archipelago and its adjacent waters..." ([8]).

Finally, Executive Decree No. 0160 of 29/01/1952, by stating:

"Article 1. Fishing by ships flying foreign flags is prohibited in the Continental Territorial Waters along the strip between the boundary with Colombian waters to the north, and the boundary with [the waters] of Peru, to the south, being those [waters] within the 12 nautical miles zone measured from the low-tide line on the outermost points of the Ecuadorean coast and adjacent islands"([9]).

na e islas adyacentes» [9].

Así que, antes del 18 de agosto de 1952, el Ecuador desde el siglo XIX basó su delimitación marítima con Colombia y Perú en el método del paralelo y sin que haya reclamaciones de sus vecinos. Por esa razón que el Decreto Supremo Nº 781 del 1º de agosto de 1947 del Perú en su punto 3, sólo necesitaba precisar la línea paralela de dirección vertical:

«...y, desde luego, declara que ejercerá dicho control y protección sobre el mar adyacente a las costas del territorio peruano en una zona comprendida entre esas costas y una línea imaginaria paralela a ellas y trazada sobre el mar a una distancia, de doscientas millas, medida siguiendo la línea de los paralelos geográficos».

Aun si, después de la Declaración de 1952 y antes de su ratificación el 6 de mayo de 1955, el Perú en su Resolución Suprema Nº 23 del 12 de enero de 1955 para delimitar su Zona Marítima de 200 millas se refirió de manera expresa al paralelo geográfico, al resolver:

«...1. La indicada zona está limitada en el mar por una línea paralela a la costa peruana y una distancia constante de ésta, de 200 millas naúticas.

2. De conformidad con el inciso IV de la Declaración de Santiago, dicha línea no podrá sobrepasar a la del paralelo correspondiente al punto en que llega al mar la frontera del Perú».

Estos antecedentes históricos poco conocidos y que deben completarse por los ya presentados en estudios anteriores, muestran que el Ecuador tenía una legislación definida antes de 1952[10]. Por esa razón, nuestros delegados, Jorge Fernández en 1952 y Jorge Salvador Lara en 1954, insistieron tanto en el método del paralelo para delimitar nuestras fronteras marítimas, lo que fue aceptado por Chile y Perú en las dos conferencias del Pacífico Sur de 1952 y 1954, al constar, primero, en el acta de 1952:

«A continuación intervino nuevamente el representante del Ecuador, para señalar que, a su juicio, era conveniente dar mayor claridad al artículo 3º, pues así se evitaría cualquier error de interpretación de la zona de interferencia en el caso de las islas. A este respecto propuso que la Declaración estableciera, que la línea limítrofe de la zona de cada país fuera el paralelo respectivo, desde el punto en que la frontera de los Estados toca el mar. Las demás delegaciones estuvieron de acuerdo con lo propuesto y, en vista de las

9 Ibid., pág. 134.

10 Al desconocer estos documentos, aprovechamos esta oportunidad para corregir lo que habíamos afirmado: «... que sólo Chile y Perú son unilateralmente los creadores del límite del paralelo como sistema de delimitación». Ídem nota 3, pág. 103.

Therefore, before 18 August 1952, since the nineteenth century Ecuador based its maritime delimitation with Colombia and Peru on the method of the parallel without receiving any complaints from its neighbours. For that reason, Peruvian Supreme Decree No. 781 of 1 August 1947, in its point 3, just needed to precise the parallel line in vertical direction: "... and at the same time declares that it will exercise the same control and protection on the sea adjacent to the Peruvian coast over the area between the coast and an imaginary parallel line to it at a distance of two hundred (200) nautical miles measured following the line of the geographical parallels."

Even so, after the 1952 Declaration and before its ratification on 6 May 1955, Peru, in its Supreme Resolution No. 23 of 12 January 1955 referred explicitly to the geographic parallel in order to demarcate its 200-mile maritime zone, by resolving:

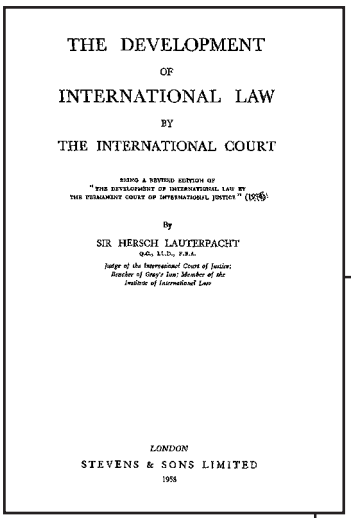
"... 1. The said zone shall be limited at sea by a line parallel to the Peruvian coast and at a constant distance of 200 nautical miles from it.

2. In accordance with clause IV of the Declaration of Santiago, the said line may not extend beyond that of the parallel corresponding to the point where the frontier of Peru reaches the sea."

[…]

Annex 288

H. Lauterpacht, *The Development of International Law by the International Court*, 1958


THE DEVELOPMENT
OF
INTERNATIONAL LAW
BY
THE INTERNATIONAL COURT

BEING A REVISED EDITION OF
"THE DEVELOPMENT OF INTERNATIONAL LAW BY THE PERMANENT COURT OF INTERNATIONAL JUSTICE" (1934)

By
SIR HERSCH LAUTERPACHT
Q.C., LL.D., F.B.A.
Judge of the International Court of Justice;
Member of Gray's Inn; Member of the
Institute of International Law

LONDON
STEVENS & SONS LIMITED
1958

of existing conventional and customary law by reference to common sense and the canons of good faith.

52. *The Form and Substance of Reliance upon General Principles of Law*

The relative infrequency of express recourse to "general principles of law" as authorised and enjoined by the Statute of the Court has been accentuated by the fact that in those cases in which the Court has actually applied them it has, perhaps not unnaturally, refrained from resorting to them *eo nomine* and by way of express reference to Article 38 (3).[20] Thus in the *Chorzów Factory* case it used the following language: "The Court observes that it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation."[21] Elsewhere it refers to "principles generally accepted in regard to litispendence."[22] In another case it based its Opinion on "accepted principles of law" according to which the individual members of an organisation constituted as a corporate body cannot take action of any kind outside the sphere of proceedings within that organisation.[23] In the Order concerning provisional measures in the case of the *Electricity Company of Sofia and Bulgaria* it invoked "the principle universally accepted by international

[20] Individual judges have from time to time, largely by reference to Art. 38 of the Statute, invoked general principles of law recognised by civilised States. See, *e.g.*, Judge Hudson in the *Electricity Company* case in support of the view that a subsequent expression of intention prevails over the earlier (Series A/B, No. 77 (1939), p. 125); the same Judge in the *Diversion of Waters* case in reliance on the proposition that equity is part of international law (Series A/B, No. 70 (1937), p. 76); Judge Anzilotti in the same case to the effect that a party which has failed to execute a treaty cannot rely on it (*inadimplenti non est adimplendum*) (*ibid.*, p. 50); Judge McNair in the *Status of South-West Africa* case in the matter of private law analogies generally (*I.C.J. Reports* 1950, p. 148); Judge Read in the same case with regard to the termination of a legal relationship by all those interested in it (*ibid.*, p. 167). In his Dissenting Opinion in the case concerning the *Interpretation of Judgments Nos. 7 and 8* Judge Anzilotti stated expressly that in basing himself on the rule that "under a generally accepted rule which is derived from the very conception of *res judicata*, decisions on incidental or preliminary questions which have been rendered with the sole object of adjudicating upon the Parties' claims (*incidenter tantum*) are not binding in another case," he relied upon principles obtaining in civil procedure (Series A, No. 13 (1927), p. 27). This, he stated, was particularly appropriate seeing that when the Committee of Jurists who drafted the Statute of the Court elaborated the expression "general principles of law as recognised by civilised States" specific reference was made to the principle of "*res judicata*."

[21] Series A, No. 17 (1928) (*Chorzów Factory*. Indemnity; Merits), p. 29.

[22] Series A, No. 6 (1925) (*German Interests in Polish Upper Silesia*), p. 20.

[23] Series B, No. 16 (1928) (*Interpretation of the Greco-Turkish Agreement*), p. 25.

tribunals . . . to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given." [24] In the Judgment concerning *Certain German Interests in Polish Upper Silesia* the Court stated that nothing, either in the Statute or the Rules which govern the Court's activities or in the general principles of law, prevents it from considering certain aspects of a preliminary objection before proceeding with the examination of the case on the merits.[25] In the *Corfu Channel* case the Court invoked certain "general and well-recognised principles" including "elementary considerations of humanity, even more exacting in peace than in war" [26] as substantiating the obligation of Albania to give notification of the existence of a minefield in Albanian territorial waters. In the same case, in allowing indirect and circumstantial evidence in favour of a State which had been the victim of a breach of international law in the territory of another State, the Court observed that "this indirect evidence is admitted in all systems of law." [27] In the Advisory Opinion in the *Jaworzina* case the Court invoked "the traditional principle: *ejus est interpretare legem cujus condere*"—a principle which "must be respected by all"—in support of the interpretation given by the Conference of Ambassadors in the matter of the disputed boundary.[28] In the Advisory Opinion on the *Effect of Awards of the United Nations Administrative Tribunal* the Court relied on the "well-established and generally recognised principle of law" according to which "a judgment rendered by a judicial body is *res judicata* and has binding force between the parties to the dispute." [29] In the case concerning the *Interpretation of the Greco-Turkish Agreement* the Court rejected as "contrary to an accepted principle of law" the contention that it is possible to accord to individual members of a corporate body the right of independent outside action in matters affecting the organisation.[30]

The Court relied on a number of occasions on the "principle generally accepted in the jurisprudence of international arbitration, as well as by municipal courts," to the effect that "one Party cannot

[24] Series A/B, No. 79 (1939), p. 199.
[25] Series A, No. 6 (1925), p. 19.
[26] *I.C.J. Reports* 1949, p. 22.
[27] *Ibid.*, p. 18.
[28] Series B, No. 8 (1923), p. 37.
[29] *I.C.J. Reports* 1954, p. 53.
[30] Series B, No. 16 (1928), p. 25.

avail himself of the fact that the other has not fulfilled some obligation, or has not had recourse to some means of redress, if the former Party has, by some illegal act, prevented the latter from fulfilling the obligation in question, or from having recourse to the tribunal which would have been open to him." [31] A State is estopped from relying on it own non-fulfilment of an international obligation. This impatience of evasion and the insistence on holding States to the attitude previously adopted by them show themselves in the way in which the Court on a number of occasions was prepared to recognise the operation of the principle of estoppel—which, although it referred to it as a principle known in "Anglo-Saxon law," it considered apparently to be a general principle of law. Thus in the *Serbian Loans* case it examined in detail whether as the result of a clear and unequivocal representation of one party to the dispute, on which the other party was entitled to rely and actually relied, the latter's position had undergone a substantial change.[32] It is possible, having regard to the language used by the Court, that it applied the same principle in the case of *Eastern Greenland* where, after pointing out that "Norway reaffirmed that she recognised the whole of Greenland as Danish," the Court stated that "thereby she has debarred herself from contesting Danish sovereignty over the whole of Greenland." [33] In the same case the Court denied that Denmark was estopped (*empêché*) by her conduct from claiming that she "possessed an old-established sovereignty over all Greenland." [34] In the Advisory Opinion on the *Jurisdiction of the European Commission of the Danube* the Court discussed the argument which relied on the alleged inconsistency of the Treaty of Versailles with the provisions of the Definitive Statute of the Danube. The Court rejected that argument. It said: "As all the Governments concerned in the present dispute have signed and ratified both the Treaty of Versailles and the Definitive Statute, they cannot, as between themselves, contend that some of its provisions are void as being outside the mandate given to the Danube Conference under Article 349 of the Treaty of Versailles." [35] In the case of the *Société commerciale de Belgique* the Court stated that as the

[31] Series A, No. 9 (1927) (*Chorzów Factory*. Indemnity; Jurisdiction), p. 31; Series B, No. 15 (1928) (*Danzig Railway Officials*), p. 27.
[32] Series A, No. 20 (1929), p. 39.
[33] Series A/B, No. 53 (1933), at p. 69.
[34] At p. 53.
[35] Series B, No. 14 (1927), p. 23.

Greek Government expressly recognised the arbitral awards in question as possessing the force of *res judicata* it could not " without contradicting itself " contest the relevant submission of the Belgian Government.[36]

It does not much matter whether, in considering the parties to be bound by their own conduct, the Court resorts to the terminology of the doctrine of estoppel or not. This applies, for instance, to cases in which the Court accepted jurisdiction as the result of the conduct of the parties[37] or when it interpreted a legal text by reference to the declarations of the Government in question. Thus in the Advisory Opinion on the *International Status of South-West Africa* the Court held that certain declarations made by the Government of the Union of South Africa constituted a recognition on its part of its obligation to submit to continued supervision in accordance with the Mandate and not merely an indication of its future conduct. The Court said: " Interpretations placed upon legal instruments by the parties to them, though not conclusive as to their meaning, have considerable probative value when they contain recognition by a party of its own obligations under an instrument." [38] It is a question of emphasis whether reliance on the conduct of the parties to a treaty subsequent to its conclusion is treated from the point of view of the doctrine of estoppel preventing a party from asserting an interpretation inconsistent with its conduct or whether it is considered as a legitimate factor in the process of interpretation in the sense that subsequent conduct throws light upon the intentions of the parties at the time of the conclusion of the Treaty. Both represent, in substance, a general principle of law.[39]

[36] Series A/B, No. 78 (1939), p. 176.

[37] See above, p. 103. And see below, pp. 201 *et seq.*

[38] *I.C.J. Reports* 1950, p. 136.

[39] Yet there may be an element of artificiality in both unless care is taken to circumscribe their operation. Clearly, a party cannot improve its position by relying on conduct which is, wittingly or otherwise, in violation of the apparent purpose of the treaty as expressed in its language or, in some cases, as deduced from surrounding circumstances. Neither may it always be accurate to say that when a party seems by its conduct to acknowledge obligations such acknowledgment is conclusive upon it inasmuch as it throws light upon its true intentions at the time of the conclusion of the treaty. For such acknowledgment may be due to a lack of appreciation of its true position under a treaty; or it may be due to an attitude of accommodation going outside the obligations undertaken in the treaty. It would therefore appear that, when considered from the point of view of estoppel, the conduct of one party can be invoked in favour of the other only when, as the result of such conduct, the position of the latter has altered for the worse—a factor which is of the essence of the doctrine of estoppel in its primary connotation. When considered from the point of view of interpretation, conduct by one party may occasionally, but not invariably, throw light upon its intention when concluding

Similarly, in the Advisory Opinion concerning the *Competence of the International Labour Organisation* the Court, in affirming the competence of the latter in that respect, attached importance to the fact that for a period of two years after the signature of the Treaty none of the Contracting Parties raised the question whether agricultural labour fell within the competence of the International Labour Organisation. "All this might suffice to turn the scale in favour of the inclusion of agriculture, if there were any ambiguity."[40] In the Advisory Opinion on the *Competence of the General Assembly regarding Admission to the United Nations* the Court, in interpreting Article 4 of the Charter, attached importance to the fact that the organs of the United Nations to which the Charter entrusts the judgment of the Organisation had consistently interpreted the text in the way in which the Court interpreted it by reference to the language of the Article in question and other considerations.[41] It would thus appear that the Court equated with "subsequent conduct" the uniform practice pursued by the organs of the Organisation established by the authors of the Charter and acquiesced in by them.

While it may be difficult to classify these and similar statements as coming within the orbit of some of the technical aspects of the doctrine of estoppel, they seem to correspond to what is its essential

a treaty. On the other hand, there is considerable probative force in the concurrent conduct of *both* parties. In either case, the practice of the Court has tended to attach importance to conduct as a factor ancillary to interpretation reached by other methods. (For a more emphatic statement of the principle of "subsequent conduct" as an element of interpretation see Fitzmaurice in *B.Y.*, 28 (1951), pp. 9, 20–22.) In the Advisory Opinion in the case concerning the *Interpretation of the Treaty of Lausanne* the Court considered as relevant the facts subsequent to the conclusion of the Treaty "in so far as they are calculated to throw light on the intention of the parties at the time of the conclusion of that Treaty." From that point of view the Court attached importance to the fact that both the British and Turkish representatives at the Council of the League voted in support of a Resolution affirming the definitive and binding character of the decision or recommendation to be made by the Council; this showed that "there was no disagreement between the Parties as regards their obligation" under the crucial Article of the Treaty—a result which "may therefore be regarded as confirming the interpretation which, in the Court's opinion, flows from the actual wording of the Article." (Series B, No. 12 (1925), p. 24.) See also, on the relation between acquiescence and estoppel, MacGibbon in *B.Y.*, 31 (1954), pp. 144–152.

[40] Series B, No. 2 (1922), p. 41.

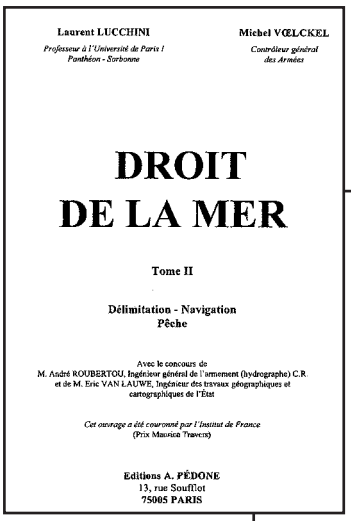
[41] *I.C.J. Reports* 1950, p. 9. See also, for extensive reliance on "subsequent practice," the Separate Opinion of Judge Basdevant in the *Minquiers* case (*I.C.J. Reports* 1953, p. 82). In the case concerning *Rights of the Nationals of the United States in Morocco* the Court, in the circumstances before it, declined to interpret the fact of the continuing exercise of a measure of consular jurisdiction by the United States as showing that the termination, by the Treaty of 1837, of consular jurisdiction in Morocco did not affect the rights of the United States: *I.C.J. Reports* 1952, p. 200.

feature, namely, that a person may—having regard to the obligation to act in good faith and the corresponding right of others to rely on his conduct—be bound by his own act. This may fairly be regarded as a general principle of law which, once more, is merely an affirmation of the moral duty to act in good faith. Like law as a whole, so also "general principles of law" are, in substance, an expression of what has been described as socially realisable morality. In legal history, courts—as distinguished from formal legislation—have been mainly responsible for the infusion of morals into law.[42] While in the international sphere judicial empiricism must—because of the limited and precarious character of international jurisdiction—proceed with greater caution, this aspect of the contribution of the Court provides one of the not least significant features of its activity.

[42] See, as to England and the United States of America, Pound, *The Spirit of the Common Law* (1921), p. 184.

Annex 289

L. Lucchini and M. Vœlckel, *Droit de la Mer, Tome II : Délimitation – Navigation Pêche*, 1996



Baltique[142] ; 3/ un traité global (17 juin 1985) s'appliquant à l'ensemble des zones maritimes[143] et remplaçant les instruments juridiques antérieurs[144].

§ 4/ - L'APPROCHE RÉGIONALE

644. - Il convient de s'interroger sur la relation pouvant s'établir entre régionalisme et accords de délimitation. Autrement dit, voit-on poindre des convergences entre les accords conclus dans le cadre d'une même région, qui autorisent à conclure à l'existence d'une certaine spécificité.

La relation plus générale régionalisme/droit de la mer[145] a été - et est encore à certains égards - vivace. Des doctrines régionales se sont façonnées. Elles ont pu exercer une influence plus ou moins forte sur le droit de la mer. On sait notamment combien puissante a été celle de la doctrine sud-américaine (ou même plus largement latino-américaine)

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142. LIS N° 55 ; CML N° 20 ; Charney/Alexander II. p. 2039.

143. Son préambule exprime la volonté « *to regulate in a single treaty the problems of delimitation of the marine areas adjacent to the coasts of the Union of Soviet socialists Republics and the People's Republic of Poland* ».

144. Voir dans le même esprit le bloc conventionnel mis en place par la Finlande et l'URSS, et qui, lui aussi, conjugue zones et segments : accord du 20 mai 1965 concernant les frontières d'espaces maritimes et du plateau continental dans le golfe de Finlande (LIS N° 16 ; CML N° 9 ; Charney/Alexander II. p. 1959) ; accord du 5 mai 1967 sur le plateau continental dans la partie nord-est de la Baltique (LIS N° 56 ; CML N° 9 ; Charney/Alexander II. p. 1971) ; accord du 25 février 1980 concernant la délimitation des espaces en matière de pêcheries dans le golfe de Finlande et dans la partie nord-est de la Baltique (Charney/Alexander II. p. 1979) ; accord du 5 février 1985 sur la délimitation de la zone économique, de la zone de pêche et du plateau continental dans le golfe de Finlande et dans la partie nord-est de la Baltique (cf. E. Franckx : *New Soviet Delimitation Agreements with its Neighbors in the Baltic Sea.* ODIL 1988. p. 143 ; Charney/Alexander II. p. 1989 ; de façon plus générale, sur les délimitations en mer Baltique : *Baltic Sea Maritime Boundaries Almost Complete*, in *Geographic Notes* N° 12. 15 juin 1990).

145. Cf. cet ouvrage. Tome I. § 47 ; J.P. Quéneudec. *Les tendances régionales dans le droit de la mer* in *Régionalisme et universalisme dans le droit international contemporain.* Pédone. 1977. p. 257 ; M.I. Glasnner. *Régionalism and the law of the sea* in Vukas (ed.). op. cit. p. 409. L.M. Alexander. *Regionalism and the law of the sea : the case of semi-enclosed seas.* ODIL 1974. p. 151. Sur la pratique de la Communauté européenne : E. Franckx. EC *Maritime zones : the delimitation aspect.* ODIL 1992. p. 239. Sur la pratique russe, A.G. Ode El Ferink. *The Law of Maritime Boundaries. A Kase Study of the Russian Federation.* Dordrecht. Nijhoff. 1994. Publications on Ocean Development.

sur la formation de règles nouvelles au cours des dernières décennies[146].

Cette doctrine trouve son écho dans des textes comme celui de la célèbre Déclaration du 18 août 1952 faite par le Chili, le Pérou et l'Equateur, qui constitue à la fois l'expression d'une philosophie commune et un accord de délimitation. Dans un passé plus proche, les parties à certains accords de délimitation s'engagent à coopérer au développement économique et social d'une région considérée dans sa singularité[147].

Si l'existence de doctrines régionales concernant le droit de la mer ne fait donc guère de doute, peut-on conclure à l'existence parallèle de doctrines en matière de délimitation ?

Mais, tout d'abord, qu'entend-on par doctrine en matière de délimitation ? *Il s'agit d'un ensemble de positions qui présentent un certain degré de cohérence et donnent lieu à des accords homogènes dans un secteur géographique déterminé.*

Or, il serait aventureux d'affirmer, *de manière générale*, que des indices d'unité suffisamment nombreux et marqués se trouvent réunis dans les accords intéressant une région donnée.

Il est vrai, certes, que l'on relève parfois des signes de parenté. Ainsi, le Chili, l'Equateur et le Pérou ont, par la Déclaration de Santiago, porté leurs choix sur la méthode du parallèle de latitude tracé du point où la frontière terrestre entre les Etats atteint la mer (point IV de la Déclaration) ; l'ancienneté de délimitations en Amérique latine (le fameux traité de 1942 concernant le golfe de Paria, par exemple) constitue un point qui pourrait être à certains égards distinctif[148]. Mais ce ne sont là que des traits épars, isolés, insuffisants à nos yeux pour que puisse être avancée l'idée d'une doctrine commune[149].

L'emploi de mêmes méthodes de délimitation au plan continental ou dans le cadre d'une vaste région pourrait constituer l'un de ces

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146. Cf. K. Hjertonsson. *The New Law of the Sea. Influence of the Latin American States on recent developments of the Law of the Sea.* Sijthoff. 1973 ; J. Castañeda. *Les positions des Etats latino-américains* in *Actualités du droit de la mer.* Pédone. 1973. p. 158 ; voir également ODIL 1995 N° 2. Special issue : Latin America and the Law of the Sea.

147. Chili/Pérou (18 août 1952). LIS N° 86 ; CML N° 2 ; Charney/Alexander I. p. 793 ; Pérou-Equateur (18 août 1952). LIS N° 88 ; CML N° 3 ; Charney/Alexander I. p. 829.

148. Cf; K.G. Nweihed. *Middle American and Caribbean Maritime Boundaries* in Charney/Alexander I. p. 271.

149. Il s'agit d'ailleurs de déterminer plus précisément ce qu'est une région : l'Amérique du Sud est-elle une région ? ou l'Amérique centrale ? ou encore le complexe Amérique latine ?

facteurs de rassemblement. Or, de ce point de vue, la prépondérance du recours à l'équidistance (ainsi qu'il sera étudié à la section suivante) est telle et l'utilisation de cette technique est si répandue dans le monde qu'il serait bien difficile d'y déceler la particularité d'une région donnée. D'ailleurs le « groupe des 22 » (équidistance) comme celui « des 29 » (équité), qui ont si profondément divisé la 3ème Conférence (cf. *supra* N° 607), avaient tous deux une composition transversale indifférente à des regroupements fondés sur des critères régionaux.

En fait, *la pratique conventionnelle est éclatée* ; la multiplicité des intérêts et facteurs entrant en jeu dans les accords de délimitation, conjuguée à la diversité des situations géographiques gênent l'émergence de positions communes.

645. - Une approche globale et ambitieuse est donc en porte-à-faux avec la réalité. Toutefois, le défaut de doctrines régionalement établies qui aurait pour effet de styliser les accords passés dans le cadre de la région, amène à réviser la démarche. Ne peut-on pas, alors, plus modestement, considérer que se dégage de *l'étude des accords* certaines lignes de force qui témoigneraient *a posteriori* de l'existence d'un faisceau fédérateur ?

Là encore, il est difficile de construire une réponse ordonnée et clairement positive, tant la dispersion l'emporte sur la convergence. Aussi allons-nous nous borner à présenter un bric à brac de notations de façon impressionniste.

646. - Quelques *constatations simples* peuvent être faites tout d'abord.

1/ Le *nombre d'accords* conclus est sensiblement différent d'une région à l'autre. Si le réseau de délimitations est presque complet dans la zone Baltique[150], s'il est dense dans la mer des Caraïbes[151], s'il l'est plus encore dans la région du Pacifique central, les mers de Timor, d'Arafura ou de Corail, il est, en revanche, particulièrement faible en

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150. Cf. E. Franckx. *Baltic sea maritime Boundaries* in Charney/Alexander I. p. 345 ; B.A. Boczek. *The Baltic Sea : a study in marine regionalism.*GYIL 1980. p. 196. Voir également W. Goralczyk. *La mer Baltique et les problèmes de coopération des Etats riverains.* RGDIP 1980. p. 269.

151. Cf. K.G. Nweihed. cf. note 148 ; J.F. Pulvenis. *La mer des Caraïbes.* RGDIP 1980. p. 310 ; voir aussi G. Brocard. *Le statut juridique de la mer des Caraïbes.* PUF 1979.

Afrique - continent qui a pourtant contribué de façon décisive à la création du concept de zone économique exclusive - puisque cinq accords seulement ont été conclus[152].

2/ L'*ancienneté des accords* est susceptible de constituer un deuxième critère instructif.

On a déjà pu rappeler que certains pays d'Amérique centrale avaient très tôt éprouvé le besoin de conclure des traités de délimitation[153]. A s'en tenir, malgré tout, à une période plus récente, ce sont les pays riverains du golfe Persique, puis ceux de l'Europe du Nord qui ont amorcé au début des années 60 le mouvement conventionnel qui s'est développé avec ampleur par la suite. La raison de cet antécédent tient à la nécessité pour la plupart de ces Etats de régler impérativement leurs problèmes de frontières maritimes, afin d'assurer dans des conditions suffisantes de sécurité juridique l'exploitation des richesses pétrolières de ces régions.

Il est à signaler, d'ailleurs, que le dernier accord affectant la région du golfe Persique remonte à 1974[154].

3/ *La concision et la technicité de certains accords*

Il s'agit là d'un caractère, qui est à plus d'un titre, complémentaire du précédent. C'est sous la poussée de considérations économiques liées à la seule exploitation des hydrocarbures que les Etats du golfe Persique ont procédé à des délimitations. Aussi n'est-il pas surprenant que les accords conclus soient brefs et de nature technique.

En ce qui concerne les pays de l'Europe septentrionale, la technicité cède le pas à la concision. La brièveté des accords trouve sans doute sa principale explication dans une conception partagée, qui vise à adopter des *instruments fonctionnels*. Le but recherché est de délimiter. Rien d'étranger à ce but ne doit distraire l'attention, ni encombrer le texte. On ne peut trouver exemple plus symptomatique à cet égard que celui des traités conclus par la France en ce qui concerne ses départements ou territoires d'outre-mer avec ses voisins, traités épurés et d'une parfaite concision.

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152. Parmi ces cinq, A.O. Adede souligne que celui conclu entre le Maroc et la Mauritanie a un sort incertain. Cf. *African Maritime Boundaries* in Charney/Alexander I. p. 293. spécialement p. 294.

153. Cf. K.G. Nweihed. op. cit. p. 272.

154. C'est celui conclu entre l'Iran et Oman (25 juillet 1974) ; LIS N° 67 ; CML N° 40 ; Charney/Alexander II. p. 1503 ; dans le dernier ouvrage cité, voir également L.M. Alexander. *Persian Gulf Maritime Boundaries*. I. p. 315.

668. - Les positions officielles prises par les trois Etats en 1952 ont eu pour conséquence de procéder entre eux à la détermination de leurs frontières[225]. Puis, la Colombie, ralliée à cette méthode[226] conclut un accord de délimitation avec le Pérou (23 août 1975) applicable à tous les espaces maritimes de la côte pacifique[227].

Les quatre accords ci-dessus mentionnés sont les seuls à faire une application de ce procédé que l'on peut qualifier à la fois de *doctrinale* et *d'exclusive.*

Le traité de paix et d'amitié signé par l'Argentine et le Chili le 29 novembre 1984, qui met un terme au différend du canal de Beagle ayant longuement opposé les deux pays[228] en constitue pour l'Amérique du Sud un autre exemple. Mais celui-ci est, quant à lui, dépourvu des deux caractères précédemment soulignés : seuls, certains segments du tracé de délimitation empruntent le procédé, en alternant d'ailleurs méridiens et parallèle.

En Amérique centrale, dans trois accords de délimitation que la Colombie a conclus avec le Panama, Costa Rica et le Honduras[229], ce sont également certains segments qui dérivent de l'emploi de cette méthode.

La France est également parvenue à un accord avec le Vénézuéla le 17 juin 1980 ; l'objectif était de procéder à une délimitation entre d'une part les départements français de la Guadeloupe et de la Martinique et d'autre part l'îlot vénézuélien d'Avès[230]. C'est le même méridien[231] qui a été choisi tant pour la délimitation d'Avès avec la

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225. Equateur-Pérou : LIS N° 88 ; CML N° 3 ; Charney/Alexander. I. p. 829 ; Chili-Pérou : LIS N° 2 ; Charney/Alexander. I. p. 793.

226. On doit remarquer que l'application de cette méthode du parallèle de latitude à plusieurs Etats, dont les côtes sont adjacentes, appelle presque automatiquement par contagion les Etats voisins à faire de même, sans quoi les délimitations risqueraient de produire un résultat inéquitable pour certains d'entre eux.

227. LIS N° 69 ; CML N° 44 ; Charney/Alexander. I. p. 809.

228. Cf. *supra* N° 656.

229. Accord du 20 novembre 1976 : LIS. N° 79 ; CML N° 48 ; Charney/Alexander. I. p. 519 ; accord du 17 mars 1977 : CML N° 50 ; Charney/Alexander. I. p. 801 ; accord du 2 août 1986 : Charney/Alexander. I. p. 503.

230. CML N° 67 ; Charney/Alexander. I. p. 603 ; cf. également K.G. Nweihed. *Economic zone (uneasy) delimitations in the semi-enclosed Carribean Sea : recent agreements between Venezuela and her neighbors.* ODIL. 1980. p. 1 ; I. Morales Paùl. *La delimitacion de areas marinas y sub-marinas al norte de Venezuela.* Serie Estudios. 9. Caracas. 1983.

231. Cf. article I de l'accord : méridien 62°48'50".

Annex 290

N. Marques Antunes, *Towards the Conceptualisation of Maritime Delimitation – Legal and Technical Aspects of a Political Process*, 2003

Towards the Conceptualisation of Maritime Delimitation

Legal and Technical Aspects of a Political Process

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The first technical concern to be addressed is the concept of straight line, which has to be defined in the treaty, or in the judicial or arbitral decision. The geodetic reference and the geographical coordinates of the points defining each segment of the line are also pivotal for an accurate definition of boundary. Depending on how the lines were arrived at, other technical issues might have to be addressed.

Despite the fact that generalisations from *ad hoc* solutions can hardly ever be made, as to the methodology used, these solutions might provide an objective starting point for analysing geographically analogous situations. For example, as will be illustrated by the examples below, it might be argued that the 'corridor solution' is applicable where one state is 'walled' on both sides by the territory of another state, and using equidistance would give rise to a cut-off. Equally, it must be observed that, in numerous instances, *ad hoc* solutions do not depart significantly from equidistance (although the relationship with equidistance cannot be easily established). A typical case is that of use of parallels or meridians that follow closely perpendiculars to the general direction of the coast.

5.3.d)(ii) Parallels, Meridians, and Other Straight Lines

The course of the boundaries devised in the 1988 Anglo/Irish agreement, which run through a "stepped" succession of parallels and meridians, seems an *ad hoc* solution that nonetheless has behind it a certain (equidistance-related) rationale. Equidistance, strict and modified, and bisectors of coastal fronts have influenced the basic course of the lines, which were also adapted to fit in the 'block systems' of concessions of both parties[212].

Referring explicitly the equidistance principle, the 1976 Colombia/Panama treaty resorts to parallels and meridians, both in the Pacific Ocean (a parallel) and in the Caribbean Sea (a "stepped" succession of parallels and meridians), to define the boundary. This is an example of an *ad hoc* solution in which equidistance was clearly the starting point. The 1984 Argentina/Chile agreement defines the boundary on the basis of a succession of loxodromes, including two arcs of meridian and one arc of parallel (Figure 26). Strategic goals, previously awarded boundaries and economic interests are among the factors that were weighed in the determination of the boundary. Example of simplification involving a trade-off of areas on both sides of the equidistance-line are the two 1976 Spain/Portugal agreements. In the north, the boundary is a parallel; and in the south, it is a meridian. Equity-related adjustments seem to have played a significant role in three agreements in which parallels were used: 1976 Kenya/Tanzania, in the outer stretch; 1976 Mauritania/Morocco; and 1988 Mozambique/Tanzania (Figure 24), in the outer stretch[213].

In 1952, Peru, Chile and Ecuador made the Santiago Declaration in which they used parallels to delimit their boundaries in the western coast of South America[214]. At that time however, these states were attempting to assert their maritime claims in international law,

(212) Cf. Appendix 2, F39.
(213) Cf. Appendix 2, D17, D48, D50, D56, F2, F44.
(214) Cf. Appendix 2, A13, A14. Peru has stated in January 2001 that it does not recognise the parallel as being the maritime boundary with Chile. On the legal delimitation standards at that time, cf. para.1.2.a) supra.

and the normative standards of delimitation remained unclear, if at all existent. One could only speculate as regards the specific considerations behind the utilisation of this line. The adherence of Colombia in 1979 to this declaration was preceded by an agreement with Ecuador which, conforming to the regional framework, had also recourse to a parallel as boundary-line[215].

The boundary determined by the Court in the *Jan Mayen* case is also an example of an *ad hoc* line, adjusting the provisional equidistance. The course of the line was influenced by a combination of two factors: the disproportionality of coastal lengths, and the need to allow equitable access to the capelin resources by both sides. This is again a line devised in an *ad hoc* manner to respond to a specific context. The recourse to geodesics to connect the turning points, though a perfectly legitimate choice, remains unexplained. But it should be noted that nothing prevented the Court from resorting to loxodromes as an interpretation of 'straight line'.

5.3.d)(iii) 'Corridor-Solutions'

The 'corridor-solutions' devised in the certain delimitations are usually based upon two loxodromes (not necessarily parallel). What characterises the settings in which this solution was utilised is that one state has 'projections' onto the sea on each side the land territory of another state. This approach was taken in the following three treaties: 1975 Senegal/Gambia, 1984 France/Monaco, and 1987 Dominica/France (Guadeloupe and Martinique), in the eastern sector[216]. From a legal perspective, and despite being based also on a 'corridor-solution', the *Canada/France* arbitration (around St. Pierre and Miquelon) shows one important difference in relation to the others. Whereas in the former, the corridor was devised as means to favour the 'surrounded state', in the latter such a solution sought to favour the 'surrounding state'. To this extent, this solution resembles more the 1978 Venezuela/Netherlands (Antilles) agreement, in which the sidelines are also pushed from equidistance towards the 'surrounded state'[217].

The solution devised by Germany, Denmark and the Netherlands in the aftermath of the *North Sea* cases (1971) is also somewhat of a 'corridor-solution'. The chief difference is that these agreements involved three states, unlike the typical 'corridor solution', which only involves two states. However, because of the way in which the cases developed and in which the boundaries were delimited in the aftermath, it might be contended that, as to delimitation with Germany, Denmark and the Netherlands acted much as if they were only one state. The sequence of loxodromes that forms the 'complex corridor' results from the specific geographical and legal circumstances *in casu*. It is owed to the need to consider previous oil concessions and to the fact that the 'corridor' was 'opened' by gradually shifting the equidistance-lines on both sides of Germany[218].

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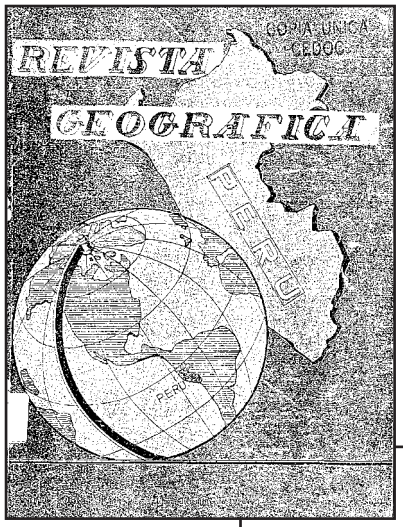
(215) Cf. Appendix 2, D15; E. Jiménez de Aréchaga, «South American Maritime Boundaries», in Jonathan I. Charney and Lewis M. Alexander (eds.) *International Maritime Boundaries*, 1993, p.285, at pp.285-286.
(216) Cf. Appendix 2, D27, F19, F34.
(217) Para.7.4.c) infra.
(218) Para.2.3.d) supra.

Annex 291

P. Martínez de Pinillos, "Geografía y superficie de nuestro mar", in *Revista Geográfica del Perú*, December 1956, p. 147



GEOGRAFIA Y SUPERFICIE DE NUESTRO MAR

Por el Profesor PEDRO MARTINEZ DE PINILLOS

Conferencia dictada en la Sociedad Geográfica de Lima, el 22 de mayo de 1956, dentro del Ciclo de conferencias de divulgación científica del Mar Peruano, organizado por la Asociación de Geógrafos Egresados del Instituto de Geografía de la U. N. M. de San Marcos.

NOTA DE LA REDACCION.

I. LA VIEJA Y LA NUEVA GEOGRAFIA

Por la Ley Natural de la Transformación, todo está en un perenne cambio. A veces, esto es inapreciado, no ya en el mundo inconmensurablemente pequeño y o el inconmensurablemente grande, sino en nuestro propio mundo. En el mundo del Hombre. Sin embargo esto no significa que aquello no sea así.

En el mundo de la Cultura, esta apreciación, por el diferente tiempo en que vive el Hombre y vive su obra, es más tenue que en otros campos. Sin embargo es una realidad actuante.

En el plano de la Geografía, esta transformación es realmente enorme y es obra de pocos como ocurre siempre en casi todos los aspectos de la actividad espiritual de nuestra Especie.

El viejo concepto de la Geografía se basaba en impresionismos sensoriales para llegar a narraciones y descripciones de orden subjetivo y eran más o menos pintorescas o literarias, intercalando conceptos aritméticos de alturas, longitudes, superficies, número de habitantes. En una palabra, de cantidades.

El nuevo concepto de la Geografía se basa, en impresionismos sensoriales pero además en el estudio de los resultados dados por instrumentos y de aparatos de muy alta precisión y emplea un método propio y científico: deductivo-inductivo-deductivo, que estudia y explica un paisaje en sus causas y en sus consecuencias, teniendo como única finalidad el beneficio de la Especie Humana. Es pues utilitaria y pragmática aunque hoy, casi concluída la exploración del Globo, esta Ciencia se encamina hacia una síntesis filosófica. Es pues una encrucijada del Conocimiento.

En nuestro País, la transformación de la Vieja en Nueva Geografía, se la debemos a la acción nunca bien ponderada del Profesor francés Marc Pieyre. Permítanme que desde esta honorable tribuna, rinda un homenaje de fervoroso recuerdo al Maestro, advirtiéndoles que lo hace no el más capacitado de los muy pocos discípulos que tuvimos la honra y la suerte de trabajar con él.

II. NECESIDAD DE LA NUEVA GEOGRAFIA EN EL PERU

Nuestro País es un gran conjunto de expresiones naturales y humanas; caracterizadas por presentar enormes contrastes y oposiciones, a veces paradójicas. Y esto es el resultado de una peculiarísima y constante interrelación en casi todos los aspectos, de los distintos fenómenos y agentes geográficos.

A pesar de este tan atractivo panorama al punto de vista de la investigación geográfica, el Perú es virgen a este conocimiento. Por ello surge potente la vivencia de conocer en forma cabal esta heredad en beneficio de quienes hemos tenido la suerte de nacer aquí; de quienes la aman como si así hubiera sido y de quienes nos deben suceder. Por ello también es que la improvisación, la rutina, y el empirismo deben dejar de ser ya los canales por donde se dirija la acción de los encargados de dirigir las cosas en nuestro País. Y no debe seguir siendo así, por las funestas consecuencias, que en muy variado orden, estamos y seguiremos sufriendo. Cuando esto ya no sea, entonces, la relación del Estado Peruano con el Suelo Peruano nos servirá para descubrir los destinos, los verdaderos destinos del Hombre Peruano.

III. EL NUEVO CONCEPTO GEOGRAFICO APLICADO AL PAISAJE MARINO

El Océano es el resultado de la dinámica interrelación de complejos fenómenos geológicos, hidrológicos, atmosféricos, biológicos. Es una Unidad. Dentro de esa Unidad existen Medios, Zonas, Regiones, Localidades y Puntos, con límites muy difíciles de precisar —con excepción del último— porque dichos fenómenos varían en su intensidad, en su permanencia y hasta en el modo de relacionarse, siendo siempre los mismos, es decir, conservando en esencia, su propia y primitiva personalidad.

De aquí se desprende la enorme y complicada tarea que es estudiar el Océano y de aquí se desprende también que un profundo conocimiento de él, tanto al punto de vista estrictamente científico, como al del económico y al del nacionalista, merezca los más intensos y generosos esfuerzos.

El Profesor Heráclides Vergaray, fue el primero en incorporar el Mar como un Medio Geográfico Peruano. Y lo hizo en la tesis que le permitió graduarse de Bachiller en Geografía Física.

Valedera, por todos conceptos, es la acción que lleva a cabo la Asociación de Geógrafos (Egresados del Instituto de Geografía de la U. N. M. S. M.), bajo la dirección de su dinámico Presidente Sr. Edmundo Rey Riveros, al poner en el tapete de la actualidad un problema de tan honda trascendencia e importancia nacional y digo esto porque hasta ahora si algo se hizo, no lo fue en la forma ni en el fondo, como lo que hoy se está llevando felizmente a cabo.

Las conferencias de Schweigger, Nicholson, Ancieta, Dávila y Velarde, permiten darse cuenta de:

1º—Las expresiones naturales del Mar Peruano, no son muy claras todavía a nuestro entendimiento y no lo son, no por responsabilidad de los muy ilustres científicos que me han precedido en el uso de esta tribuna, sino por la ausencia casi total de los elementos materiales y las facilidades necesarias para que ellos, en cada una de sus respectivas especialidades, puedan dedicarse más hondamente a resolver el sinnúmero de incógnitas que en este sentido ofrece el estudio de nuestro Mar. Estas expresiones no son muy claras ni en sus orígenes ni en las consecuencias de cada uno de los factores, ni de las interrelaciones entre ellos ni tampoco en las consecuencias de esas interrelaciones;

2º—Las expresiones de nuestro paisaje marino —creo yo— determinan un todo y un todo muy especial al mirarlo en el conjunto del Mundo Oceánico del Planeta y esto es así, porque son peculiarísimas las formas y los modos como los distintos agentes y fenómenos se interrelacionan. Es asimismo espacial en su significación general y en sus consecuencias que ésta pueda tener. Nuestro Mar, está perfectamente personificado y poderosamente diferenciado entre resultados semejantes que se dan en otras zonas del Mundo y en las mismas o en otras latitudes;

3º—Esta peculiar forma de interrelacionarse de los fenómenos, producen un gran conjunto que es el Paisaje Marino Peruano, con complejas dependencias y en periódicos e imperiódicos resultados que se dan frente a nuestra Costa bastante peculiar también, y en muy estrecha relación por el rumbo que ésta tiene.

Surge así una dualidad natural que debemos y tenemos que hacer permanente en nuestra conciencia y en la de las generaciones futuras: el Perú es TIERRA Y MAR.

IV. EL FACTOR ECONOMICO Y LA GEOGRAFIA

Cuando nosotros poseemos algo, hablando económicamente, lo apreciamos sólo por la significación material que pueda tener. Este valor es lo que permite hacer permanente en nosotros la propiedad de algo. En lo que respecta a los hombres como individuos.

En una nación, esta propiedad tiene otra dimensión, muchísima más importante y trascendente: la de ser el ligamen inmaterial que, a través del

tiempo, une a los grupos humanos que forman ese pueblo y a éste con los que heredan esa propiedad.

Mas ésta es tal en su significación y valor económico, sólo porque los factores naturales se han dado de tal manera y se relacionan de tal modo entre ellos mismos, que producen expresiones de más o menos valor económico.

Y éste es el caso precisamente, de Nuestro Mar como expresión económica casi única en el mundo por su valor real, explicado por el conocimiento geográfico.

V. LA OBRA DEL HOMBRE PERUANO

Antes, hace muchas centurias, la conciencia de propiedad que nuestros antepasados tenían sobre el Mar, estaba marginada por una simple y rudimentaria actividad extractiva efecto del reducido radio de acción de pequeñas embarcaciones a remo y a vela.

Por el Mar, llega a este territorio la ola cultural del Mundo de Occidente para formar, con el aquél establecido, el Perú de hoy, País de mestizos.

Por el Mar, llega a esta tierra el hálito de la emancipación y por él llega también la posibilidad material de realizarla, de conquistarla.

En el Océano sucumben definitivamente, en la Guerra del 79, nuestras esperanzas de defender triunfantes el honor de la Nación. Y en el Océano también nace una de las glorias inmarcesibles del género humano: GRAU.

El Hombre, el Peruano de hoy, poco ha hecho para incorporar ese Mar a la Entidad Nacional, ni desde el punto de vista científico ni desde el punto de vista económico. Sí desde el legal. De esto nos ocuparemos más adelante.

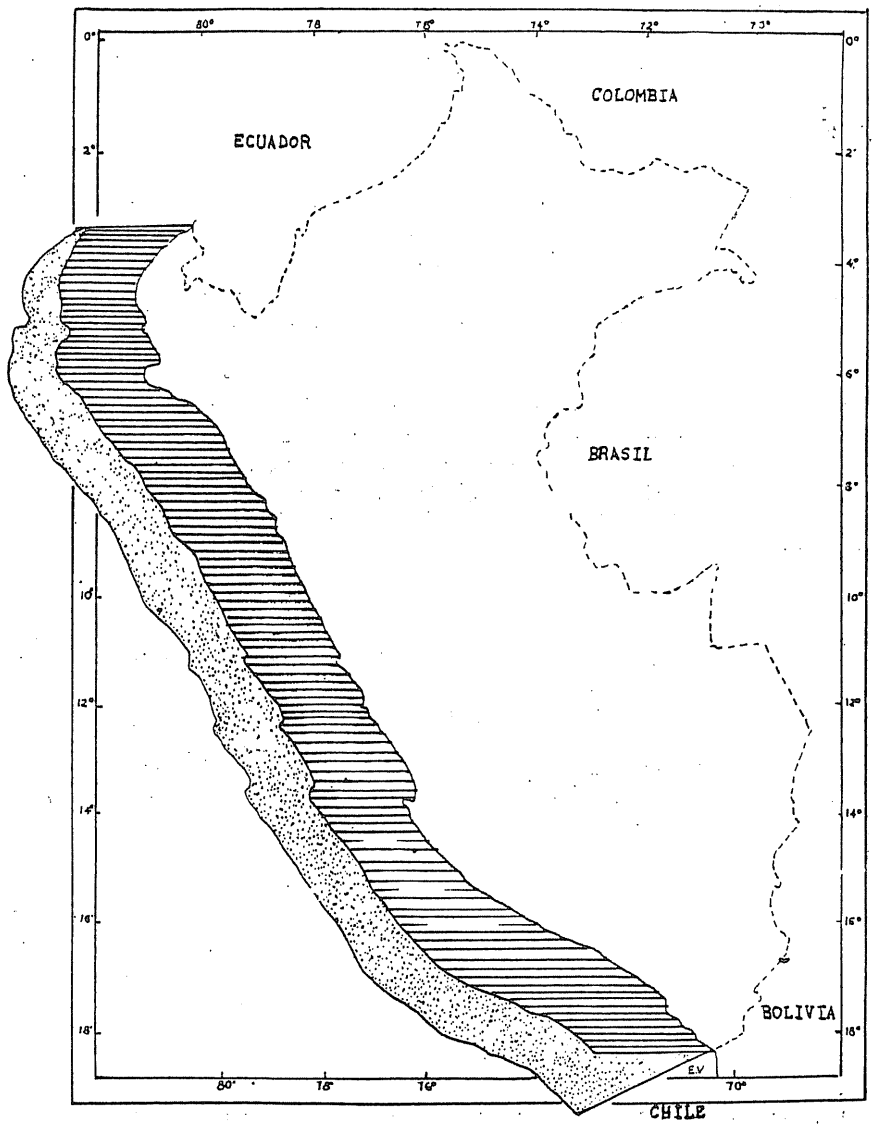
La presencia de vosotros al llamado de la Asociación de Geógrafos Egresados de San Marcos, la obra de los ilustres Profesores que han ocupado anteriormente esta tribuna, desarrollando la Idea del Mar, son muestras fehacientes de la naciente inquietud que nos anima por variar la tonalidad en que hemos estado viviendo respecto a esta nueva dimensión geográfica. Confiamos y tenemos razones para ello en que este entusiasmo y esta acción continuarán siendo canalizados, indesmayablemente, para el bien del País. No debemos olvidar anteriores esfuerzos conocidos con el nombre de Jornadas Oceanográficas llevadas a cabo por la Sociedad Geográfica de Lima.

VI—EL DECRETO SUPREMO Nº 781 DE 1º DE AGOSTO DE 1947; (1)
(Gráfico Nº 1)

No creo necesario dar lectura a este documento. Simplemente indicaré que en él se establece la soberanía del Perú sobre 200 millas al Oeste

(1) Se incluye en esta misma Revista como Anexo I.

AREA SUPERFICIAL DE LA ZONA MARITIMA PERUANA (200 millas)



LEYENDA

Zona Marítima Peruana, según el DS 781 de 1° agosto de 1947 y el Acuerdo Internacional entre Perú, Chile y Ecuador de 4 de diciembre de 1954 (Superficie calculada en 626.240 Km2)

Superficie de 301 296 Km2, que por razones geográficas debe ser incluída dentro de nuestra Soberanía Marítima
Area total de la Zona Marítima Peruana (200 millas); 927.536 Km2.

de la Costa y sobre y debajo de la superficie marina, siguiendo la línea de los paralelos.

Respecto a las islas se trasladarán sus respectivas superficies, a esa misma distancia y contada desde los puntos más occidentales de ellas.

De acuerdo a lo que se nos ha dicho anteriormente, en las conferencias de Schweigger y de Dávila (2), respecto a la extensión, en anchura, de la Corriente Peruana, consideramos que el límite de las 200 millas señaladas en el comentado Decreto, como frontera de nuestra propiedad oceánica, es incuestionablemente, un prudente **margen de seguridad** para **hacer posible la cabal y no indiscriminada explotación de las especies ictiológicas que significan la incalculable, pero acabable fuente de recursos de nuestro Mar.**

Sin embargo, algo tenemos que decir en lo que se refiere al procedimiento seguido para señalar el límite de estas 200 millas. Al hecho de medirlo siguiendo la línea de los paralelos en primer lugar, y en segundo lugar al hecho de trasladar las superficies de las islas a 200 millas medidas desde los puntos más occidentales de éstas y siguiendo también las líneas de los paralelos.

Sabemos, y podemos comprobarlo en cualquier momento, que en la Naturaleza los fenómenos se interrelacionan más o menos estrechamente lo que determina diferentes conjuntos, más o menos importantes por su volumen o extensión según sea la estructura de esos fenómenos y la forma e intensidad en que se relacionan entre sí.

Sabemos también que el **Mar Peruano,** como expresión geográfica, es un gran conjunto y peculiarísimo en el panorama oceánico del Globo, no sólo por la expresión en sí misma, esencialmente, sino porque además los límites de este gran conjunto están más que menos delineados en forma natural. Podemos admitir que, como conjunto natural que es, puede presentar, en la extensión, algunas muy tenues soluciones de continuidad, pero al mismo tiempo decimos que ellas no alteran la total homogeneidad de ese conjunto. Todavía no sabemos muy a cierto el por qué sea esto así, pero vuelvo a repetir, pero sí podemos comprobar los resultados; la homogeneidad como también que ella es consecuencia de peculiar forma como esos fenómenos se interrelacionan.

De este, surge clara y palpable la incongruencia geográfica que significa trasladar la superficie de las islas a 200 milas de sus puntos más occidentales y siguiendo las líneas de los paralelos, pues con esto se acaba de establecer una solución de continuidad terminante entre esas superficies y la línea que limita las 200 millas y que corresponde al litoral llevado también a 200 millas. Es decir que se altera, en perjuicio exclusivamente nuestro, una realidad que frente a nuestras costas no ha sido jamás alterada, ya que nunca felizmente nadie dijo que el espacio de mar entre las

(2) Conferencias dictadas en la Sociedad Geográfica de Lima, sobre el Mar Peruano.

Islas de Lobos y la Costa Norte del Perú, aún siguiendo el sentido de los paralelos, no era nuestro mar, y esto es precisamente lo que se está diciendo aunque trasladando este escenario a 200 millas al Oeste.

No quiero referirme a los problemas de demarcación y de defensa para cuya justa solución, este singular modo de establecer estos límites creará, inevitablemente, situaciones verdaderamente incómodas.

Debo agregar que este es el resultado de la ausencia del concepto geográfico en la mentalidad de los llamados técnicos que han procedido sin agotar las consultas a todas las instituciones técnico-científicas que existen precisamente para dar luces en estos asuntos, de tan grande importancia y trascendencia nacionales.

Tampoco tiene sentido el marcar las fronteras siguiendo la línea de los paralelos, por la sencilla razón de que nuestra costa ni es perpendicular a ellos, sino oblicua en su rumbo general y, además de esto, es sinuosa y el procedimiento seguido permite que un foráneo pueda extraer, sin nuestro consentimiento, los recursos de nuestro mar, estando dentro del límite de las 200 millas como lo voy a comprobar con la ayuda de un gráfico.

Supongamos que un barco esté pescando en el punto **A.** De aquí a **B**, y siguiendo la línea de los paralelos hay 200 millas. Pero desde este mismo punto **A** a **B**[1] hay mucho menos de 200 millas. Es decir, que ese barco está atentando contra nuestra soberanía decretada en este instrumento jurídico del que estamos haciendo referencia, pero al mismo tiempo ese mismo barco está aceptando, no invalidando nuestra reclamación legal. Ha habido la intención de defender lo que naturalmente nos pertenece, pero con ausencia de los basamentos científicos que siempre deben ser rectores, en estos casos, de la intención.

Parecería que con esto se hubiera terminado el enjuiciamiento geográfico de las leyes que legitiman nuestra soberanía y nuestra propiedad sobre nuestro Mar. Desgraciadamente no es así.

El 4 de Diciembre de 1954 se firma en Lima el Acuerdo Tripartito entre nosotros (Perú), Ecuador y Chile respecto a la común soberanía sobre 200 millas al Oeste, ratificando, en sus conceptos esenciales, el Decreto del año 1947. Este acuerdo establece, entre otras cosas, una zona especial de 10 millas a cada lado del paralelo que constituye la frontera marítima entre uno y otro de los tres países. Línea que se internará en el mar a partir de la intersección de las fronteras terrestres hasta 12 millas. En esta zona pueden pescar los nacionales de los países limítrofes sin que signifique atentar contra la soberanía del País frente al cual se está extrayendo los recursos ictiológicos. Este Acuerdo es ratificado por nuestro Congreso, el 5 de mayo de 1955.

Esta es otra grave incongruencia en lo que respecta a nuestro límite marítimo **con el País del Sur, pues en nuestra frontera terrestre con él, el litoral forma un ángulo como claramente lo pueden apreciar aquí y trazar**

desde este punto una línea hasta las 200 millas y siguiendo la línea de los paralelos es, determinar graciosa pero injustificadamente, una mayor proporción de nuestra Zona Marítima a Chile. Lo equitativo debe ser trazar la bisectriz de ese ángulo hasta 200 millas al Oeste y a partir de esta determinación señalar las 10 millas a cada lado, y hasta 12 al Oeste como zona neutra para el efecto de la pesca por los nacionales de los tres países firmantes. Con Ecuador no se presenta este problema por el rumbo que tiene el litoral de ese País con respecto al nuestro, como pueden verlo también en el Mapa de América del Sur.

Bien sé, paciente auditorio, que no es totalmente válido el sólo impugnar una creencia o una determinación, y esto en cualquier campo de la actividad humana. Por eso no sólo me limito a señalar los **gravísimos errores cometidos, fáciles de subsanar felizmente todavía,** sino que paso a proponer las soluciones que, creo están enmarcadas dentro de un criterio geográfico:

1º—El límite de las 200 millas debe trazarse partiendo de todos los puntos más occidentales de nuestro litoral incluyendo a las islas.

2º—Esta línea debe ser oblícua a estos puntos.

3º—A partir de estos puntos se trazarán arcos de circunferencia de 200 millas de radio que, naturalmente, tendrán un punto de intersección con cada línea oblicua anteriormente marcada.

4º—Nuestra verdadera frontera marítima estará determinada por la sucesión de segmentos exteriores hacia el Oeste de estos arcos.

5º—En lo que respecta a nuestra frontera con Chile yo me he referido al procedimiento que considero justo.

Debo, en honor a la verdad, decir que el jurista Dr. Rómulo Vidalón, fue el primero en sostener la tesis jurídica de nuestra propiedad sobre el Mar hasta las 200 millas al Oeste en su trabajo presentado para optar el título profesional. Como también fue el Profesor Heráclides Vergaray Lara, el primero en obtener, tras pacientísimo esfuerzo, la superficie de **nuestra propiedad marítima según lo indicado por el Decreto de 1947, siendo la cantidad lograda de 626.240 Kms2 que fue tomada por nuestro Ministerio de RR. EE. como cantidad oficial, aunque sin indicar el origen del guarismo.**

Según mis procedimientos ya indicados, y ayudado generosamente por el Profesor Julio Gonzales Neyra, hemos obtenido **927.536 Kms.2.** Una mayor diferencia de **301.296 Kms.2** a nuestro favor. Entrando al detalle, diré que se trazó variadas figuras geométricas en todo este espacio y se obtuvo la superficie de cada una. Allí, donde las sinuosidades o del litoral o de la línea fronteriza no permitía esta forma de trabajo, se utilizó un planímetro.

La gran diferencia cuantitativa entre la superficie dada por el Profesor Vergaray de acuerdo al Decreto de 1947 y al Acuerdo de 1954, y la

obtenida por mí, significa algo más que una cantidad de kilómetros. Con esto quiero decir que no sólo el Perú es Tierra y Mar, ni que el Perú tiene hoy una superficie continental de 1'285.215.6 Kms.2 y una superficie de Zona Marítima de 927.536 Kms.2. No. No es sólo eso. Significa algo, muchísimo más que eso. Significa nada menos, que el Perú incluye, con este procedimiento y por primera vez en su Historia y sin lesionar absolutamente los intereses de nadie, lo que cabal, real y naturalmente le corresponde, porque así lo determina, en cuanto al Mar se refiere la Naturaleza. La superficie total del Perú, incluyendo su Zona Marítima es: 2'212.751.6 Kms.2.

No puedo declararme enemigo del Panamericanismo, de la Política de Buena Vecindad, de la Hermandad Americana. Creo en todo esto, pero sólo hasta el punto que no perjudique ni leve ni gravemente a los países o a algún País, que con su presencia haga posible estas ideas. Soy de los que creo que el Mundo será verdaderamente de Paz y de Amor cuando a los hombres no nos separen ni fronteras naturales ni fronteras espirituales. Cuando los hombres, todos los hombres, seamos ciudadanos del Mundo. Cuando todos los países al unísono y sin discriminaciones de ningún género, ideal que todavía no se vislumbra en el horizonte del Tiempo se pongan de acuerdo, realicen este soñado objetivo. Mientras no sea así, muy grave es tomar unívocamente una determinación en este sentido.

Nuestro País, mejor dicho nuestros representantes y a lo largo de sólo nuestra Historia Republicana, han cedido 728.000 Kms.2 de nuestro territorio continental. Los han cedido a todos los pueblos que, desde este punto de vista, tienen la suerte de ser nuestros vecinos. Por eso he escrito una vez y lo proclamo dolido y quizá un poco enforverizado ahora que, **somos los Desposeídos de América.** Y acabamos de comprobar que algunos, por ignorancia, determinan que sigamos siéndolo.

A honda reflexión llama esta disminuída situación. Porque en este caso, único en nuestra Historia de Límites, eran países muy alejados de nuestras costas quienes se oponían a nuestra determinación pero yo creo que sólo podían hacer eso, oponerse, dados los momentos que vive y felizmente seguirá viviendo el Mundo del Hombre. Nuestros vecinos estaban de acuerdo con nostros. Tan es así ,que han firmado el Acuerdo Tripartito. No había pues el pretexto de un posible conflicto con ellos por esa razón, como se arguido en las diferentes ocasiones en que se ha cedido nuestro Sagrado Patrimonio. Sin embargo, el resultado ha sido el mismo.

Decía hace unos momentos que esto puede remediarse. Nosotros tenemos la esperanza de que los ciudadanos que conforman el nuevo Parlamento (Parlamento Democrático), revisen detenida y cuidadosamente este Tratado. Legalmente pueden hacerlo. Moralmente están obligados a hacerlo. Es para ellos un imperativo impostergable. Lo es también para todas las instituciones nacionales. Quizá si entre ellas ocupa un primer lugar en este sentido, la Asociación de Geógrafos Egresados del Instituto de Geografía de la Universidad Nacional Mayor de San Marcos.

Esta verdad incontrastable que es la nueva dimensión que poseemos, está basada pues en una razón natural y tiene grandes significados. Un significado geográfico, porque esta verdad es la consecuencia de examinar una situación natural y nacional con el criterio científico que norma la raística de la Geografía. Está expresándose esa situación natural en su conjunto después de haberla analizado, sintetizado y analizado nuevamente. Tiene además un carácter nacional de trascendencia insospechable, porque es la primera vez que exitosamente poseemos lo que real cabal y naturalmente nos pertenece. Y lo poseemos, además, en su totalidad.

Los eternos factores de la Tierra son el Suelo y el Mar, el Espacio y la Situación. Los hombres necesitamos espacio para vivir y para crecer. No olvidemos nunca que nuestro País es muy pobre, y que nuestros hijos y los hijos de nuestros hijos, han de necesitar muchísimo mayor espacio que nosotros para desenvolverse.

Todas estas afirmaciones sólo son fruto del amor que le tengo a mi País, del profundo respeto que le guardo a su Historia, y de mi esperanza y de mis deberes por cumplir con su explendente Futuro. Es fruto de la creencia de que nada tiene valor sino está hecho en beneficio del Hombre. En este caso del beneficio del Hombre Peruano y esto lo está determinando, en este caso no yo, sino la Geografía.

No olvidemos tampoco que la relación de los Estados con el suelo que ocupan o puedan ocupar es muy importante porque sirven para descubrir algunos secretos del Destino de los hombres que están representados por su Estado.

Yo sé, y vosotros también, que ayer y siempre, sólo se ha tenido y se tendrá tantos derechos como fuerza se posea para defenderlos. Sabemos también que siempre se debe guardar un estrecho equilibrio entre la fuerza y el propósito. Pero debemos saber además, y mejor que lo anterior, que el Perú es Tierra y que el Perú es Mar. Y tengo que decirlo, y todos tenemos que decirlo y sustentarlo y defenderlo. Tenemos que defender esta nueva dimensión que gracias al conocimiento geográfico tiene el Perú.

Muy agradecido por haberme escuchado.

———:oOo:———

[…]

On 4 December 1954, the Tripartite Agreement was signed in Lima between us (Peru), Ecuador and Chile, concerning the common sovereignty over 200 miles to the West, thereby ratifying, in its essential concepts, the Decree of 1947. This agreement determines, among other things, a special zone of 10 miles along each side of the parallel that constitutes the maritime frontier between each of the three countries. This line enters into the sea from the junction of the land frontiers up to [a distance of] 12 miles. Nationals of the bordering countries can fish in this zone without committing a violation of the sovereignty of the Country in the vicinity of which the fishing resources are being extracted. This Agreement was ratified by our Congress on 5 May 1955.

[…]

I must, in honour of the truth, say that the legal expert Dr. Rómulo Vidalón, was the first to support the legal thesis of our property over the sea up to 200 miles to the West in his study presented to be eligible to the professional title. As it was also Professor Heráclides Vergaray Lara, who was the first to obtain, after a very patient effort, the surface of our maritime property according to what is indicated in the Decree of 1947, which is 626,240 Km^2, which is [the figure] taken by our Ministry of Foreign Affairs as the official number, although it does not indicate the origin of the data.

According to my proceedings, which have been already indicated, and generously helped by Professor Julio Gonzales Neyra, we have obtained [a figure of] 927,536 Km^2. [This represents a] greater difference of 301,296 Km^2 in our favour. Going into the details, I would say that various geometrical figures were traced within all this space and that we obtained the surface of each one of them. Where the sinuosities of the coast or of the frontier line did not allow this form of work, a planimeter was used.

The great quantitative difference between the surface given by Professor Vergaray according to the Decree of 1947 and the Agreement of 1954, and the one I obtained, means something else than a number of kilometres. It does not only mean that Peru is Land and Sea, nor that Peru has today a continental area of 1,285,215.6 Km^2 and a Maritime Zone area of 927,536 Km^2. No. That is not all. It means much more than that. It simply means that Peru includes, with this procedure and for the first time in its History and without causing prejudice to anyone's interests, what fairly, really and naturally corresponds to it, because that is how it is determined, as the Sea refers to the Nature. The total surface of Peru, including its Maritime Zone is: 2,212,751.6 Km^2.

[…]

Our Country, more precisely our representatives, and this only along the period of our Republican History, have ceded 728,000 Km^2 of our continental territory. They have ceded it to the people who, in that regard, have the chance to be our neighbours. That is why I have once written and I now proclaim it, hurt, and maybe a little fervently, that we are the Dispossessed of America. And we have just verified that some, by ignorance, determine that we continue to be.

This situation of inferiority calls for thorough reflection. Because in this case, unique in our Boundaries History, [only] countries [located] very far from our coasts were opposed to our determination. But I think they could only do so, be opposed, given the moments that the World of Mankind goes through and will continue going through. Our neighbours agreed with us. Such is the case that they signed the Tripartite Agreement. The pretext of a possible conflict with them for this reason did not exist at that moment, as it has been argued in the different occasions in which our Sacred Patrimony has been ceded. However, the result has been the same.

I said a few moments ago that this can be repaired. We have the hope that the citizens who compose the new Parliament (Democratic Parliament) revise in detail and carefully this Treaty. Legally, they can do it. Morally, they are obliged to do so. It is for them an imperative that can not be deferred. It is also so for all the national institutions. In this perspective, perhaps the Association of Alumni of the Institute of Geography of the *Universidad Nacional Mayor de San Marcos* holds a leading place among them.

[…]

Annex 292

T. L. McDorman, K. P. Beauchamp, D. M. Johnston, *Maritime Boundary Delimitation: An Annotated Bibliography*, 1983

Maritime Boundary Delimitation

An Annotated Bibliography

Ted L. McDorman
Dalhousie Ocean Studies Programme

Kenneth P. Beauchamp
Canadian Arctic Resources Committee

Douglas M. Johnston
Dalhousie Ocean Studies Programme

LexingtonBooks
D.C. Heath and Company
Lexington, Massachusetts
Toronto

Limits in the Sea, no. 63 (1975).
Atlante dei confini sottomarini (Atlas of the Seabed Boundaries), p. 119.

Note:
Zone: continental shelf.
Other: if a single geological petroleum structure straddles the boundary, then no well shall be drilled within 125 meters of the boundary line except by mutual agreement, and the parties "shall endeavour to reach agreement" on coordinated and unitized operations.

South America

Chile-Ecuador-Peru 76

Agreements between Chile, Ecuador, and Peru, signed at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Santiago, 18 August 1952. Declaration on the maritime zone. Agreements between Chile, Ecuador, and Peru, signed at the Second Conference of the Exploitation and Conservation of the Maritime Resources of the South Pacific, Lima, 4 December 1954. Agreement relating to a special maritime frontier zone.

Printed text:
Laws and Regulations on the Regime of the Territorial Sea (U.N. Legislative Series, 1957), at pp. 723 and 729.
Limits in the Seas, nos. 86 and 88 (1979).

Note:
Zone: 200-nautical-mile zones of "sole sovereignty and jurisdiction."
Method: parallel of latitude drawn from the point where the land frontier between the two countries reaches the sea.
Other: the second agreement establishes a 10-nautical-mile wide zone beyond a distance of 12 nautical miles from the coast where fishing is reserved for the nations of both countries and citizens of the adjacent states shall not be considered in violation of a state's sovereignty.

Brazil-Uruguay 77

Agreement between the Federative Republic of Brazil and the Oriental Republic of Uruguay establishing a maritime boundary.

Done 21 July 1972.
Entered into force 12 June 1975.
Printed text:
Limits in the Seas, no. 73 (1976).
Note:
Zone: maritime boundary (200-nautical-mile territorial sea).
Method: a line "nearly perpendicular to the general line of the coast."

Argentina-Uruguay *78*

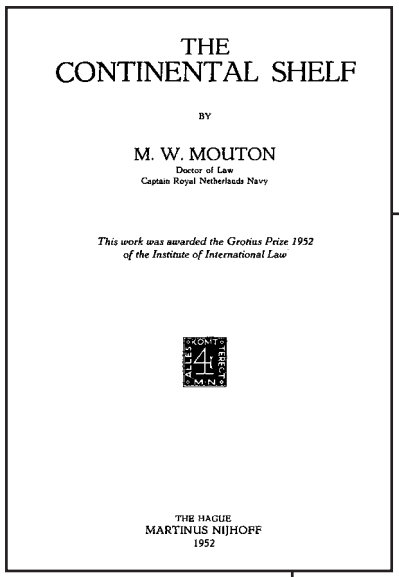
Treaty of the La Plata River and its maritime limits (Argentina-Uruguay).
Done at Montevideo, 19 November 1973.
Entered into force 12 February 1974.
Printed text:
International Legal Materials 13 (1974):251.
Limits in the Seas, no. 64 (1975).
Atlante dei confini sottomarini (Atlas of the Seabed Boundaries), p. 185.
Note:
Zone: maritime boundary and continental shelf.
Method: equidistance.
Other: where a mineral deposit straddles the boundary, when exploitation takes place the volume of minerals extracted should be allocated in proportion to the volume located on either side of the boundary. A common fishing zone and scientific-research zone are established with a mixed technical commission to establish regulations for the common zone.

Colombia-Ecuador *79*

Agreement between Colombia and Ecuador on delimiting marine and submarine areas and on maritime cooperation.
Done at Quito, 23 August 1975.
Entered into force 22 December 1975.
Printed text:
Limits in the Seas, no. 69 (1976).
National Legislation and Treaties Relating to the Law of the Sea (U.N. Legislative Series, 1980), p. 398.
Note:
Zone: marine and submarine areas.
Method: a line of the geographical parallel intersecting the land boundary.

Annex 293

M. W. Mouton, *The Continental Shelf*, 1952


THE
CONTINENTAL SHELF

BY

M. W. MOUTON
Doctor of Law
Captain Royal Netherlands Navy

This work was awarded the Grotius Prize 1952 of the Institute of International Law

THE HAGUE
MARTINUS NIJHOFF
1952

cause these waters are defined as "the waters covering the submarine platform". The continental shelf is taken in the geological sense.

The *Chilian* Presidential Declaration of 25th June, 1947 [72] [a], p. 188, starts with a similar assertion as to the claims of sovereignty in the United States and Mexican documents adding, without doubt rightly the Argentine Decree.

The Preamble then continues:

"3. That particularly in the case of the Republic of Chile there is a manifest advantage in issuing an *analogous* proclamation of sovereignty .... because owing to its topography and lack of mediterranean extension, the country's life is bound up with the sea and with all the present and future riches contained in the sea, to a greater degree than in the case of any other nation.

4. That an international consensus recognizes that each country has the right to consider as national territory the whole extent of the adjacent epicontinental sea and continental shelf".

This is a remarkable statement, and certainly not all international lawyers will agree with it. In the Preamble of the Argentine Declaration is a similar passage, which is, however, more carefully worded: "In the international sphere *conditional* recognition is accorded to the right of every nation to consider as national territory the entire extent of its epicontinental sea and of the adjacent continental shelf". This paragraph does not appear expressis verbis in the Preamble of the Peruvian Decree, but it did appear in the original Preamble of the Decree Law of Costa Rica of 27th July, 1948. We will deal with these two Decrees presently.

The operative part of the Declaration then continues (there is a mistake in the translation, which will be dealt with presently):

"2. The Government of Chile confirms and proclaims the national sovereignty over the seas adjacent to its coasts, whatever their depth may be, to the full extent necessary to reserve,

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[a] *See also* [153], *p. 6 (slightly different translation. Here the date of the Declaration is given as 23 June 1947).*

protect, conserve, and utilize the natural resources and wealth of whatever nature, found on, in, or under said seas, placing under Government supervision the fishing and marine hunting industries in order to prevent this type of resources from being exploited to the prejudice of the inhabitants of Chile and diminished or destroyed to the detriment of the country and of the American Continent.

3. Demarcation of the zones of protection of maritime hunting and fishing in the continental and island seas which are under the control of the Government of Chile will be made in virtue of this declaration of sovereignty, whenever the Government considers it suitable, by ratifying, amplifying, or in any manner modifying the said demarcations in conformity with the knowledge, discoveries, studies, and interests of Chile which may be made known in the future; at present said protection and control are declared over all the sea included between the perimeter formed by the coast and a mathematical parallel projected out to sea at a distance of two hundred marine miles from the continental coasts of Chile. With respect to the Chilian islands, this demarcation will be made by marking out a sea zone contiguous to the coasts of these islands, projected parallel to these coasts for two hundred marine miles from the whole circumference.

4. The present declaration of sovereignty does not disregard similar legitimate rights of other States, on the basis of reciprocity and does not affect rights of free navigation on the high seas.

Santiago, 25 June, 1947".

This Decree will be discussed together with the next one.

Peru. Presidential Decree 1st August, 1947 [72], p. 190 [a].

The Preamble after having stressed the necessity for conservation of fishing resources goes on: ".... That the fertilizing wealth deposited by guano birds on the islands of the Peruvian coast also requires for its safeguard the protection, conservation, and regulation of the use of the fishing resources which serve to nourish the said birds; ....".

Then a similar reference is made relating to the sovereignty

[a] *See also* [151], *p. 16.*

over the epicontinental waters as in the Chilian Decree, including the latter as well.

Then follows the operative part of the Decree, (with the same translation mistake): ....

"2. The national sovereignty and jurisdiction are exercised as well over the sea adjacent to the coasts of the national territory, whatever its depth, to the extent necessary to reserve, protect, conserve, and utilize the natural resources and wealth of all types which are found in or under the said sea.

3. As a consequence of these declarations, the State reserves the right to establish the demarcation of zones of control and protection of the national wealth in the continental and island seas which are under the control of the Government of Peru, and to modify the said demarcation in accord with supervening circumstances, by reason of new discoveries or studies, or national interests which may become apparent in the future; and declares at present that it will exercise the said control and protection over the sea adjacent to the coasts of Peruvian territory in a zone lying between those coasts and an imaginary line parallel to them, drawn on the sea at a distance of two hundred (200) marine miles, measured by following the line of the geographical parallels. With respect to the national islands, this demarcation will be drawn by marking out a zone of the sea contiguous to the coasts of the said islands, up to a distance of two hundred (200) marine miles measured from every point on the circumference of the islands.

4. The present declaration does not effect the right of free navigation of ships of all nations, in conformity with international law".

In both the Chilian Declaration and the Peruvian Decree, the Preamble makes reference to the continental seas, and epicontinental seas.

Only in the Peruvian Preamble these terms are defined where it stresses the necessity of conservation of fishing resources, "and other natural wealth which is found in the epicontinental waters which cover the submarine platform, and in the continental seas adjacent to it ....".

In the actual declaration and decree, no reference is made to the continental shelf, in so far as fisheries are concerned.

This is natural because, although the continental shelf along the northern coast of Peru is still fairly wide (maximum about 70 miles) from 15 degrees southern latitude to the south it is narrow, whereas for Chile the shelf is extremely narrow and in certain areas hardly existent. Therefore these countries seek protection for the fisheries naturally outside the waters covering their continental shelf.

We have seen in the beginning of this Chapter that the Pacific Ocean along the coasts of these countries is extremely rich in marine life. Schweigger [75] investigated the distribution of fish along the Peruvian coast. On the maps 1A–1G (p. 9–15) he gives the results of his observations concerning the occurrence of different species of fish and other marine animals in the Pacific from about 4 degrees south latitude to nearly 17 degrees south latitude, along the Peruvian coast.

Compared with the maps 2 (A–G), (p. 18–20), these maps prove that, although the largest density of fish is met on the continental shelf, many species are found outside, at considerable distances from the shelf.

The same can be said about the places where fisheries take place, shown on the maps 7 (A–G), p. 98–101.

Schweigger concludes his discussion on distribution of fish by saying, p. 102–103, that the accumulation of fishes does not follow the configuration of the continental shelf.

Data concerning the places where fisheries take place, which would be the best proof of our thesis, that fish live also in areas far outside the continental shelf, are unfortunately not everywhere available.

It is clear that fisheries far outside the coast are more costly and need capital behind them. The west coast of Africa, very rich in marine life as we have seen, doubtlessly fished by natives near the coast, has not yet been exploited at greater distances from the coast. In Peru it is only the last five years, that a great extension of fisheries has taken place, with the help of American capital. When Schweigger wrote (1943) the fisheries were not mechanized and the small boats with their hand equipment could not go far from the coast, without the means to keep the fish fresh for a longer period (p. 253). Scully [76], p. 7–8, describes the recent development of the Chilian and Peruvian fisheries:

"From Talcahuano, Chile, to Ecuador's Galápagos Islands, this area had suddenly become the great new fishing grounds of the world .... Last year most of the United States' 189,000,000 pounds of tuna were caught in these waters, frozen, and shipped to California for packing. More than eighteen million cans of South American-packed bonito, a delectable fish new to most people in the United States, were sold here. Along with these came five thousand tons of frozen swordfish and lesser lots of other species. This new inter-American industry has made jobs in South America for some thirty thousand fishermen, cannery-workers, and boat-builders.... From the massive Andes mountains that rise within sight of the coast, dozens of rivers carry huge loads of life-giving nitrates and phosphates into the Pacific. But, instead of settling and being lost, these elements are constantly stirred to the surface by the swift, cold Humboldt Current that sweeps up from the Antarctic, hugging the coasts of Chile and Peru until it swerves westward off Ecuador to wash the Galápagos Islands .... While the current itself is only 20 to 80 miles wide along the coast, it is impossible to bound the area influenced by its life-making activities, especially after it turns westward. But twenty-three species and five hundred million pounds of fish were taken last year in big numbers".

From the F.A.O. Statistics [77], p. 39, it appears that the Chilian catch has increased from 30,572 metric tons in 1938 to 76,246 in 1949, and from an article on "Better utilization of fisheries resources in Latin America" [78], p. 5, the figures for Peru in 1939 were 4,849 metric tons, and in 1949 45,260.

If the long since uttered desirability to extend the zone for exclusive fishery rights or at least to lay down conservation measures is to be materialized at all, these countries have certainly as much reason to claim the said rights as those which are in the possession of a continental shelf.

Peru has an extra reason, because the fish form the food for the guano birds, which are an economic asset to the country. Murphy [a], p. 64, quoted by Brongersma [55], p. 76, remarks concerning the coastal water of Peru: "the existance in littoral waters of a vast abundance of marine organisms, upon which

[a] R. C. Murphy, "The oceanography of the Peruvian littoral", Geogr. Review, Vol. 13, p. 64–85, 1925.

are dependent in turn unsurpassed fishery resources, as well as the remarkable Peru guano industry". Sverdrup [54], p. 942: "The great production of this oceanic system (The Peru Coastal Current) is manifest in the tremendous quantities of marine birds in this area. Some idea of the magnitude of production can be had from Schott's [a] Report (1932) "that on one small island of the Chinchas group there are estimated to be some five or six million marine birds, such as cormorants, pelicans and gannets, which daily remove at least 1,000 tons of small fish from the surrounding water. The great Peruvian guano deposits on the shores of these regions may be as much as 30 metres in thickness ....".

Chile has an extra reason because of the length of its coastline compared with the surface of its territory.

The claim of 200 miles sounds extravagant, it is true, but the basis of their claims is not unsound.

In both documents sovereignty is claimed over the seas adjacent to the coasts, whatever its depth, and according to the translation "*to the* (full) *extent necessary to reserve, protect, conserve* and *utilize* the natural resources ....".

In both documents it is then declared that at present this protection and control will be exercised in a zone between the coast and a parallel at a distance of 200 miles from the coast. Hence it follows that at present both documents claim sovereignty over a part of the high seas far beyond the territorial sea. Possibly through using this or a similar translation the opinion has been expressed that sovereignty was claimed *only as far as* necessary for the protection or conservation of the fisheries. A very limited sovereignty indeed.

François said in the 69th meeting of the International Law Commission [67], p. 22: "Chile did not claim sovereignty for all purposes, but solely for the purpose of protecting natural riches ....", and Hudson (loc. cit.): "It did not .... represent a mere proclamation of full rights of sovereignty".

We, however, believe that the translation of this passage in both documents is wrong. Paragraph 4 of the Chilian Preamble, which we have criticized above, stated that every country has

[a] G. Schott, "The Humboldt Current in relation to land and sea conditions on the Peruvian coast", Geography V, 17, p. 87–98, Manchester, 1932.

the right to consider *as national territory* the *whole extent* of the adjacent epicontinental sea and continental shelf. In the Spanish text "for the whole extent" we read "toda la extensión", meaning "the whole area, space or compass". The translation here is correct, because "extent" cannot mean anything else here than area, space or compass.

In paragraph 2 of the operative part of the Chilian Declaration and of the Peruvian Decree the same Spanish words are used: "El Gobierno, de Chile .... proclama la soberanía nacional sobre los mares adyacentes a sus costas .... *en toda la extensión* necessaria para reservar ...." etc. Here the underlined words have been translated by: "to the full extent" which means in English to the full degree. Hence the opinion that the sovereignty is limited. This translation is wrong and should read "to the full area, extensiveness or space, necessary to reserve, etc." [a]. It is clear that *if* sovereignty is claimed to the full *degree* "necessary to reserve", that only a limited sovereignty would be meant. If, however, sovereignty is claimed for the *area* "necessary to reserve" the words "necessary to reserve" do not limit the degree of sovereignty, but the area over which sovereignty is claimed. In this area the sovereignty is full and only conditioned by the last paragraph saying that the declaration does not affect rights of free navigation on the high seas. There is no reason to translate "toda la extensión" in par. 4 of the Preamble differently from the same words in par. 2 of the actual Declaration. Moreover why is the statement in par. 4 of the Preamble made if it was not meant to be followed up in the Declaration? Briefly, in the same meeting of the International Law Commission [67], p. 21, said that "the Chilian proclamation represented a claim to extend the country's territorial waters to a very large area".

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[a] The word "extent" according to the Shorter Oxford Dictionary means "space or degree to which anything is extended". If we take the meaning of "degree" the sovereingnty is conditioned. If we take the meaning "space" the sovereignty is full in that space. 2. International Law Quarterly ,1948[79], p. 135, gives a better translation: "within those limits necessary in order to reserve etc.", in the Chilian Declaration, and p. 137: "in the extension necessary to reserve etc.", in the Peruvian Decree. Selak [65], p. 673, uses the incorrect translation "to the extent" and Young [73], p. 853: "to whatever extent" which is better, but does not exclude the wrong interpretation. He states, however, that full sovereignty was asserted over the epicontinental sea in both documents. *The Int. Law Quarterly translation also in* [153] *p. 6 and 17.*

Another point we cannot agree with, even if the translation had been the right one, quod non, is that only conservation rights are claimed. They claim the sovereignty and jurisdiction to *reserve*, protect, conserve and *utilize*, the natural resources (in the Chilian Declaration "aprovechar", in the Peruvian Decree "utilizar"). The wording, it is true, is somewhat queer, because one could claim the whole area of sea necessary to protect or conserve the natural resources: in order to protect them properly one needs a minimum of space necessary to make the protection effective. The area of sea necessary to utilize the resources i.e. the fish, seems to be rather an elastic one. At any rate for the protection *and control*, at present an area of 200 nautical miles parallel to the coast is deemed to be necessary and in that area Chile and Peru claim the *full* sovereignty. This was necessary, because otherwise conservation regulations could only be enforced against their own nationals and not against fishermen of another nationality. Moreover because the utilization of the fish is one of the reasons for claiming sovereignty, an exclusive fishing right is meant. We agree with François [80] (p. 929), that the Chilian Declaration (and the Peruvian Decree) are not in agreement with the Law of Nations. There may be just reasons for these countries, and in particular for Chile, with its long coastline compared with the surface of its territory, to claim a wider margin than the 3-mile limit, for exclusive fishery rights, as we believe that Norway has a just reason for such a wider claim, because of particular local circumstances, but a 200-mile margin is, according to our opinion, extravagant.

As to conservation regulations, these should, as we will explain later, be agreed upon with other States, which have fishery interests in those regions and if no agreement is possible, an international body should be empowered to lay down such regulations in that area.

Concerning conservation we therefore disagree with the method used.

Costa Rica first issued a Decree Law of 27 July, 1948 [72], which was very similar to that of Chile. But this Decree was replaced by Decree Law No. 803 of 2 November, 1949 [153], p. 9.

In Art. 2 of this Decree (compare with Art. 2 of the Chilian

Annex 294

S. N. Nandan, "The Exclusive Economic Zone: A Historical Perspective", in *Essays in memory of Jean Carroz: The Law and the Sea*, 1987, p. 171

Essays in memory of Mélanges à la mémoire de Ensayos en memoria de

Jean Carroz

The Law and the Se

Le Droit et la Mer

El Derecho y el Mar

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE
ORGANIZACION DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACION
Rome, Roma, 1987

The Exclusive Economic Zone: A historical perspective

S.N. NANDAN

Under Secretary-General, Special Representative of the Secretary-General for the Law of the Sea. The opinions expressed in this article are those of the author and do not necessarily represent the views of the United Nations.

INTRODUCTION

The concept of the exclusive economic zone is one of the most important pillars of the 1982 Convention on the Law of the Sea. The regime of the exclusive economic zone is perhaps the most complex and multifaceted in the whole Convention. The accommodation of diverse issues contributed substantially to the acceptance of the concept and to the Convention as a whole. The 1982 Convention on the Law of the Sea is often referred to as a package. The metaphor is derived from a decision made during the Third United Nations Conference on the Law of the Sea that the Convention would be adopted *in toto,* as a "package deal". No single issue would be adopted until all issues were settled. This decision provided an essential mechanism for reconciling the varied interests of the states participating in the Conference. If a state's interests in one issue were not fully satisfied, it could look at the whole package and find other issues where its interests were more fully represented, thereby mitigating the effects of the first. Thus, the Convention became an elaborately-constructed document built on trade-offs, large and small.

The larger package consists of: a twelve-nautical-mile territorial sea; an exclusive economic zone of up to 200 nautical miles in which coastal states have pre-eminent economic rights and which obviates the need for a territorial sea of 200 nautical miles claimed by some states; extension of the continental shelf regime to the margin, with revenue-sharing obligations beyond the exclusive economic zone; a regime for transit passage through straits used for international navigation and for archipelagic sea-lanes passage; guaranteed access to and from the sea for land-locked states; a regime for the administration and development of the common heritage resources of the international sea-bed area; protection and preservation of the marine environment; and adequate mechanisms for settlement of disputes concerning the interpretation and application of the provisions of the Convention.

Within this larger package are many smaller packages of which the exclusive economic zone is one of the most interesting examples. The provisions contained in articles 55 and 75[2] reflect an array of interests: the sovereign rights of coastal states to manage the zone in good faith; the regard for the economic interests of third states; regulation of certain activities in the zone, such as marine scientific research, protection and preservation of the marine environment, and the establishment and use of artificial islands, installations and structures; freedom of navigation and overflight; the freedom to lay submarine cables and pipelines; military and strategic uses of the zone; and the issue of residual rights in the zone.

As of December 1986, out of 142 coastal states at least 70 states have proclaimed exclusive economic zones of 200 miles and about 20 others have established exclusive fishing zones of 200 miles. The rapid and widespread acceptance of the economic zone concept as reflected in national legislation indicates that it has become a permanent feature of modern international law of the sea. What was once a revolutionary idea with few supporters is now considered by some to be a part of customary international law.

Ultimately, one must look at the whole package to understand the mini-packages and why some states would ostensibly "give-up" certain traditional rights that for decades had worked in their favour. In order to appreciate fully the balance of the legal, political and economic interests involved in the negotiations, it is useful to look at the historical context of those interests. This article traces the development of the concept of the exclusive economic zone to its final form in the Convention.

Part V of the United Nations Convention on the Law of the Sea establishes the legal regime of the exclusive economic zone. Article 55 creates the legal regime and distinguishes it from the territorial sea: "The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention." [3]

HISTORICAL BACKGROUND OF THE EXCLUSIVE ECONOMIC ZONE CONCEPT

The first important assertion of exclusive jurisdiction over marine resources beyond the territorial sea was

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[1]Carroz, J.E. 1982. The living resources of the sea. *In* The management of humanity's resources: The Law of the Sea. Workshop 1981 organized by The Hague Academy of International Law and the United Nations University. The Hague, Martinus Nijhoff, pp. 193-207.

[2]*The Law of the Sea*, United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea, United Nations Sales No. E.83.V.5 (UN: New York, 1983).

[3]Ibid.

made by the United States of America in the Truman Proclamation of 28 September 1945 on the continental shelf.[4] The Proclamation states that "having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control". Concurrently, a second Proclamation[5] was issued with respect to coastal fisheries. This Proclamation states:

"In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale. Where such activities have been or shall hereafter be developed and maintained by its nationals alone, the United States regards it as proper to establish explicitly bounded conservation zones in which fishing activites shall be subject to the regulation and control of the United States."

In both Truman Proclamations, the freedom of navigation was maintained.

UNILATERAL DECLARATIONS OF SOVEREIGNITY[6]

Chile and Peru. While some of the concepts expressed in the Truman Proclamation found their way into the Convention, the true parents of the exclusive economic zone concept were certain Latin American states. In 1947, the declaration made by the President of Chile on 23 June [7] and Decree 781 of 1 August [8] by the Government of Peru established maritime zones of 200 miles. The Chilean declaration proclaimed national "sovereignty over submarine areas, regardless of their size or depth, as well as over the adjacent seas extending as far as necessary to reserve, protect, maintain, and utilize natural resources and wealth". It further established the demarcation of "protection zones for whaling and deep sea fishery" to extend to 200 nautical miles from the coasts of Chilean territory.

The source of the "mystical" 200-mile limit has recently been traced by Armanet [9]. Although the motivation for the establishment of the zone was economic, Armanet suggests that the legal precedent was derived from a map in a magazine article discussing the Panama Declaration of 1939 in which the United Kingdom and the United States agreed to establish a zone of security and neutrality around the American continents in order to prevent the resupplying of Axis ships in South American ports. The map showed the width of the neutrality zone off the Chilean coast to be about 200 miles. This became the basis for the 200-mile limit. In both the Chilean declaration and the Peruvian decree, freedom of navigation was maintained.

Arab states. The Truman Proclamations had an effect not only in Latin America, but also among certain Arab states. A succession of unilateral declarations were adopted by ten Arab States and emirates within a two-month period in 1949 [10].

The declarations proclaimed sovereignty particularly over the petroleum resources on the continental shelf; they had in common the following aspects:

- jurisdiction over the sea-bed and subsoil;
- an affirmation of the regime of the high seas, the freedoms of navigation and overflight;

[4]An earlier document, "The Submarine Areas of the Gulf of Paria (Annexation) Order" was issued in 1942 by the United Kingdom. It appropriated the sea-bed area of the Gulf of Paria and maintained freedom of navigation. However, the Truman Proclamation contained a rationale for the continental shelf and must be considered to be the most important, if not the first, legal instrument dealing with the subject.
Proclamation No. 2667, "Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea-Bed of the Continental Shelf", 28 September 1945, 10 Fed. Reg. 12303; XIII Bulletin, Dept. of State, No. 327, 30 September 1945, p. 485.

[5]"Proclamation No. 2668, "Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas", 28 September 1945, 10 Fed. Reg. 12304.

[6]For additional examples of unilateral declarations and bilateral agreements asserting rights in submarine areas during the 1940s, see Lauterpacht, H. 1950. Sovereignty over Submarine Areas. *British Yearbook of International Law*, London, Oxford Univ. Press. (1951): 379-383.

[7]Presidential Declaration Concerning Continental Shelf of 23 June 1947, *El Mercurio*, Santiago de Chile, 29 June 1947.

[8]Presidential Decree No. 781 of 1 August 1947, *El Peruano: Diario Oficial*, Vol. 107, No. 1983, 11 August 1947.

[9]Armanet, United Nations Conference on the Law of the Sea: The 1974 Caracas Session. AJIL, Vol.69.

[10]The dates of adoption of the declarations are as follows: Saudi Arabia, 28 May 1949; Bahrain, 5 June 1949; Qatar, 8 June 1949; Abu Dhabi, 10 June 1949; Kuwait, 12 June 1949; Dubai, 14 June 1949; Sharjah, 16 June 1949; Ras al Khaimah, 17 June 1949; Umm al Qaiwain, 20 June 1949; Ajman, 20 June 1949. From: Dahak, D., 1986. *Les Etats Arabes et le Droit de la Mer*, Tome I. Casablanca, Les Editions Maghrébines, p. 123 (In French).

- the use of the expression "submerged lands" rather than
"continental shelf"; and
- delimitation effected on the basis of equitable principles. [11]3

Thus, among the above states, there was consensus as early as 1949 on the principle of sovereignty over the natural resources on the "continental shelf".

THE LATIN AMERICAN PERSPECTIVE

The Santiago Declaration. The first international instrument to proclaim a 200-mile limit came into being five years later on 18 August 1952.[12] The Santiago Declaration was signed by three Latin American countries that border the South Pacific: Chile, Ecuador and Peru. The Declaration reflects the main driving force behind it which was the desire of those states to develop the resources of their coastal waters. It asserts that "owing to the geological and biological factors affecting the existence, conservation and development of the marine fauna and flora of the waters adjacent to the coasts of the declarant countries, the former extent of the territorial sea and contiguous zone is insufficient to permit of the conservation, development and use of those resources, to which the coastal countries are entitled". Therefore, the three governments "proclaim as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast". The Declaration also provided for sole sovereignty and jurisdiction over the sea floor and subsoil and maintained the principle of innocent passage through the zone but not, as in the Chilean and Peruvian legislation, freedom of navigation.

At the first and second United Nations Conferences on the Law of the Sea held in Geneva in 1958 and 1960, the principles embodied in the Santiago Declarations garnered little support and left Chile, Ecuador and Peru in an isolated position. However, if states were unwilling to support those ideas in an international political forum, they were not as hesitant at home. Over the decade of the 1960s several other Latin American states established 200-mile maritime zones. By 1970, when the United Nations General Assembly adopted Resolution 2750 (XV) which provided the mandate for the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction to act as the preparatory body for the Third United Nations Conference on the Law of the Sea, nine Latin American states had declared sovereignty and jurisdiction over all waters within 200 miles of their coasts. These states were: Ecuador, Panama, Braziil, Chile, Peru, El Salvador, Argentina and Nicaragua. Although the proclamation of these countries differed, the purpose of establishing a legal framework under which the state conserved and exploited the natural resources within the waters adjacent to its coast was common to all.

The Montevideo and Lima Declarations. The position of the Latin American states was somewhat solidified in two international agreements signed in 1970: the Montevideo Declaration on the Law of the Sea[13] and the Declaration of Latin American States on the Law of the Sea (the Lima Declaration)[14].

The Montevideo Declaration came about as the result of a request by the Secretary-General of the United Nations to states to present their views regarding the convening of a new United Nations Conference on the Law of the Sea. The twenty-fourth Session of the General Assembly, in Resolution 2574A (15 December 1969), recommended that a broad survey be made concerning revision of the regimes of the high seas, the continental shelf, the territorial sea, the contiguous zone, conservation of the living resources of the high seas, and particularly, an internationally-accepted definition of the area beyond the limits of national jurisdiction.

As a result, the Government of Uruguay held, in Montevideo, a meeting with the other Latin American states that had declared sovereignty over waters within a 200-mile limit, for the purpose of coordinating their position. The nine previously-mentioned Latin American states met and approved the Montevideo Declaration.

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[11] *Ibid.*, pp. 123-130

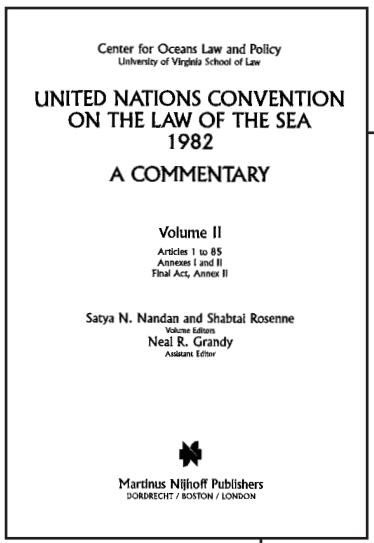
[12] Declaration on the Maritime Zone. *United Nations Legislative Series*, ST/LEG/SER.B/6 (United Nations, New York, 1957), pp. 723-724.

[13] The Montevideo Declaration on the Law of the Sea of 8 May 1970. *In* Lay, S. H., Churchill, R. Nordquist, M., eds. *New directions in the Law of the Sea, Documents*, Vol. I. (Oceana: Dobbs Ferry, New York, 1973), pp. 235-236.

[14] The Declaration of Latin American States on the Law of the Sea (The Lima Declaration) of 8 August 1970. *Ibid.*, pp. 237-239.

Annex 295

S. Nandan and S. Rosenne (eds), *United Nations Convention on the Law of the Sea 1982: A Commentary, Vol. II*, 2002-2003



North Sea Continental Shelf cases. In that judgment, the Court held, *inter alia*, that article 6 of the 1958 Convention on the Continental Shelf

> did not embody or crystallize any pre-existing or emergent rule of customary law, according to which the delimitation of continental shelf areas between adjacent States must, unless the Parties otherwise agree, be carried out on an equidistance–special circumstances basis.[5]

At the same time, the Court stressed that

> delimitation must be the object of agreement between the States concerned, and that such agreement must be arrived at in accordance with equitable principles.[6]

The second factor that influenced the negotiations at UNCLOS III was–as noted by the General Assembly in resolution 2574 A (XXII) of 15 December 1969 (see Volume I of this series, at 169)–that "developing technology is making the entire sea-bed and ocean floor progressively accessible and exploitable for scientific, economic, military and other purposes." This reflected the expansion of continental shelf claims as technology developed.

In consequence, it became necessary to reexamine the approach to the delimitation of overlapping claims to the continental shelf. The protracted negotiations which followed on this issue revealed the existence of two virtually irreconcilable approaches, namely: (i) delimitation should be effected by the application of the median line or equidistance line coupled with an exception for special circumstances; and (ii) delimitation should involve a more emphatic assertion of equitable principles. Common to both approaches was recognition that delimitation by agreement is the most satisfactory way of resolving issues arising from overlapping claims.

The negotiations at UNCLOS III regarding the delimitation of the continental shelf and those regarding the delimitation of the exclusive economic zone were conducted together. A major difference existed, however, in that article 83 had a predecessor in article 6, paragraphs 1 and 2, of the 1958 Convention on the Continental Shelf, while article 74 had no predecessor. In some respects, there is a conceptual link between the two–in effect, both address delimitation of maritime zones in which the coastal State has sovereign rights with respect to natural resources. For the most part, however, the factors determining the different positions of delegations on the issue of delimitation were their concerns over the delimitation of the continental shelf (see para. VI.4 above).

83.4. At the 1973 session of the Sea-Bed Committee, proposals regarding the delimitation of overlapping claims to the continental shelf generally

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[5] *North Sea Continental Shelf* cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), 1969 ICJ Reports 3, para. 69.

[6] Ibid., para. 85. For an indication of how application of the equidistance method alone could lead to inequity, see paras. 89 and 91 of that judgment.

83.19(c). Paragraph 2 provides for the application of Part XV of the Convention (on the settlement of disputes) if no agreement on delimitation can be reached "within a reasonable period of time." Under Part XV, States may exclude article 83 from the compulsory procedures entailing binding decisions (articles 286 to 296) by making a declaration in writing to this effect in accordance with article 298, paragraph 1(a). In that case, article 298 applies, with its provision for compulsory recourse to conciliation under Annex V.

The interpretation of the phrase "within a reasonable period of time" might give rise to dispute. This phrase occurs in article 74, paragraph 1, article 83, paragraph 1, and in article 298, paragraph 1(a)(i). When a dispute arises over whether a reasonable period of time has elapsed, a conciliation commission must be presumed to have the competence to decide on this issue both where it is asserted as a preliminary objection under article 298, and under article 83 (and 74) when it addresses the merits of a dispute.

83.19(d). Paragraph 3 addresses the duties of the States concerned "pending agreement" on delimitation. It combines two elements: the duty to "make every effort" to conclude provisional arrangements of a practical nature, and a prohibition against jeopardizing or hampering the reaching of the final agreement. The first element aims to promote the adoption of certain interim measures; the second seeks to limit the activities of the States concerned in the disputed area.

Paragraph 3, given the language of paragraph 2, is apparently not dependent on the initiation of delimitation negotiations. As regards the requirement that the States concerned "make every effort to enter into provisional arrangements," the same obligation to enter into negotiations exists as under paragraph 1. The phrase "make every effort" may leave some room for interpretation by the States concerned, or by any dispute settlement body.

The "provisional arrangements of a practical nature" are to be entered into without prejudice to the final delimitation. This corresponds to the general rule on the effect of provisional measures, which are without prejudice to the rights, claims or positions of the parties concerned.[64] Provisional arrangements can become part of the final agreement on the delimitation if the parties so agree. There is no indication of what is meant by the phrase "of a practical nature." This will depend on the circumstances of each case.

The phrase "not to jeopardize or hamper the reaching of the final agreement" does not exclude the conduct of activities by the States concerned within the disputed area, so long as those activities do not prejudice the final delimitation.

83.19(e). Paragraph 4 stipulates that where there is an agreement in force between the States involved in a delimitation dispute, that agreement

[64] Cf. the Charter of the United Nations, Article 40.

continues to be applicable. There was no controversy over this provision at the Conference. The paragraph is *lex specialis* in relation to article 311 (regarding the relation of the 1982 Convention to other conventions and international agreements), and is maintained by article 311, paragraph 5.

83.19(f). During the Conference, various attempts to permit reservations to the Convention as a whole were linked with the provisions of article 83 (and 74), either by attaching a footnote to article 309 (regarding reservations) or by amending that article (see paras. 83.16 to 83.18 above).[65] This issue was resolved by the adoption of article 298, paragraph 1(a)(i) (regarding disputes concerning sea boundary delimitations), which was also negotiated through Negotiating Group 7, and in the adoption of article 309 in its present form.

[65] On the question of the relationship between the articles on delimitation and article 309 (reservations and exceptions) see Volume V, at 218, paras. 309.5 ff.

Annex 296

F. Novak and L. García-Corrochano, *Derecho Internacional Público, Tome II, Vol. 1*, 2001

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Chambuyaco y por el Chambuyaco aguas arriba hasta su naciente; de allí toma el meridiano de la naciente del Chambuyaco (70°37'15"18 O.) hasta que esta línea se corta en el paralelo 11°S., y de este punto por una recta a la naciente del río Acre, y por el curso del Acre hasta su confluencia con el Yaverija.

4.2.4. Límites con Bolivia

Estos fueron establecidos por los Tratados de 1902 y 1909 y el Protocolo de 1932. Desde la confluencia del Yaverija con el Acre, siguiendo una línea geodésica, al punto de intersección del meridiano 68°58'26" con el río Manuripe, y de allí por otra línea geodésica hasta la boca del río Heath en el Madre de Dios (punto más oriental del Perú en la longitud 68°39'27" O.). Por el Heath aguas arriba hasta su naciente, para continuar por la divisoria entre el Madidi y el Tambopata, por el río Colorado hasta su desembocadura en el Tambopata, y por este río aguas abajo hasta su confluencia con el Lanza, siguiendo por el curso de este hasta el Paralelo 14°12' de latitud Sur y por esta línea hasta la divisoria de los ríos Lanza y Tambopata, para continuar por las altas cumbres, por el Yagua-Yagua hasta los nevados de Palomaní, el centro del lago Suches, y de allí por el río Colorado y después el Suches hasta su confluencia con el Pachasili. La frontera sigue al Sur por una línea adoptada según los linderos de las comunidades y pueblos, atraviesa el Lago Titicaca hasta la península de Copacabana, que divide en dos partes desiguales, hasta la confluencia del Ancomarca con el Maure. Finalmente, el límite entre la provincia de Tarata con Bolivia se basa en posesión inmemorial y efectiva, aun cuando existe controversia entre ambos Estados, sobre la demarcación unilateral efectuada en el año 1923 por Chile en su calidad de ocupante de la provincia de Tarata.

4.2.5. Límites con Chile

La frontera entre ambos Estados fue establecida por el Tratado de 1929 y su Protocolo Complementario; ella corre paralelamente al ferrocarril de Arica a La Paz, y a diez kilómetros al Norte de él, pero haciendo las inflexiones necesarias para dejar del lado chileno las azufreras del Tacora y pasar por el centro de la Laguna Blanca, muy cercana a los rieles. La línea termina en la orilla del Océano pacífico en el hito Concordia (18°21'03"S.), que es el punto más meridional del Perú.

4.3. El Régimen de Vecindad

El trazado y demarcación de una frontera entre dos Estados no significa una solución de continuidad territorial ni menos aun un factor de aislamiento. Por el contrario, es usual que entre las regiones vecinas existan relaciones de interdependencia que generan situaciones descritas como relaciones de vecindad. Estas relaciones de vecindad imponen ciertas limitaciones a los Estados en cuanto a la disposición de sus zonas fronteri-

[…]

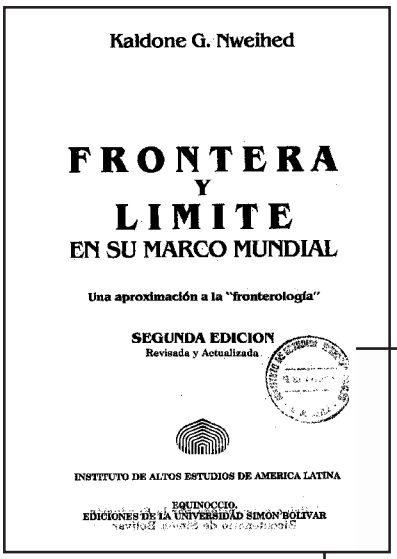
4.2.5. Boundaries with Chile

The frontier between the two States was established by the Treaty of 1929 and its Additional Protocol; [the frontier] runs parallel to the railway from Arica to La Paz, and ten miles North of it, but making the necessary arrangements in order to leave the Tacora sulphur deposits on the Chilean side and passing through the centre of Laguna Blanca, very close to the rails. The line ends at the seashore of the Pacific Ocean on boundary marker Concordia (18° 21' 03" S), which is the southernmost point of Peru.

[…]

Annex 297

K. G. Nweihed, *Frontera y Límite en su Marco Mundial*,
2nd edn, 1992



costa, y —evidentemente— fue otro el trato acordado a la isla de Tasmania y a la lejana dependencia insular de Macquarie que se interna hacia aguas antárticas.[30] El Tratado de 1973 que delimitó el mar territorial entre la Unión Soviética (Georgia) y Turquía y su Protocolo de 1975 parecen seguir este método.

El método de la prolongación del azimut final o de la dirección general del límite terrestre, tiene una ventaja obvia que conduce a la equidad, si alcanza el mar en un ángulo recto o casi recto; de lo contrario, esta ventaja va disminuyendo en la medida en que el límite terrestre agudiza su ángulo al tocar el mar, acarreando una situación de iniquidad. Sería otra la situación cuando se aporten documentos históricos referidos a la dirección general del límite terrestre como factor decisivo para la orientación del límite marítimo, a partir del punto en que el primero alcanza el mar; tal parece ser el caso del límite que divide la Guajira entre Venezuela y Colombia.

2.3. *La adopción del paralelo o del meridiano del punto en que el límite terrestre alcanza el mar.* He aquí otro método que se ha aplicado básicamente en adyacencia, y no en espacios abiertos, frente a frente. Fue introducido por los países latinoamericanos del Pacífico Sur, Chile, Perú y Ecuador, al afianzar su esfuerzo mancomunado en la célebre Declaración de Santiago, de 1952, virtual inicio de un nuevo ciclo en el Derecho del Mar, por parte de los países en desarrollo. La Declaración de Santiago prevé la construcción de paralelos a partir de los respectivos puntos en que los límites terrestres alcanzan el mar entre Chile y Perú, y entre éste y Ecuador, hasta 200 millas náuticas mar afuera.

Dos años después firmaron en Lima varios acuerdos complementarios entre los cuales figura el *El Convenio sobre Zona Especial Fronteriza Marítima*, con el fin de crear una zona especial de 10 millas de ancho a cada lado de los dos paralelos fronterizos, en donde la presencia accidental de embarcaciones de cualquiera de las partes contratantes no será considerada como violación, siempre que no ocurra dentro de las doce primeras millas paralelas a la costa. Este Convenio fue ratificado por Perú en 1955 y por Ecuador en 1964. Chile demoró en hacerlo hasta 1967.[31]

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30. Ammoun, *op. cit.* Mapa de las líneas de Australia en *North Sea Continental Shelf Cases, Pleadings, Oral Arguments Documents,* 1968. Vol. I, p. 499, reproducido en nuestro trabajo *La Vigencia del Mar II,* 1974. Anexo cartográfico. Figura 14.

31. República Oriental de Uruguay, *América Latina y la Extensión del Mar Territorial: Régimen Jurídico.* Montevideo: Presidencia de la República, 1971, pp. 117-139.

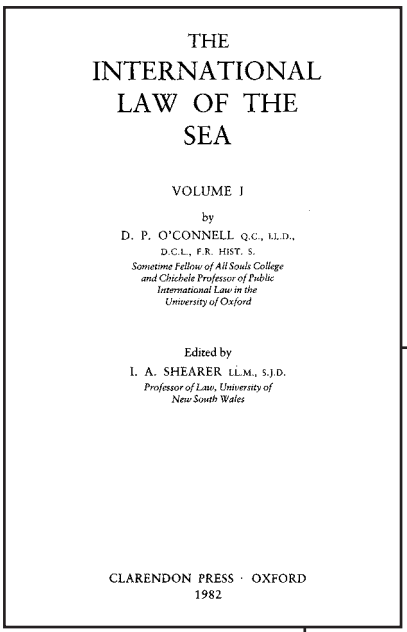
[…]

The Santiago Declaration provides for the construction of parallels from the respective points at which the land boundaries reach the sea between Chile and Peru, and between the latter [Peru] and Ecuador up to 200 nautical miles offshore.

[…]

Annex 298

D. P. O'Connell, *The International Law of the Sea, Vol. I*, 1982



Chapter 15

THE EXCLUSIVE ECONOMIC ZONE

The EEZ, popularly known as the 200-mile limit, and which during its generic phase was also called the 'patrimonial sea', represents the triumph of individualism over collectivism in international relations. In one concept it aims to secure for coastal States the resources of the sea, the seabed and the subsoil, irrespective of variations in geographical or economic or ecological circumstances. The process of its evolution did fundamental violence to the course of legal history, and the extent of this disruption is revealed by the fact that the attempt to resolve both the problems of access to the mineral resources of this area, and of conservation and management of fishery resources, under a single rubric, has substantially failed. For the EEZ is only exclusive so far as the former are concerned; it is essentially only preferential so far as the latter are concerned. This fundamental contradiction has forced the question of mineral resources out of the context of the EEZ, and into that of the continental shelf, where it acts as a redefinition of that concept. What is left of the EEZ proper is a misnomer.

This dislocation between the two categories of resources is reflected in the Draft Caracas Convention which, having recited that the coastal State has sovereign rights with respect to both living and non-living resources,[1] then exports the catalogue of rights respecting the latter to Part VI, which is the chapter dealing with the continental shelf.[2] This leaves the living resources alone subject to the catalogue of rights set out in Part V, which is the chapter dealing with the EEZ. These rights, while they amount to a powerful accretion of the coastal State's power in the area beyond the territorial sea, are exclusive only when the

[1] Draft Convention(1980), Art. 56. Fleischer in 14 *San Diego L. Rev.* (1977), 552. The geographical areas potentially affected by 200-mile claims have been calculated by Alexander and Hodgson in 12 *San Diego L. Rev.* (1975), 573 as follows: Atlantic and Arctic, 37.59%; Indian Ocean, 32.34%; Pacific Ocean, 36.29%; Total, 35.86% of the world's sea. In the South Pacific, in fact, the whole is virtually EEZ; from Heard Island to Kiribati, and from Vietnam to French Polynesia, there are only pockets of residual high seas. The countries with the largest 200-mile limits in order of magnitude are: USA, Australia, Indonesia, New Zealand, Canada, Soviet Union, Japan, Brazil, Mexico, Chile, Norway, India, Philippines, Portugal, Madagascar. The countries benefiting most from a campaign led by developing countries are, in fact, developed countries.

[2] Art. 56(3).

coastal State is able to harvest the maximum sustainable yield, which is rarely likely to be the case.

There is, then, with respect to competiton for the fishery resources of the EEZ, a fundamental legal instability in this doctrine which can only be productive of grave difficulties of interpretation. Controversy is likely to turn upon the condition of customary international law respecting extraterritorial competence, and the plausibility of the arguments advanced by the proponents of the concept is likely to be subjected to close scrutiny.

1. The Genesis of the EEZ

(1) THE DECLARATION OF SANTIAGO, 1951

On 23 June 1947, the President of Chile made a Declaration[3] in which, recalling the Truman Proclamation and the continental shelf decrees of Mexico and Argentina, he proclaimed 'national sovereignty' over the continental shelf and 'over the seas adjacent to its coasts . . . to the extent necessary' to protect the natural resources, up to a limit of 200 miles from the coast and islands. A proviso was added that the declaration of sovereignty recognized legitimate rights of other States on a reciprocal basis, and it would not affect the rights of free navigation on the high seas.

This Declaration was followed on 1 August 1947 by a Supreme Decree of Peru.[4] In this, the expression 'epicontinental seas' appeared. On 18 August 1952, Chile, Peru, and Ecuador joined in a Declaration on the Maritime Zone, made at Santiago, and known as the Santiago Declaration. This postulated the duty to ensure necessary food supplies and hence to conserve and protect natural resources, and proclaimed as a principle of common international maritime policy that each of the three countries 'possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 miles from the said coast.'[5] The 200-mile zone would extend around islands. Again there was the proviso as to navigation, but the reference to 'innocent passage' rather than 'navigation' suggests an extension of the territorial sea limit to 200 miles.[6]

[3] U.N. Leg. Ser., ST/LEG/SER.B/6, 4; Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific: *Agreements and Other Documents 1952–1966*, Lima (1967), 15,

[4] No. 781 (1), *Ley Peruana*, 11 August 1947; *New Directions*, Vol. 1, 231.

[5] *Agreements and Other Documents, sup. cit.*, 20; US *Naval War College Documents*, 246–279. The Declaration was adhered to by Panama in the Preamble to Law No. 1031 of 1967.

[6] Garcia Amador considered that no claim to territorial waters was being made, 771. Cf. Oda in 18 *Z.a.ö.R.VR.* (1975), 65 *et seq.*; Garaicoa in 10 *Miami L.Q.* (1956), 490; McDougal and Burke, 493; Pan American Union, *Background Material on the Activities in the Organization of American States Relating to the Law of the Sea* (1951), 39 *et seq.* In 1954, Peru seized Mr. Onassis's whaling fleet within the 200-mile limit: Azcarraga in 6 *Arch.des V.* (1956), 41. Thereafter there was a struggle to oppose the claim to US fishing boats: Loring in 23 *Standford*

The Declaration was accompanied by a Joint Declaration on Fishery Problems in the South Pacific, in which it was recommended that biological stations be set up to study the migration and reproduction of the species of greater nutritive value, that scientific research should be jointly conducted, and that regulatory and licensing systems for fisheries be set up. A further document established the Permanent Commission of the Conference on the Use and Conservation of the Marine Resources of the South Pacific, which would establish technical offices, co-ordinate action, carry out studies and adopt resolutions with a view to the conservation and improved use of marine fauna and other resources, in particular concerning protected species, open and closed seasons, areas of sea, and gear and methods.[7]

On 4 December 1954, the three Governments adopted a Supplementary Agreement,[8] in which they undertook to consult for the purpose of legal enforcement of the principle of their sovereignty over 200 miles, and not to enter into any agreements which might imply a diminution of their sovereignty over the said zone. An Agreement on Penalties[9] was also adopted, in which the parties undertook to punish any person, whether a national or alien, by seizure of the product which is the object of the offence, and in the case of subsequent offences, by condemnation of the vessel. Fines were also provided for. Although the policing of the respective 200-mile zones would be primarily a function of national authorities, ships and aircraft of any of the parties could be employed on request.[10] It would not be lawful for any person, whether an individual or body corporate, to engage in hunting or fishing or any other form of exploitation in the 'maritime zone' without a permit, and special conditions were attached to the issue of permits to nationals of non-parties.[11]

At the same meeting, a Special Maritime Frontier Zone was established,[12] at a distance of twelve miles from the coast, extending to a breadth of ten miles on either side of the parallel which constitutes the maritime boundary between two parties. The accidental presence of a vessel of either of the adjacent countries in its zone would not be considered to be a violation of the waters of the maritime zone, though fishing or hunting within the special zone would be reserved exclusively to the nationals of each country. The purpose of this provision was to create a 'tolerance zone', in view of navigational difficulties at great distances from the coast.[13]

L.Rev. (1971), 391. Wolff, *Peruvian – US Relations Over Maritime Fishing*, Occasional Paper of the Law of the Sea Institute (1970). For Ecuador see Lecuona in 2 *J. Mar. L. and Com.* (1970), 91.

[7] *Agreements and Other Documents, sup. cit.*, 23.
[8] Ibid., 30.
[9] Ibid., 32.
[10] Ibid., 37.
[11] Ibid., 37.
[12] Ibid., 42.
[13] See *infra*, Vol. II, Ch. 16, sect. 2(3).

4. The Status of the EEZ

Unlike the doctrine of the continental shelf, which derived from notions of the inherentness of local authority over submarine terrain, the doctrine of the EEZ has no theoretical antecedents, and thus depends for its viability and its content upon changes in customary law brought about as a result of State practice. Respecting the question whether the 200-mile limit has become established by that method, there is no reason to question the view of the Norwegian Government:

> In view of this state practice, as well as in the light of the support which a clear majority of the nations of the world has given to the principle of the 200-mile economic zone during the Law of the Sea Conference, it may now be held to be axiomatic that the necessary political premises and basis in international law do in fact exist for the establishment of such zones. From the point of view of international law, the adoption and entry into force of the new Convention on the Law of the Sea will therefore not constitute any absolute *sine qua non* for the establishment of an economic zone of 200 miles.[64]

In the *Channel Continental Shelf Case*, France argued that all the Geneva Conventions on the Law of the Sea had been rendered obsolete by the evolution of the law stimulated at the Conference, because consensus had been arrived at there regarding the right of a coastal State to an EEZ, and because a number of countries had claimed this right. The United Kingdom, while agreeing that a certain consensus had indeed emerged, denied that the concept of the EEZ had become customary law. The Court of Arbitration did not pronounce directly on that issue. It confined itself to holding that no basis for the obsolescence of the Geneva Convention existed.[65]

By the beginning of 1980, ninety-five countries and territories had claimed 200-mile jurisdictional limits,[66] although not all for the same purposes. Thirty-two[67] confined their legislation to fisheries and relied

[64] Explanatory Note of Mr. Evensen introducing the Economic Zone Bill, No. 91 of 1976.

[65] Decision of 30 June 1977, 18 *ILM* (1979), 397, Paras. 44, 45, and 46.

[66] Angola, Argentina, Ascension, Australia, Bahamas, Bangladesh, Barbados, Belgium, Benin, Bermuda, Brazil, British Virgin Islands, Burma, Canada, Cayman Islands, Chile, Colombia, Comoro, Congo, Cook Islands, Costa Rica, Cuba, Denmark (incl. Faeroes and Greenland), Djibouti, Dominican Republic, Ecuador, El Salvador, Fiji, France, F.R. Germany, Ghana, Grenada, Guatemala, Guinea, Guyana, Haiti, Iceland, India, Indonesia, Ireland, Japan, Kampuchea, Kenya, Kiribati, D.P.R. Korea, Liberia, Malaysia, Maldives, Mauritius, Mexico, Micronesia, Mozambique, Nauru, Netherlands, New Caledonia, New Zealand, Nicaragua, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Pitcairn Island, Portugal, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Suriname, Taiwan, Thailand, Togo, Tokelau, Tonga, Tristan da Cunha, Turks and Caicos Islands, Tuvalu, USSR, United Kingdom, USA, Uruguay, Vanuatu, Venezuela, Vietnam, Western Samoa, P.D.R. Yemen.

[67] Angola, Ascension, Australia, Bahamas, Barbados, Belgium, Bermuda, British Virgin Islands, Canada, Cayman Islands, Chile, Denmark, F.R. Germany, Guyana, Ireland, Japan, Kiribati, Micronesia, Nauru, Netherlands, Nicaragua, Oman, Papua New Guinea, Pitcairn

for seabed matters on the concept of the continental shelf as an independent category. Of the remainder, fourteen made claims of, or tantamount to, territorial sea claims of 200 miles,[68] although in some of their legislation they distinguished between a twelve-mile and the 200-mile limit, forbidding fishing in the former but allowing it on licence in the latter, sometimes on a basis of reciprocity;[69] and the remaining forty-nine may be classified as claiming exclusive economic zones, although in some cases the expression is not used. In addition, there are thirteen countries[70] whose claims, whatever their genesis may be, can be treated as EEZ claims although they extend for varying distances less than 200 miles, and are, or purport to be, or are tantamount to, territorial sea claims but allow for licensed foreign fishing beyond twelve miles.

An attempt is made in the Draft Caracas Convention to indicate the innateness of the EEZ by affirming that the coastal State 'has' sovereign rights instead of indicating that it 'may claim' them. Because the EEZ lacks the inherent qualities of the continental shelf, it is difficult to see how this innateness could come about except as a matter of a positive rule of customary law. And if it did come about, it would be difficult then to deny a comparable innateness in respect of the territorial sea. The argument for regarding the EEZ as vested in any coastal State without the need for a claim to be made would be based

Island, Solomon Islands, South Africa, Turks and Caicos Islands, Tristan da Cunha, Tuvalu, USSR, United Kingdom, USA.

[68] Argentina, Benin, Brazil, Ecuador, El Salvador, Ghana, Guinea, Liberia, Haiti, Panama, Peru, Sierra Leone, Somalia and Uruguay. The coalescence of fishing and seabed rights has been a feature of the history of Argentinian claims. Although the Civil Code had referred to three miles as the limit of the territorial sea, in 1946 Argentina claimed a continental shelf and a fishery zone corresponding with what was called the epicontinental sea, that is the sea above the continental shelf: Decree 14708. See Kraske in 3 *A. des V.* (1951–52), 259. The epicontinental sea and the limit of 200 miles are relatively coincidental in the case of Argentina, but the claim to the epicontinental sea was not put into practical effect until 1966, when a new Territorial Sea and Continental Shelf Act was passed, which utilizes in combination the spatial extent of 200 miles and the isobath of 200 metres: 6 *ILM* (1967), 663; 71 *RGDIP* (1966), 301. The effect of this legislation upon the epicontinental sea claim is not clear. It is supposed that the latter has been abrogated in so far as the epicontinental sea extends beyond the 200-mile limit. See Espiell in *Annuaire français*, 1970, 756. The difference becomes very significant if one considers the claim of Argentina to the Falkland Islands. Potentially the legislation covers a limit of 200 miles around the islands, linking with the primary limit of 200 miles from the the continent, but if the epicontinental sea is still effectively claimed, the divergence becomes more marked in this area than on the continental coast. The Law of 1967 establishes a twelve-mile exclusive fishery zone. In the remainder of the 200-mile limit, foreign fishing is licensed. Protests were made in 1966 by Brazil, France, and Soviet Union: 71 *RGDIP* (1966), 389.

[69] e.g., Argentina, Brazil, Haiti, Uruguay.

[70] Cameroun, *loi* No. 74/16 of 1974, 50 miles; Malta, Act No. 24 of 1978, 25 miles; Congo, decree of 2 November 1977, Mauritania, *loi* of 31 July 1972, Nigeria, Decree No. 38 of 1971, all 30 miles; Gambia, Act of 1971, Tanzania, Proc. of 24 Aug. 1973, Iran, Proc. of 30 October 1973, all 50 miles; Morocco, *Dahir* of 2 March 1973, 70 miles; Madagascar, Ord. 73–060 of 1973, Art. 2, 100 miles; Gabon, *décret* of 21 July 1972, Guinea-Bissau, Decision No. 14 of 1974, 150 miles; Poland, Law of 17 Dec. 1977, 85 miles.

on the duty of such State to conserve fisheries, not in its own interest, but in the interest of the community of nations. It is premature to say that such a duty has been imposed by the practice of States outside the text of the Draft Convention.

The question as to whether all of the elements of Part V of the Draft Caracas Convention are inducted into customary international law by virtue of this formidable body of claimants to 200-mile jurisdictional zones, is one, however, not so readily answered. In order to answer it one would need to know to what extent the provisions of the Draft Caracas Convention relating to the determinations of maximum sustainable yield, allowable catch and local harvesting capacity, and to allocation of surplus, recognition of traditional interests and other listed interests, have become features of State practice. Only a minority of the enactments passed so far provide for such matters,[71] and of them only a minority again paraphrase the provisions of the Draft Convention,[72] although this is not conclusive because in many cases there is the power to make regulations, which may include licensing.

Because the evidence of State practice derived from the legislation is thus far inconclusive, it needs to be supplemented by evidence as to the outcome of negotiations undertaken with respect to allocations. These have led to agreements in a number of instances,[73] but it is too early for a pattern to be discernible. Much of the legislation is drafted so as to establish a bargaining position, and may, even if it indicates a disparity between the legislative practice and the design of the Draft Convention, for that very reason confine the free play of political forces so as to achieve the essential goals set forth in Part V. An example of such legislation is the United States Fishery Conservation and Management Act, 1976.[74] This prohibited all foreign fishing within 200 miles of the

[71] e.g. USA, Fishery Conservation and Management Act, 1976, s.201; USSR, Decree of 10 Dec. 1976; Fiji, Marine Spaces Act, 1977, s.11; New Zealand, Act No. 7 of 1977, s.11; Western Samoa, Act No. 3 of 1977, Art. 5. Two countries provide only for regional allocations: Haiti, Decln. of 6 April 1977, and Togo, Ord. of 16 Aug. 1977, Art. 4. Cf. also the pre-Conference practice of some, but not all, Latin-American countries.

[72] Mexico, Act of 10 Feb. 1976; New Zealand, Act No. 7 of 1977, ss. 11, 12, 13. Portugal, Act No. 33 of 1977, Art. 5.

[73] The Japan-USSR Agreement of 27 May 1977 reduced the Japanese catch within specified areas of the Soviet 200-mile limit to 45% of the catch of previous years. The USSR attempted to link negotiation over fishing to recognition of territorial status quo, and when Japan declined it denounced the Fishing Agreement of 1956. Nonetheless, the negotiations succeeded on fishing alone: 81 *RGDIP* (1977), 1181. The USA-Japan Agreement of 9 Nov. 1976 provides for annual determination of quotas up to 1986 and provides for licensing. It covers certain continental shelf resources: 16 *ILM* (1977), 287. The USA-USSR Agreement of 26 Nov. 1976 specifies species and quotas: 15 *ILM* (1976), 62. The USA-EEC Agreement of 15 Feb. 1977 provided for 5% royalty on catches. This was criticized in the Assembly at Strasbourg as excessive: 81 *RGDIP* (1977), 821. Exchange of fishing rights characterized the USA-Cuba Agreement of 27 April 1977.

[74] Pub. Law 94–265, 94th Cong., ss.201 (c) (1), (2), (3), (4), 203. For the regulations under this Act, see 16 *ILM* (1977), 350–421. See Magnuson in 52 *Wash. L. Rev.* (1977), 427; Jacobson and Cameron in ibid., 451; Anderson in 12 *Texas Int. Law J.* (1977), 331; Christie in 7 *Georgia J. Int. and Comp. Law* (1977), 133.

United States except pursuant to a fisheries agreement with the foreign country concerned;[75] if substantially the same privileges are reciprocally extended to American fishermen, a permit is issued.[76] The claim for reciprocity as a condition of the grant of a licence ignores both the significance of traditional rights and the criterion of allocation of the surplus. Furthermore, the conditions for the negotiation of the requisite fishery agreements go beyond what is envisaged in the Draft Convention, since they include foreign recognition of the American EEZ and American non-recognition of any foreign maritime claims which are contrary to the policy in the Act (including allocation on a basis of reciprocity).

Within the 200-mile limit the total allowable level of foreign fishing will be the balance of the optimum yield after deduction of the portion actually harvested by American vessels. The calculation of both the levels of optimum yield and harvestable capacity is entirely subjective. No distinction is made between what the United States is able to harvest and what it actually harvests. The surplus is thus contingent upon factors other than those set out in the Draft Convention.

The Secretary of State is obliged to certify that he has been unable to conclude a fishery agreement giving American vessels 'equitable access' to fisheries in an EEZ claimed by another nation, in accordance with traditional fishing activities of American vessels; or that an American fishing vessel is seized while fishing outside the territorial sea of a foreign nation, as a consequence of a claim to jurisdiction not recognized by the United States. Thereupon, the Secretary of the Treasury must prohibit the importation into the United States of all fish and fish products from the fishery involved.[77] This may offend the treaty relations of the United States, especially under GATT, and it is clearly beyond what is provided in the Draft Convention.

The Act refers to 'all fish' and it seems to require the participation of American fishermen in the exploitation of the surplus of foreign sedentary fisheries as well as swimming fish, which is a contradiction both of the 1958 Continental Shelf Convention and the Draft Caracas Convention.

Despite the want of congruence between this legislative scheme and the Draft Caracas Convention (as contrasted with the Mexican legislation) the negotiations which the United States has actually conducted for allocations have established an affinity between the two, which is perhaps indicative of the fact that the basic scheme of the Draft Convention is likely to be inducted into customary law—and indeed must be, if stability is to be achieved at all between the interests

[75] s.201(f).
[76] s.204.
[77] s.201(e). Crystal in 52 *Wash. L. Rev.* (1977), 495.

of coastal States and of others.[78] Those countries which claim that the EEZ is exclusive to them in all literal senses are a minority,[79] and likely to be a diminishing one as the processes of allocation go on.

The number of countries which claim the 200-mile limit as EEZ is twice as large as the number which merely claim a fishery limit of that distance. Because the considerations underlying the development in customary law of a 200-mile limit to seabed rights are the same as those underlying the development of that limit for fishery purposes, there is no reason to suppose that at present customary international law allows only for an extended fishing limit. Whether one proceeds independently by practice to establish a continental shelf entitlement of 200 miles at least, independently of a comparable fishing zone, or amalgamates the two in the corporate notion of EEZ, is immaterial to the reality of the situation. However, an element of uncertainty, or want of confidence, about this is evident in the legislation of some countries which establishes 200-mile continental shelf rights as well as 200-mile EEZ rights.[80]

In the legislative field, there has been a tendency towards regional patterns,[81] due in some cases to some States enacting in a mirror fashion so as to meet the legislation of neighbours.[82] For these countries there may be two levels of negotiations in view – regional and global, with differing degrees of tension respecting them. Only after the historical process has settled down by means of negotiations will the full significance of the variegated pattern become evident.[83]

There has also been a propensity for common regional action to occur, as in the area of the European Economic Community, whose Council adopted a Resolution on 3 November 1976 recommending concerted action to declare 200-mile limits, and indicating that fishing agreements with third States should be reached between them and the Community, and on the basis that Community fishermen obtain allocations from third countries, and maintain existing rights.[84] This accentuated the bargaining position of Western European countries vis-à-vis Eastern European countries in particular.

[78] See *supra*, p. 553.

[79] The only enactments that are emphatically exclusive in this sense are those of Vietnam, s.3 and the Maldives. Others, perhaps, are Pakistan, Benin (to which Germany protested on 29 December 1976 in a letter circulated through the UN), Seychelles, Sri Lanka, India, Togo, and some of the Latin American States, notably Peru, Chile, and Ecuador.

[80] Argentina, Art. 2; Burma, ss. 12, 17; Dominican Rep., Arts. 4, 7; Fiji, s.7; India, ss. 6, 7; Malagasy Rep., Art. 2; Pakistan, ss. 5, 6; Seychelles, ss. 5, 6; Vietnam, ss. 3, 4.

[81] e.g., the Latin American countries; the Indian Ocean countries and the Pacific Ocean countries.

[82] e.g., Bahamas and USA.

[83] e.g., USA and Cuba, 1977, Arts. 3 and 4.

[84] *Bulletin of the EC*, 1976, No. 10, paras. 1502–1504; Winkel in 14 *Common Market L. Rev.* (1977), 329.

Annex 299

L. Oppenheim, *International Law: A Treatise, Vol. 1: Peace* (H. Lauterpacht (ed.)), 8th edn, 1955

INTERNATIONAL LAW

A TREATISE

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no way interferes with freedom of navigation and with the breeding of free-swimming fish.[1] This is a case in which the requirement of effectiveness of occupation must be interpreted by reference to the reason of the thing and to the judicial and arbitral pronouncements in which such effectiveness is treated as a matter of degree determined by the nature of the area in question.[2] In so far as the right of the State to the continental shelf appurtenant to its territory has come to be recognised by International Law, such right extends both to the subsoil of the sea and to its bed.[3]

X

THE SUBSOIL BENEATH THE BED OF THE OPEN SEA

See most of the literature cited above, § 278*bb*—Lindley, pp. 69-71—Gidel, i. pp. 507-514—Sibert, pp. 671-673—*International Law Association Report* (Report by Feith), 43 (1948), pp. 168-206; 44 (1950), pp. 87-138—Lauterpacht in *B.Y.*, 27 (1950), pp. 398-403—Waldock in *Grotius Society*, 36 (1950), pp. 117-121.

Rules concerning the Subsoil beneath the Bed of the Open Sea.

§ 287*c*. The subsoil beneath the bed of the open sea requires special consideration, on account of coal or other mines, tunnels, and the like, as well as in relation to the rights in the continental shelf.[4] If the subsoil beneath the bed of the open sea stood in the same relation to the open sea as the subsoil beneath the territory of a State stands to that territory,[5] all rules concerning the open sea would necessarily have to be applied to the subsoil beneath its bed, and no part of this subsoil could ever come under the territorial supremacy of any State. However, it would not be rational to regard the subsoil beneath the bed of the open sea as an inseparable appurtenance of the open sea, in the same way as the subsoil beneath the territorial land and water is an appurtenance of such territory. The rationale of the open

[1] See to the same effect Westlake, Fauchille, Hurst, *op. cit.*, and Verdross, p. 221; but see Lindley, *op. cit.* As to the Ceylon pearl fishery see above, p. 618, n. 1. For an instance of a regulation of oyster fisheries in the open sea without any assertion of sovereignty, see the Declaration signed by Great Britain and France on September 29, 1923: Treaty Series, No. 31 (1923), Cmd. 1996; *L.N.T.S.*, 21, p. 138. See also Smith, ii. pp. 142-164.

[2] See above, § 225.

[3] See below, § 287*d*.

[4] See below, § 287*d*.

[5] See above, §§ 173, 175. As to the subsoil of territorial waters see Gidel, iii. pp. 326-332.

sea being free and for ever excluded from occupation on the part of any State is that it is an international highway which connects distant lands and thereby secures freedom of communication, and especially of commerce, between States separated by the sea.[1] There is no reason whatever for extending this freedom of the open sea to the subsoil beneath its bed. On the contrary, there are practical reasons—having regard to the construction of mines, tunnels, and the like—which, apart from the wider issue involved in the now recognised claim to the continental shelf, compel recognition of the fact that this subsoil can be acquired through occupation. The following five rules, which are not exhaustive, commend themselves with regard to this more limited aspect of the question.[2]

(1) The subsoil beneath the bed of the open sea is no man's land, and it can be acquired on the part of a littoral State through occupation, starting from the subsoil beneath the bed of the territorial maritime belt.

(2) This occupation takes place *ipso facto* by a tunnel or a mine being driven from the shore through the subsoil of the maritime belt into the subsoil of the open sea.

(3) This occupation of the subsoil of the open sea can be extended up to the boundary line of the subsoil of the territorial maritime belt of another State, for no State has an exclusive claim to occupy such part of the subsoil of the open sea as is adjacent to the subsoil of its territorial maritime belt.

(4) An occupation of the subsoil beneath the bed of the open sea for a purpose which would endanger the freedom of the open sea is inadmissible.

(5) It is likewise inadmissible to make such arrangements in a part of the subsoil beneath the open sea which has previously been occupied for a legitimate purpose as would indirectly endanger the freedom of the open sea.

If these five rules are correct, there is nothing to prevent coal and other mines which are being exploited on the shore of a littoral State from being extended into the subsoil beneath the open sea up to the boundary line of the subsoil beneath the territorial maritime belt of another State. Further, a tunnel which might be built between two parts of

[1] See above, § 259. [2] As to the continental shelf see below, § 287*d*.

the same State separated by the open sea—for instance, between Northern Ireland and Scotland—would fall entirely under the territorial supremacy of the State concerned. On the other hand, for a tunnel between two different States separated by the open sea—as, for instance, the proposed Gibraltar tunnel between the Spanish coast and either Tangier or Ceuta—special arrangements would have to be made by treaty with regard to the territorial supremacy over that part of the tunnel which runs under the bed of the open sea.[1]

The Continental Shelf.

§ 287*d*. Following upon the Proclamation of the President of the United States of September 28, 1945, a number of States have asserted rights to the so-called continental shelf. In that Proclamation [2] the Government of the United States declared the natural resources of the subsoil and sea-bed of the continental shelf—described 'as an extension of the land-mass of the coastal nation and thus naturally appur-

[1] *The Proposed Channel Tunnel.*—It is of interest to give some details concerning the project of a Channel Tunnel between Dover and Calais (see Oppenheim in *Z.V.*, 2 (1908), pp. 1-16; Robin in *R.G.*, 15 (1908), pp. 50-77; Hatschek, p. 210; Verdross, p. 221; Fauchille, §§ 483 (35)-483 (38); Lindley, p. 70; Gain, *La question du tunnel sous la Manche* (1933). Already some years before the Franco-Prussian War the possibility of such a tunnel was discussed, but it was not until 1874 that the first preliminary steps were taken. The subsoil of the Channel was geologically explored, plans were worked out, and a shaft of more than a mile long was tentatively bored from the English shore. In 1876 an international commission, appointed by the British and French Governments and comprising three French and three British members, made a report on the construction and working of the proposed tunnel (see *Parl. Papers*, C. 1576, Report of the Commissioners for the Channel Tunnel and Railway, 1876). The report enclosed a memorandum, recommended by the commissioners as a basis for a treaty between Great Britain and France concerning the tunnel. In spite of this elaborate preparation the project could not be realised, since public opinion in Great Britain was for political reasons opposed to it. And although repeated attempts were made both before and after the First World War to revive popular interest in the project, no progress has been made (see Fell, *The Position of the Channel Tunnel Question in May 1914* (1914), and *The Channel Tunnel, its Position in October 1921* (1921)). The rapid development of aviation is radically changing the problem. For an expression of British official opinion see the Statement of the Prime Minister (Mr. J. Ramsay MacDonald) in the House of Commons on July 7, 1924; Hansard, Commons, 1924, vol. 175, columns 1782-1786. And see for the Statement of Policy of the British Government of June 4, 1930, regarding the Channel Tunnel, (1930), Cmd. 3591; *British and Foreign State Papers*, 134, p. 1.

[2] For the text see *A.J.*, 40 (1946), Suppl. p. 47, and *Laws and Regulations on the Régime of the High Seas* (published in 1951 by the United Nations), vol. i., p. 38. In the latter volume there will be found, on pp. 3-44 and 299-305, the relevant proclamations of most other States.

tenant to it '—beneath the high seas but contiguous to the coasts of the United States to be subject to its jurisdiction and control. Similar proclamations were subsequently issued under the responsibility of the United Kingdom by certain States under its protection[1] and by a large number of other States,[2] including Argentina, Chile and Peru. While in most cases the relevant proclamations expressly disclaimed the intention to affect the status of the high seas and the superincumbent air space, the three last-mentioned States, as well as some other Latin-American States,[3] combined the assertion of rights to the continental shelf with wide, though somewhat indefinite, claims to the sea above it. These claims, which must be regarded as having no foundation in International Law, have met with protests on the part of the principal maritime Powers.[4]

The reasons which have inspired the conception of the freedom of the sea and which assisted in its development are not, it is asserted, in conflict with the recognition of the rights of the coastal State to exclusive exploitation of the

[1] Namely, various Arab Sheikhdoms in the Persian Gulf, including Bahrein, Kuwait, Abu Dhabi and Quatur—all issued in 1949. Previously, in a Treaty of February 26, 1942, with Venezuela relating to the submarine areas of the Gulf of Persia (Treaty Series, No. 10 (1942), Cmd. 6400) the two countries agreed to recognise rights of sovereignty or control which may be acquired by either of them in the submarine areas of the Gulf of Persia as delineated by the Treaty. Proclamations of the continental shelf or instruments of a like nature were also issued by British authorities in the Bahamas (1945), Trinidad (1945), Jamaica (1948) and British Honduras (1949).

[2] These include, in addition to those mentioned in the text: Mexico (1945), Panama (1946), Costa Rica (1948), Iceland (1948), Guatemala (1949), the Philippines (1949), Saudi Arabia (1949), Honduras (1950), Brazil (1950), Pakistan (1950), El Salvador (1950), Yugoslavia (1950), Israel (1953), Australia (1953). Some of the proclamations and enactments are limited to fisheries, as was the Portuguese Law of 1910 in which the equivalent of the expression ' continental shelf ' is used throughout (*Laws and Regulations on the Régime of the High Seas*, vol. i. (1951), p. 19).

[3] Thus the Constitution of El Salvador of 1950 lays down that the territory of the Republic ' includes the adjacent seas to a distance of two hundred nautical miles from low-water mark and comprises the corresponding aerial space, subsoil and continental shelf.'

[4] The protests of the United States and of the United Kingdom, respectively, against the proclamations or enactments of Peru, Chile, Honduras, Yugoslavia, Ecuador, Costa Rica, El Salvador, Saudi Arabia, Argentina and Iceland will be found in *Laws and Regulations on the Régime of the High Seas*, vol. i. (1951) and *International Court of Justice, Anglo-Norwegian Fisheries* case, *Pleadings, Oral Arguments, Documents*, vol. 2, pp. 743, 747, 750, and vol. 4, pp. 574, 583, 589, 592, 596 and 601. Some of these protests had reference to the limit of territorial waters fixed in connection with the continental shelf.

natural resources of the sea-bed and the subsoil of the continental shelf. The direct proximity of the coastal State ; the fact that the continental shelf constitutes a natural prolongation of its territory and that the mineral deposits of the shelf and of the mainland may form a common pool ; the special interest of the coastal State in the exploitation of the resources of the continental shelf ; the circumstance that it is, geographically, in the best position to do so ; and its legitimate reluctance to permit other States to establish themselves, for that purpose, in the direct proximity of its coast—all these factors, it is said, substantiate the reasonableness of the claim of the coastal State to these areas. Whatever may be the deductions made by writers from the notion of the freedom of the sea in relation to its sea-bed and subsoil, such deductions cannot, according to some, prevail in relation to the possibilities, revealed by modern science and developments, of exploiting the resources of the bed of the sea and its subsoil. It is, on that view, consonant with the nature of things that the conception of effectiveness as a condition of possession or acquisition of title should in this case be applied only in a general and substantially figurative manner—as, indeed, it has been applied in the past to some situations relating to title to territory.[1]

While the geographical notion of the continental shelf—conceived as the submarine areas contiguous to the coast up to a point where the sea is more than two hundred metres deep—may give rise to difficulties,[2] and although it introduces a measure of actual inequality as between various States,[3] it has now become widely accepted and is believed

[1] See above, § 225.

[2] Thus, for instance, in some areas —as in the Persian Gulf—there exists no continental shelf proper inasmuch as the sea does not reach a depth of two hundred metres (six hundred feet).

[3] In some countries the continental shelf ends abruptly near the coast. In its Report (see below, p. 635) the International Law Commission pointed out that although the depth of two hundred metres as a limit of the continental shelf must be regarded as the general rule, it is a rule which is subject to equitable modifications in special regions in which submerged areas, of a depth less than two hundred metres, situated in considerable proximity to the coast are separated by a narrow channel, deeper than two hundred metres, from the part of the continental shelf adjacent to the coast. In such cases, it was stated, the shallow areas must be regarded as contiguous to that part of the shelf.

to express accurately the notion of coastal submarine areas as constituting the natural seaward extension of the territory of the State.

It probably matters little whether the rights of the coastal State in the continental shelf are described as exclusive rights of exploitation and exploration of the natural resources [1] of the sea-bed and its subsoil, or exclusive jurisdiction for the purpose of exploration and exploitation of such resources, or rights of sovereignty, or sovereign rights either generally or as limited to such exploration and exploitation.[2] Neither, it has been maintained, is there any compelling legal reason for limiting such rights to the subsoil of the continental shelf as distinguished from the bed of the sea so long as the assertion of such rights is not used as a device for encroaching upon freedom of navigation and

[1] Although the proclamations of the continental shelf had their origin in the desire to secure the exploitation of a mineral source of wealth, namely petroleum, it has been asserted, the general reasons underlying the recognition of the right of States to the sea-bed and subsoil of the continental shelf do not require any limitation of such rights to mineral resources. On that view, such rights extend to natural resources in the wider sense—provided their exploitation does not interfere with the rights of other States in respect of swimming fish even if their regular habitat or breeding periods occur on the bed of the sea. To that extent the recognition of the rights of the coastal State over the bed of the sea may render to a large extent obsolete, in respect of States validly claiming rights over the continental shelf, the conception of sedentary fisheries as an exceptional extension of the rights of the State (above, § 281). For sedentary fisheries are normally located on the bed of the sea—although it is conceivable that shallow sea areas permitting the exploitation of sedentary fisheries may be situated outside the continental shelf. There is agreement that with respect to sedentary fisheries the assertion of the right over the sea-bed within the continental shelf ought not to result in a deprivation of acquired rights of foreign nationals.

[2] In this connection reference may be made to two cases decided by the Supreme Court of the United States in the matter of the respective rights of the United States and its member-States with regard to the ownership of the resources of the subsoil of territorial waters and of waters outside them. As to the first see *U.S.* v. *California* (above, p. 502, n. 3). As to the second see *U.S.* v. *Texas* (1950) 339 U.S. 707, where it was held, by a bare majority of the Court, that considerations of national defence and of the conduct of foreign affairs require that the title to and jurisdiction over the resources of the subsoil outside the territorial waters be deemed to be vested in the United States. For a discussion of what has been described as the 'tidelands controversy' see a series of articles in *Baylor Law Review*, 3 (1951), p. 115-335. See also Bartley, *The Tidelands Controversy* (1953); Hardwick, Illig and Patterson in *Texas Law Review*, 26 (1948), p. 398, and comment in *Yale Law Review*, 56 (1947), p. 356, and in *Michigan Law Review*, 50 (1951), p. 114. For the possible impact, on this question, of the decision of the International Court of Justice in the *Anglo-Norwegian Fisheries* case see *I.C.L.Q.*, 1 (1952), pp. 213-216.

fishing on the high seas or for interfering with legitimate scientific investigations. In 1953 the International Law Commission, after prolonged study, adopted Draft Articles on the continental shelf designed mainly to safeguard the traditional principle of the freedom of the sea in relation to legitimate requirements of exploration and exploitation of the natural resources of the continental shelf.[1] To that extent these Articles provide an instructive example of a combination of the functions of codification and development of International Law.[2]

[1] After laying down that the 'coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources' and that such rights do not affect the legal status of the superincumbent sea or of the air-space above it,' the Draft provides, in Article 6, as follows:

'1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or fish production.

2. Subject to the provisions of paragraph 1 and 5 of this article, the coastal State is entitled to construct and maintain on the continental shelf installations necessary for the exploration and exploitation of its natural resources and to establish safety zones at a reasonable distance around such installations and to take in those zones measures necessary for their protection.

3. Such installations, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own and their presence does not affect the delimitation of the territorial sea of the coastal State.

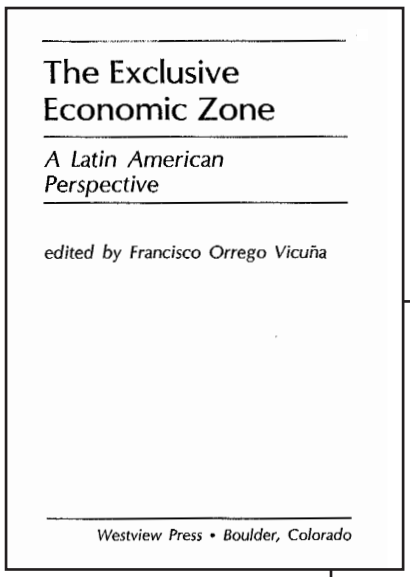
4. Due notice must be given of any such installations constructed, and due means of warning of the presence of such installations must be maintained.

5. Neither the installations themselves, nor the said safety zones round them may be established, in narrow channels or on recognised sea lanes essential to international navigation.'

[2] The following is a selection from the extensive literature on the subject: *Memorandum of the Secretary-General of the United Nations on the High Seas* (Doc. A/CN. 4/32) (prepared by Gidel); Mouton, *The Continental Shelf* (1952) (a comprehensive monograph); Azcárraga, *La plataforma submarina y el derecho internacional* (1952); Borchard in *A.J.*, 40 (1946), pp. 53-70; Vallat in *B.Y.*, 23 (1946), pp. 333-338; Young in *A.J.*, 42 (1948), pp. 849-857, 45 (1951), pp. 225-239, and 46 (1952), pp. 123-128; *International Law Association Report*, 43 (1948), pp. 168-206, and 44 (1950), pp. 87-138; Hurst in *Grotius Society*, 34 (1948), pp. 153-169; Waldock, *ibid.*, 36 (1950), pp. 115-148; Lauterpacht in *B.Y.*, 27 (1950), pp. 376-433; Biscottini in *Studi e Communicazioni* 3 (1950), pp. 119-158; Johnson in *I.L..Q*, 4 (1951), pp. 445-453; Green in *Current Legal Problems*, 4 (1951), pp. 54-80; Delgado in *Revista Peruana*, 12 (1952), pp. 159-241; Bingham in *Southern California Law Review*, 1952; *Report of the International Law Commission*, 1953. See also the detailed and scholarly award given in 1951 by Lord Asquith in the *Abu Dhabi* arbitration: *I.C.L.Q.*, 1 (1952), p. 247. And see Anninos, *The Continental Shelf and Public International Law* (1953).

Annex 300

F. Orrego Vicuña, "The Exclusive Economic Zone in a Latin American Perspective: An Introduction", in F. Orrego Vicuña (ed.), *The Exclusive Economic Zone – A Latin American Perspective*, 1984, p. 1



Francisco Orrego Vicuña

1. The Exclusive Economic Zone in a Latin American Perspective: An Introduction

One of the concepts most recently incorporated in the structure of international law is that of the Exclusive Economic Zone (EEZ). The foundation of this new institution, which has undergone a long evolutionary process, goes back as far as the earliest claims to national jurisdiction over marine resources of various types. But, the Exclusive Economic Zone is also partly the result of widespread contemporary national practices and of the diplomatic negotiations that have been conducted, concurrently, at the Third United Nations Conference on the Law of the Sea and other regional or global forums.

Precisely because it is a new concept and it springs from a variety of sources, the EEZ has not yet been the object of systematic analysis in the doctrine of international law. The studies published hitherto are few in number and are only just beginning to draw the attention of international academic organizations. Thus, for example, the first provisional report of the International Law Association's International Committee on the Exclusive Economic Zone came before the Montreal session of the conference in 1982.

Since the EEZ is indissolubly linked to Latin American practice, as reflected in national legislation and in existing regional instruments, the Institute of International Studies of the University of Chile deemed it opportune to convene a conference to discuss this topic. Held in October 1981, the conference was attended by distinguished scholars and diplomats from several countries in this region, many of whom had played a direct part in the negotiations of the United Nations Conference on the Law of the Sea. This book assembles the contributions made on that occasion and other studies that it has been thought important to include.

The first point that should be noted relates to the origins of the new concept. All Latin American writers agree that the Exclusive Economic Zone has its roots in the national claims asserted by countries of

the region during the late 1940s; the first of these was the Chilean proclamation in 1947, which was followed by other similar instruments and by multilateral agreements dating from 1952. This early Latin American practice is carefully analyzed in the chapters by F. V. García-Amador and Julio César Lupinacci, which together cover more than forty years of Latin American legislation in this field. The subject is of considerable interest in the light of recent arguments suggesting different origins linked to initiatives on the part of other regions.

In addition to the historical approach, the process of creating the EEZ warrants special attention. Latin American writers, like many others throughout the world, are at one in holding that the widespread national practice already current in this respect is explicit enough to constitute a precedent on which an international customary rule can be based. In fact, the legislation of many countries, even though differing in specific approaches or modes of application, is essentially uniform as regards the basic characteristics and purposes of the exercise of national jurisdiction over the maritime space in question. Just as in the case of the continental shelf, this vast legislative movement is representative of an opinio juris in relation to the EEZ. Thus, irrespective of its expression through the Convention on the Law of the Sea, today the existence of a new consuetudinary rule can be affirmed.

At the same time, the evolution of the negotiations conducted through the Conference on the Law of the Sea is important. The analysis presented by Reynaldo Galindo Pohl, who was chairman of the Second Committee during the initial negotiations on the economic zone in the early years of the conference's work, bears valuable witness to the course of its deliberations. This type of contribution is of outstanding importance in view of the fact that almost the entire process of negotiation has been informal, with the result that there is a lack of official records that makes it extremely difficult to reconstitute the propositions and the bases that have paved the way for a compromise solution to each aspect of the problem. It is precisely to the importance of informal negotiations in the quest for a consensus on the law of the sea that Vicente Marotta Rangel refers in his study.

The Chapter by Galindo Pohl points out the basic problems that had to be examined in order to reach an understanding with respect to this new institution and the positions of the principal parties involved in the negotiation. He gives an accurate account of the nature and main characteristics of the compromise that was negotiated.

Similarly, Ambassador Galindo Pohl advances interpretations that are of special interest in view of the incipient discrepancies as to the scope of the provisions of the 1982 convention. These interpretations have the merit of being evolved in the light of the criteria that made the aforesaid compromise possible.

An essential part of this process of accommodation is that relating to the fishing regime within the EEZ and to kindred problems. The interests of the coastal states had to be reconciled with those of countries fishing in distant waters, as well as with the particular situation of the landlocked countries and of those with special geographical characteristics. At the same time, the most important of the different types of fish species needed a differentiated regime in keeping with their particular habits of life and migratory cycles, a necessity that gave rise to diverse regulations in this field. The study by Hugo Caminos, which focuses primarily on the fishing regime, offers an explanation of the different regimes referred to and of their essential components, facilitating understanding of the compromises that have intervened in the case of fishing.

The problem that has been of most lively concern to the Latin American countries in regard to the Exclusive Economic Zone has undubitably been that of its legal status. The long-standing discussions as to whether the jurisdiction exercised by a coastal state over its adjacent seas is (1) a type of specialized projection of its powers, or (2) a manifestation of its territorial sovereignty, identical with or similar to its sovereignty over the territorial sea, have continued to crop up in relation to the legal status of the EEZ. These differences arose at the outset among the members of the Permanent Commission of the South Pacific; Chile was decidedly in favor of the first approach; Ecuador leaned towards the second; while Peru adopted special modalities that revealed a preference for the latter.

The same situation recurred at a more universal level in the negotiations of the Conference on the Law of the Sea. Although the so-called territorialist group did not carry too much weight in these proceedings, it did prove influential enough to demand various accommodation formulas. The most serious source of conflict, however, was the discrepancy between the criterion of the coastal states and that of the maritime powers with regard to the specific provisions of the part of the convention on the Exclusive Economic Zone and to others of a kindred nature. This dispute accounts for the substantive compromise that was effected.

Imaginative as were the approaches adopted in the

convention to overcome the existing problems, they leave room for arguments on behalf of each of the two criteria, which in the near future will undoubtedly be reflected in conflicting interpretations. These have, in fact, already begun to rear their heads. The distinction drawn in this instrument between "sovereign rights," "jurisdiction", and "other rights and duties" obviously makes for gradation of the significance of the powers attributed to the coastal state in the maritime space under discussion, but it does not in itself settle the question of legal status. The position is much the same in respect to the subtle play of cross references with the articles relating to the high seas, which is another of the mechanisms designed for this purpose; for while it reaffirms some of the freedoms proper to the latter space, it makes no difference to the nature of the powers that the coastal state has authority to exercise.

The formula on residual rights contained in Article 59 of the convention is characterized by a balanced approach that aims at avoiding prejudgments on the question of the legal status of the EEZ and at the same time seeks to facilitate the settlement of any disputes that may arise. Perhaps one of the most important of the issues that have bearing on this matter of legal status is to be found in the sphere of the provisions for the peaceful settlement of disputes and the complicated set of exceptions and counter-exceptions appearing therein. From the study by María Teresa Infante, which looks at the problem from this angle, it can be seen that these provisions adequately safeguard the discretional powers of the coastal state.

A point of view that is shared by several authors is that the Exclusive Economic Zone can be described as a maritime space sui generis, different from the territorial sea and from the high seas although taking elements from both to combine them within a new institution. Similar efforts had been previously made in Latin America, particularly on the basis of the conceptual formulation referring to a patrimonial sea. These approaches are interesting in that they account for the modalities and characteristics of the Exclusive Economic Zone, but they too fail to solve the problem of the fundamental conflicts between one conception and the other, which are still in evidence. Probably this scenario will remain unchanged for a long time, until jurisprudence and other processes of refinement of international norms come to shed light on the real significance and scope of the provisions and concepts concerned.

This debate has been of particular importance in Latin America's case, both because of the role that this region has played in the negotiations of the Conference on the Law of the Sea and because of the

characteristics of several countries' legislation. In many instances, these characteristics display contradictions or changes of direction. On other occasions different approaches have been tried out, such as that of describing the zone in terms of a territorial sea, subject, however, to regimes different from those traditionally applied. Be that as it may, the fact is that the controversy has not died down but, on the contrary, has been exacerbated in recent years, in some cases creating difficulties in connection with the signature and ratification of the new convention.

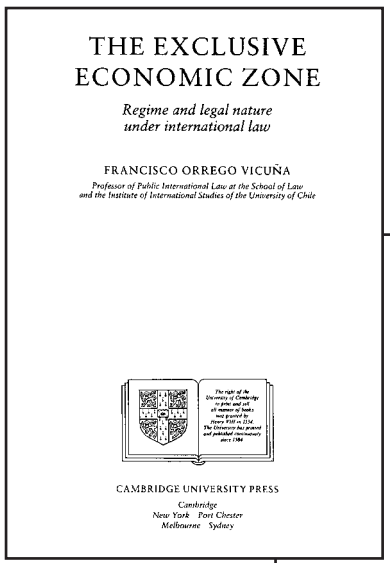
Several of the studies contained in this book take as their theme the question of the legal status of the Exclusive Economic Zone from a Latin American standpoint. Apart from the contribution by Galindo Pohl, which is concerned particularly with the process of forming a consensus, this subject is also dealt with in the chapters by Julio César Lupinacci and Alfonso Arias Schreiber. The former study is based mainly on an analysis of Latin American legislation and practice at the regional level, reviewing at the same time the negotiation of the Conference on the Law of the Sea, while the second pays particularly detailed attention to the arguments that have been adduced in this juridical and diplomatic debate. These approaches, together with other pertinent views existing in Latin America, constitute and adequate panorama of regional opinion.

The Exclusive Economic Zone involves many other questions, ranging from those of its delimitation to those of its relation with the regime of the continental shelf and including problems relating to installations of various types. These other angles have not been dealt with in the chapters in this book, whose object is rather to identify the concept of the Exclusive Economic Zone in the light of its significance in international law.

The material assembled in this book will serve to highlight, from one point of view, the wealth of intellectual discussion that has accumulated around this new institution. Perhaps the book's greatest merit lies in its testimony to the experience and farsightedness of many of those who are contributing to the birth of a new concept in contemporary international law.

Annex 301

F. Orrego Vicuña, *The Exclusive Economic Zone: Regime and Legal Nature under International Law*, 1989



Influence in delimitation of areas

of the cases the line thus established could be extended for the delimitation of the exclusive economic zone, unless there are circumstances that could justify a different criterion.[62] Furthermore, it can be assumed that in the majority of cases the States that have agreed to such delimitations of the continental shelf would have considered its possible influence with respect to the delimitation of the exclusive economic zone, especially when dealing with cases contemporary with the emergence of the exclusive economic zone in international law and practice. Due to this important reason the current trend is the undertaking of the delimitation of different maritime jurisdictions simultaneously, as will be examined next.

Trends derived from state practice

Before the exclusive economic zone regime became consolidated in international law, delimitation agreements, as was only natural, were principally related to the territorial sea or the continental shelf. There was, however, an important exception. The Santiago Declaration on the Maritime Zone, of 18 August 1952, to which Chile, Ecuador, and Peru are parties, Colombia having adhered later, provides that the maritime boundary between such countries will follow the line of the parallel of the point where the respective land boundary reaches the sea.[63] On this basis a single boundary line was established for all the maritime areas, including the territorial sea, the exclusive economic zone, and the continental shelf.[64] This criterion, as well as the formula agreed on the parallel, were later confirmed by the multilateral agreement on the special common border zone of 4 December 1954 which provides for a special fishing zone extending to both sides of the boundary line.[65]

A bilateral delimitation agreement concluded between Colombia and Ecuador in 1975[66] applies the same approach of the single boundary line and delimitation by the parallel between these countries. The boundary between Ecuador and Peru[67] and between

[62] For comments see Legault and Hankey, loc. cit., supra note 25, pp. 988–90.
[63] For the text of the Declaration and a recent analysis see U.S. Department of State, *Limits in the Seas*, No. 8, Annex 1; see also Prescott, op. cit., supra note 1, pp. 202–5.
[64] Reuter, loc. cit., supra note 4, p. 260.
[65] Agreement on the Special Maritime Common Border Zone, 4 December 1954, text in Francisco Orrego Vicuña: *Chile y el derecho del mar*, 1972, pp. 89–90.
[66] Delimitation Agreement between Colombia and Ecuador, 23 August 1975, *Limits in the Seas*, No. 69.
[67] See *Limits in the Seas*, No. 88.

Peru and Chile[68] is governed by the multilateral instruments mentioned. On occasions Peru has sought to modify the maritime boundary with Chile as to the formula of the parallel, invoking criteria of equity and security related to the territorial sea and the continental shelf,[69] but this effort could not succeed as it is contrary to an agreement in force.

The criterion of the single maritime boundary followed in this case is the natural consequence of the Santiago Declaration having claimed both the continental shelf and the superjacent waters up to the distance of 200 miles. Also, given the fact that Ecuador and Peru claim a territorial sea of 200 miles, between them the boundary line will separate territorial seas of the same extension; but since Colombia and Chile claim an exclusive economic zone, the boundary between Colombia and Ecuador and between Chile and Peru will separate an exclusive economic zone from a territorial sea.[70] The situation previously mentioned that advises that the boundary line should not vary in relation to the legal nature of the areas through which it passes is thus illustrated in practice.[71] In any event, it should be kept in mind that the maximum distance authorized by international law with respect to the breadth of the territorial sea is 12 miles.

A different stage began in maritime boundary matters when the exclusive economic zone became consolidated in international conventional and customary law. The need to take into account this new regime, along with promoting the integrating formulas with the continental shelf regime, became a strong stimulus for the use of the single boundary line, a trend that is reflected both in the decisions of courts that have been examined and in the conclusion of a growing number of delimitation agreements that share these characteristics.

Since 1975 most of the delimitation agreements have referred to the aggregate of maritime jurisdictions, whether referring to living resources or non-living resources, and whichever their nature may be,[72] a situation which has led one author to conclude that "there

[68] See *Limits in the Seas*, No. 86.

[69] Eduardo Ferrero Costa: *El Peru y las 200 millas*, 1979, pp. 378–85; Juan Miguel Bakula: *El dominio maritimo del Peru*, 1985, pp. 341–3; see also "Chile y Peru analizan delimitacion maritima," *El Mercurio*, 12, 13 June 1986.

[70] For the case of Colombia and Ecuador, see the example indicated by Attard, op. cit., supra note 3, p. 221.

[71] See supra note 9 and associated text.

[72] Reuter, loc. cit., supra note 4, p. 260.

exists, therefore, today a very clear trend to deal by means of a single operation with the lateral delimitation of all maritime areas, or, in using the language of practice, of the aggregate of maritime jurisdiction."[73]

Agreements of this nature are, for example, those that have been effected by India and Sri Lanka (1976),[74] India and Maldives (1976),[75] Gambia and Senegal (1975), Colombia and Ecuador (1975), Colombia and Panama (1976), Colombia and Costa Rica (1977), Colombia and Haiti (1978), Colombia and the Dominican Republic (1978), Cuba and Haiti (1977), the Dominican Republic and Venezuela (1979), the United States with Cuba, Mexico, Venezuela, Cook Islands and Tokelau, France, and Mauritius (1980), Costa Rica and Panama (1980), Burma and Thailand (1980), Brazil and Uruguay (1972), Kenya and Tanzania (1976), France and Tonga (1980), France and Venezuela (1980), France and Brazil (1981), France and St. Lucia (1981), France and Australia (1982), France and Fiji (1983),[76] the Netherlands and Venezuela (1978),[77] and Cuba and Mexico (1976).[78]

Some of these agreements refer specifically to the delimitation of the exclusive economic zone, consequently including the underlying continental shelf, while others have chosen the formula of delimiting the continental shelf and the superjacent waters, but all of them have in common the delimitation of maritime areas by means of a single boundary line. The agreements that today refer exclusively to the continental shelf are an exception. The criteria used with respect to the application of equity are certainly highly varied, since their range covers from the median line to general equitable principles, including generic references to international law,[79] but this is a different aspect that will be examined further below.

The strength of this integrating trend has been so powerful that it has impeded some efforts geared toward dissociating the delimitation of the continental shelf from the exclusive economic zone,

[73] Ibid., p. 261. [74] Attard, op. cit., supra note 3, p. 213. [75] Ibid., p. 250.

[76] For comments and references on these cases, see Attard, op. cit., supra note 3, pp. 213, 250–3; Dipla, op. cit., supra note 16, pp. 224–5. See also *Law of the Sea Bulletin*, No. 1, September 1983, pp. 112–14, and No. 3, March 1984, p. 17, hereinafter cited as *Bulletin*. See also Gilbert Guillaume: "Les accords de délimitation maritime passés par la France," Société Française pour le Droit International: *Perspectives du droit de la mer à l'issue de la 3e Conférence des Nations Unies*, 1984, 274–92.

[77] *Limits in the Seas*, No. 105. [78] Ibid., No. 104.

[79] Dipla, op. cit., supra note 16, pp. 224–5.

with the exception of some very special cases.[80] As one author remarks, although there have been States that have refused to consider that the delimitation effected for the continental shelf can be valid for the exclusive economic zone, this pretension has never led to a boundary agreement.[81] On the contrary, there has been at least one case in which the delimitation agreed to for the continental shelf has been extended through a later agreement to the delimitation of the territorial sea and the respective fishing zones.[82] On the other hand, there have also been cases in which the delimitation agreed to for the exclusive economic zone has been used to settle other boundary issues by means of its extension or other mechanisms.[83]

The existence of joint zones or special cooperation agreements for some matters related to the continental shelf or the exclusive economic zone[84] also constitutes exceptional situations that do not alter the trend indicated and that frequently are used jointly with the agreements of this integrating nature. These joint zones can overlap the boundary line, as in the case of the continental shelf between Spain and France in the Gulf of Biscay[85] or the continental shelf of Jan Mayen;[86] or form part of transitory agreements while delimitation is being accorded, as occurred between Malaysia and Thailand;[87] or be established in the absence of a boundary, as is the case of the zone of joint exploitation between Korea and Japan.[88] Other forms of joint exploitation or distribution of benefits have been provided for between Bahrein and Saudi Arabia (1958), Saudi Arabia and Kuwait (1965), and Saudi Arabia and Sudan (1974).[89] Also, joint zones for fishing and scientific research have been provided for, this being the case of Argentina and Uruguay (1973)[90]

[80] Reuter, loc. cit., supra note 4, p. 263. [81] Ibid., p. 263.

[82] See the agreements between Australia and Indonesia of 18 May 1971 and 26 January 1973, cit. in Reuter, loc. cit., supra note 4, p. 259.

[83] Agreement between India and Sri Lanka of 1976, cit. in Attard, op. cit., supra note 3, p. 227.

[84] Legault and Hankey, loc. cit., supra note 25, p. 986. See also the suggestions for a buffer zone in Camille M. Antinori: "The Bering Sea: a Maritime Delimitation Dispute between the United States and the Soviet Union," *Ocean Development and International Law*, Vol. 18, 1987, 1–47.

[85] Convention of 29 January 1974; see Reuter, loc. cit., supra note 4, p. 263, note 37.

[86] See supra note 47.

[87] See the agreements of 24 October 1979 and 21 February 1979, cit. in Reuter, loc. cit., supra note 4, p. 263, note 38.

[88] Agreement of 5 February 1974, cit. in Reuter, loc. cit., supra note 4, p. 263, note 39.

[89] See Attard, op. cit., supra note 3, p. 218. [90] Ibid., p. 218.

and Colombia and the Dominican Republic (1978).[91] During the course of the papal mediation between Chile and Argentina a joint zone was also proposed, which was to be applicable to both living and non-living resources throughout the extension of the exclusive economic zone disputed by the parties, but this modality was not finally retained.[92]

The only precedent in which separate boundaries have been established for the continental shelf and superjacent waters, claimed by both parties as an exclusive fishing zone, is that of the 1978 agreement between Australia and Papua New Guinea in the area of the Torres Strait.[93] In this case, the delimitation of the fishing zone followed a different course from that of the continental shelf in order to take into account some socio-economic factors of the region and other geographical circumstances derived from jurisdiction over the islands in the strait. Also, in the southern dispute between Chile and Argentina the latter country proposed during the 1978 negotiations a similar scheme inspired by that precedent, but this was not accepted.

In this manner the integrating trend leading to the application of a single boundary line finds an important support in state practice. The process is evidently accentuated to the extent that delimitation agreements increasingly refer to the exclusive economic zone as such, the regime of which by definition will include the seabed and subsoil through its extention. The delimitation process is simplified and facilitated to this same extent.

This does not mean of course that all the problems inherent to delimitation have disappeared. There are even some new ones that have emerged in relation to the exclusive economic zone and the continental shelf. One of them is the problem of the eventual existence of "gray areas," which are areas of the sea inside the disputed area, but as a result of the delimitation effected fall outside the jurisdiction of both parties: they will be beyond the jurisdiction of the party whose 200 miles could include that gray area as a consequence of the boundary line having left the area on the other side; and it will be beyond the jurisdiction of the other party, since

[91] Reuter, loc. cit., supra note 4, p. 263, note 40.
[92] See supra note 53 and associated text.
[93] Attard, op. cit., supra note 3, pp. 217–18; H. Burmester: "The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement," *American Journal of International Law*, Vol. 76, 1982, 321–49; see also Churchill, loc. cit., supra note 29, p. 26.

with respect to it the area is located beyond the 200 miles.[94] This situation can also pose complex problems with respect to the continental shelf when it extends beyond the exclusive economic zone.[95] This problem was discussed, but not settled, in the Gulf of Maine case.[96] This situation also arose in the delimitation between Chile and Argentina, where the gray area was attributed to the high seas.[97] This type of situation is rather frequent due to the variations in the configuration of the coastlines.

There are many other technical problems that arise over a delimitation of maritime jurisdictions, but undoubtedly the most complex problems are those related to the identification of equitable solutions. This aspect will be examined next with regard to the exclusive economic zone regime.

3. THE EXCLUSIVE ECONOMIC ZONE REGIME AND ITS CONTRIBUTION TO THE DEVELOPMENT OF EQUITABLE LEGAL PRINCIPLES FOR MARITIME DELIMITATION

The fact that the decisions of courts have given place to an important trend for substituting distance for natural prolongation as the basic concept on which state entitlement in this field is founded, or the fact that state practice inclines toward a single boundary line for the continental shelf and the exclusive economic zone has facilitated delimitation processes, but has not solved the problem of which are the substantive principles or criteria specifically applicable in order to attain maritime delimitation settlements.

The line followed by the decisions of courts is somewhat different from what is observed in this regard in the practice and legislation of States, principally due to the fact that the courts only intervene when it has not been possible to reach an agreement between the parties, while that practice is expressed in general through the agreements reached in the different cases. The emphasis evidently will vary in response to the complexity of the dispute posed.

The approach adopted for delimitation by Articles 74 and 83 of the Law of the Sea Convention, based on their generic reference to international law, has often been received with scepticism.[98] On the

[94] Legault and Hankey, loc. cit., supra note 25, pp. 987–8.
[95] Ibid., p. 988.
[96] Sitting of the Chamber of 10 May 1984, Verbatim Record.
[97] Treaty cit., supra note 52, Article 7, final paragraph; see also supra note 53.
[98] Attard, op. cit., supra note 3, pp. 224, 238.

Annex 302

F. Orrego Vicuña, "International Ocean Developments in the Southeast Pacific: The Case of Chile", in J. P. Craven, J. Schneider and C. Stimson (eds), *The International Implications of Extended Maritime Jurisdiction in the Pacific*, 1989, p. 221

The International Implications of Extended Maritime Jurisdiction in the Pacific

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situation that arose in the last segment of the area being delimitated was settled not by allocating such area to Argentina or Chile but by renouncing the area in favor of the high seas; and (3) in order to facilitate the arrangements on navigation the territorial sea of both Argentina and Chile in the area shall be restricted *inter partes* to three miles, while *vis-a-vis* third countries each party has established a twelve-mile limit.

The maritime boundary with Peru has been established by agreements of 1952 and 1954 done under the regional system of the South Pacific and it follows the line of the parallel where the territorial boundary reaches the ocean, a criteria which has been applied throughout such regional system. Recently Peru has purported to reopen the question of delimitation by proposing negotiations on "equitable" principles, which in accordance with the view of Peruvian authors would allocate a broader EEZ area to Peru. There is also a question of a "grey area" in this area. Chile has refused to enter into any such discussion in view that it would involve the revision of treaties in force and depart from the criteria accepted in the regional system. The Civil Code amendment mentioned above can be read as a safeguard against this revision and also as an effort to prevent that the "equitable" principles of delimitation of the Law of the Sea Convention might eventually be invoked as an argument in this question.

In this connection reference should also be made to a recent proposal from Bolivia to enter into negotiations for gaining sovereign access to the sea. Besides the implications of this proposal in terms of territorial settlements and the revision of treaties it would also have a strong maritime implication, particularly with regard to delimitation and fisheries. In fact the issue of a geographically disadvantaged state would emerge in the southeastern Pacific. The regime of access to and from the sea agreed between Bolivia and Chile is more favorable then that provided for under the Law of the Sea Convention or international law generally.[12]

Delimitation of the Continental Shelf: Oceanic Islands

On 12 September 1985 the Chilean government issued a proclamation claiming 350-mile continental shelf sovereignty for Easter Island and the neighboring island of Sala y Gomez. This proclamation was modelled after the 1947 200-mile claim, making reference both to it and to the 1952 Santiago Declaration adopted jointly with Ecuador and Peru; such early claims had also referred to the continental shelf included within the 200-mile national maritime zone. The recent proclamation involves difficult legal and technical questions.

A first issue concerns the legal basis of such proclamation. The Chilean claim is specifically based on Article 76(6) of the 1982 Law of the Sea Convention, referring also to the more general clause on islands of Article 121 of the Convention. Iceland, Ecuador, and Madagascar have also relied on the technical criteria set out in Article 76 for claiming continental shelf jurisdiction beyond 200 miles.[13] Chile has not yet ratified the Convention but

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[12]See generally Rodrigo Diaz, Maria Theresa Infante et Francisco Orrego Vicuna: "Les negotiations entre le Chili et la Bolivie a l'egard d'un acces souverain a la mer," *Annuaire Francais de Droit International*, 1977.

[13]*Ocean Policy News*, December 1986, at 2.

Annex 303

F. M. Pfirter de Armas, "¿Perú: la marcha hacia el oeste?", in R. Zacklin (ed.), *El Derecho del Mar en Evolución: La Contribución de los Países Americanos*, 1975, p. 295

propiedad nacional o extranjera, la Sociedad Pública de Servicios Pesqueros, empresas conjuntas y empresas asociadas al Estado (artículo 27). 2) Pesca para el consumo humano indirecto, esto es, la pesca industrial, la cual proporciona las materias primas para la producción de harina y aceite de pescado. 3) Pesca con objetivos de investigación y científicos. 4) Pesca deportiva.

La pesca profesional para el consumo humano directo se ha reservado para los nacionales peruanos; los barcos empleados en esta actividad también requieren ser propiedad de peruanos (artículos 26 y 43). La pesca comercial para el consumo humano directo está abierta a las empresas nacionales —privadas, propiedad estatal, o mixtas— así como a las empresas extranjeras.

La pesca para el consumo humano indirecto puede emprenderse por empresas existentes, de propiedad privada o extranjera, pero los barcos, tripulaciones y pescadores deben ser peruanos (artículo 28). Esta norma también se relaciona con los artículos 57-63 de la Reglamentación sobre Inversiones Extranjeras, los cuales prevén que la actual participación del capital extranjero no debe exceder del 49% del capital social. Sin embargo, el artículo 58 dispone que el establecimiento de nuevas empresas pesqueras con participación del capital extranjero no se autorizará con relación a la pesca para el consumo humano indirecto, lo cual contradice, evidentemente, la regla del artículo 28 mencionado arriba. También se prohibe la inversión extranjera en las industrias de alimento y aceite de pescado, así como la transferencia de acciones de los nacionales peruanos a los extranjeros o a empresas con capital extranjero.

Los individuos pueden emprender libremente la pesca deportiva, pero otras entidades legales requieren autorización previa. Las personas o asociaciones, tanto nacionales como extranjeras, que realizan la pesca con objetivos de investigación científica, se obligan a observar las reglamentaciones vigentes.

Las disposiciones examinadas se refieren a individuos y empresas con capital nacional o extranjero incorporado de acuerdo con las leyes peruanas, y que operan con barcos registrados que enarbolan la bandera peruana. Las naves extranjeras solamente pueden pescar en la zona de 200 millas si se han registrado y obtienen un permiso especial del Ministerio de Pesca (artículo 21), lo cual es una consecuencia directa de la vigilancia, protección y control de la pesca que ejerce el Estado (artículos 105-107).[23]

3. Delimitación de la zona marítima

¿Desde dónde se miden las 200 millas de la zona marítima peruana? La legislación ha seguido diferentes criterios sobre esta cuestión. El Decreto Supremo núm. 781 de 1947 fija la distancia con referencia a los paralelos geo-

[23] *General Fishing Law* núm. 18 810 de marzo 25 de 1971.

gráficos. La ley petrolera se refiere a la terraza continental comprendida entre la costa y una línea trazada a una distancia de 200 millas desde la marca de la bajamar.

Las declaraciones de los estados del Pacífico Sur no han establecido ninguna regla con relación a la medición. Tampoco lo ha hecho la Resolución Suprema núm. 23 de 1955, la cual estableció el levantamiento de cartas de la zona marítima.

En la práctica, por tanto, deben aplicarse las normas del derecho internacional consuetudinario incorporadas en la Convención de Ginebra, y por tanto debe entenderse las 200 millas medidas desde la marca de la bajamar cuando se trata de las líneas de base normales, o desde las líneas de base rectas cuando la configuración del litoral así lo requiera.

Por otra parte, ese trazado no es totalmente compatible con una línea paralela a la costa debido al hecho de que Perú también reclama una zona marítima rodeando las islas, en aplicación de las normas generales de la jurisdicción marítima. Por lo tanto, en ciertos puntos la zona jurisdiccional se extenderá hacia el mar a distancias mayores que la proyección normal desde la costa.

Con relación a la delimitación lateral con Ecuador y Chile, la declaración sobre la Zona Marítima de 1952 se refiere al paralelo correspondiente al punto donde el territorio fronterizo entre los Estados alcanza el mar; también el artículo 1 de la Convención sobre la zona especial de la frontera marítima se refiere al "paralelo que constituye el límite marítimo entre los países".[24]

4. Naturaleza legal de la zona marítima

La mayoría de los autores que han estudiado el carácter legal de la zona marítima, han llegado a la conclusión de que el Estado ejerce una soberanía limitada; [25] es una zona de *competencias especializadas* y no un mar territorial con soberanía absoluta.[26] Según Raúl Ferrero, "no se ha establecido [la zona] por consideraciones de defensa, las cuales normalmente determinan la naturaleza del mar territorial".[27] En la opinión de Alberto Ulloa, la defensa ha sido "el fundamento primario" [28] del concepto de mar territorial,[29] pero no el único; este fundamento está perdiendo rápidamente su importancia y ha sido remplazado por la idea de la explotación económica de las riquezas marinas.[30]

Las expresiones en favor de la anchura del mar territorial no son nuevas.

[24] *Conferencia sobre Explotación, op. cit.*, n. 11 *supra*, pp. 32 y 58.
[25] Alberto Ulloa: *Derecho Internacional Público, op. cit.*, n. 2 *supra*, p. 543.
[26] Raúl Ferrero, *op. cit.*, n. 8 *supra*, p. 98.
[27] *Ibid.*
[28] Alberto Ulloa: *Derecho Internacional Público, op. cit.*, n. 2 *supra*, p. 561.
[29] Mercado Jarrín: *op. cit.*, n. 1 *supra*, p. 15. En su opinión, éste fue "el fundamento más importante en el concepto clásico del mar territorial".
[30] Alberto Ulloa: *Derecho Internacional Público, loc. cit.*, n. 2 *supra*, p. 544.

Ya en 1918, José León Suárez —el jurista argentino— propuso esta idea. Pensaba que se requería no sólo por razones de seguridad sino que también era importante para el comercio, la caza y la pesca.

La legislación de Perú es confusa respecto a la naturaleza de la zona marítima. Casi cada documento hace hincapié en la expresión "soberanía y jurisdicción exclusivas" y se ha reiterado en las declaraciones de muchos funcionarios gubernamentales, particularmente del Ministerio de Relaciones Exteriores,[31] del embajador ante las Naciones Unidas, y otros.[32]

Desde el punto de vista tradicional, la idea de una soberanía y jurisdicción exclusivas puede considerarse como limitada solamente en la medida en la que se toma en cuenta el "derecho al paso inocente e inofensivo", como es el caso de la Declaración de Santiago y de la Ley núm. 15 720 sobre la Aviación Civil.

También, en tanto no haya una clara indicación de que la palabra soberanía quiere decir sólo ciertas competencias especiales, el hecho de que se ejerza sobre el mar adyacente en forma exclusiva sugiere la existencia del mar territorial.[33] Esto parece confirmarlo el lenguaje del Acuerdo Complementario a la Declaración de Santiago de 1952, el cual expresa el propósito de los signatarios a entrar en "acuerdos o convenciones relativos a la aplicación de los principios que rigen esa soberanía, con el propósito particular de reglamentar y proteger la caza y pesca dentro de varias zonas marítimas".[34] Esto significa que las partes contratantes consideran que ellas tienen sobre el área mencionada todos los derechos de soberanía que corresponden al mar territorial, pues declaran que ejercerán en particular (pero no exclusivamente) uno de esos derechos en aquel momento, decretando las reglamentaciones pertinentes, y no renuncian a otros derechos.

Sin embargo, el Decreto núm. 781 y otras normas se refieren a la libertad de navegación y sobrevuelo,[35] un elemento que no es característico del mar territorial. Tampoco los decretos, leyes y acuerdos firmados por Perú incluyen las palabras "mar territorial" o "zona contigua", excepto la Declaración sobre la Zona Marítima, donde se menciona en el párrafo 1. En general, se utilizan las expresiones "zona marítima" o "zona jurisdiccional exclusiva".

El Ministerio de Relaciones Exteriores, en su respuesta a las notas de protesta de los Estados Unidos y de la Gran Bretaña, declaró que la zona marítima no tenía "las características que evidentemente le atribuían los gobiernos que protestaban".[36]

[31] Mercado Jarrín: *op. cit.*, n. 1 *supra*,
[32] Arias Schreiber: *op. cit.*, n. 1 *supra*, p. 57.
[33] Rivera Marfán: *op. cit.*, n. 20 *supra*, p. 92.
[34] *Conferencia sobre Explotación*, *op. cit.*, n. 11 *supra* p. 45.
[35] Mercado Jarrín: *op. cit.*, n. 1 *supra*, p. 19. También Felipe Portocarrero Olave: *Derecho Internacional Público*, Lima, 1966, p. 137.
[36] Textos completos en Raúl Ferrero: *op. cit.*, n. 8 *supra*, pp. 151 *ss.*

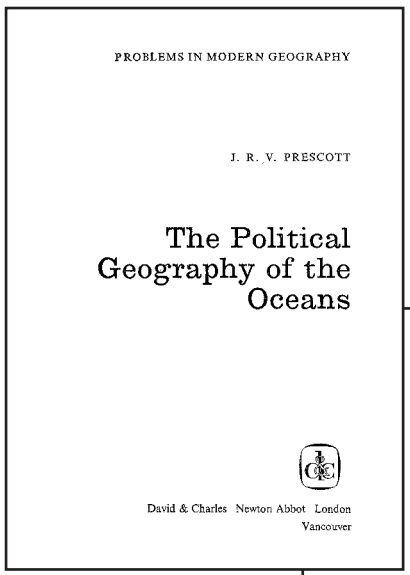
[…]

With regard to the lateral delimitation with Ecuador and Chile, the Declaration on the Maritime Zone of 1952 refers to the parallel corresponding to the point at which the land frontier between the States reaches the sea; also article 1 of the Agreement Relating to a Special Maritime Boundary Zone refers to the "parallel that constitutes the maritime boundary between the countries."

[…]

Annex 304

J. R. V. Prescott, *The Political Geography of the Oceans*, 1975



ordinates 25° 58′ 30·57″ north and 96° 55′ 27·37″ west, 12 nautical miles off the coast. As the mouth of the Rio Grande shifts, the short section of boundary between the closest fixed point and the centre of that mouth will hinge about the fixed point.[39]

Chile, Peru and Ecuador have agreed that the boundaries between their respective territorial waters will be drawn along the parallels which intersect the coast at the termini of the land boundaries. It has also been agreed that, beginning at a distance 12 nautical miles from the coast, a special zone 20 nautical miles wide will be constructed astride the boundary. This zone is designed to avoid problems associated with accidental intrusion by the nationals of neighbouring countries in foreign territorial waters. A parallel of latitude is of course an arbitrary line, and because of the general direction of the coast, Peru forfeits territorial waters to Ecuador. Such a loss is obviously considered minor compared with the benefit of having a clear boundary, easily determined by mariners. The situation is rather different in the case of Guinea. That country declared unilateral limits to its territorial sea, and selected parallels of latitude. The southern parallel 9° 3′ 18″ sacrifices territorial waters to neighbouring Sierra Leone. However, the northern parallel 10° 56′ 42·55″ cuts deeply into waters which can be legitimately claimed by Portuguese Guinea as a basis of equidistance. It even places within Guinean waters the island of Poilao, which forms part of the straight baseline system of Portuguese Guinea. Venezuela is another country which has made a unilateral declaration regarding the extent of its territorial waters at the expense of its eastern neighbour Guyana. Venezuela claims part of western Guyana and has fixed the eastern terminus of its straight baseline across the mouth of the Orinoco River 25 nautical miles east of the present terminus of the common land boundary at Playa Point.

Boundaries between states holding the opposite shores of narrow straits have also been drawn on the basis of lines of equidistance. On 17 March 1970 Indonesia and Malaysia agreed to a common boundary separating their territorial waters

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J. R. V. Prescott, *The Maritime Political Boundaries of the World*, 1985

THE MARITIME
POLITICAL BOUNDARIES
OF THE WORLD

J. R. V. PRESCOTT

METHUEN
London & New York

negotiating with distant fishing countries and to authorities anxious to improve their surveillance and control of fisheries.

A maritime issue which has prompted a rising level of debate concerns the dumping of nuclear waste in the Pacific Ocean. There has been widespread opposition to Japanese plans to dump 10,000 drums of liquid nuclear waste; each drum would contain 200 litres. The selected site is 460 nautical miles southeast of Tokyo, in deep water northeast of Agasawara Gunto. Kiribati and Nauru approached the organization set up by the London Dumping Convention and sought an amendment prohibiting the dumping of all radioactive waste throughout the world's oceans. At present only the dumping of high-level waste is prohibited. The amendment was referred to an expert committee, since the Convention requires that amendments must be based on scientific and technical evidence. This seemed to be an outcome which was satisfactory to the Japanese, since they are confident that the scientific evidence will endorse their proposal. The countries of the southwest Pacific Ocean have also prepared a convention for the protection and development of natural resources in their seas. The tenth article requires members to take all appropriate measures to prevent, reduce and control pollution resulting from the disposal of nuclear waste. Unfortunately there is no clear definition of the area to which the convention applies, and it appears certain that it will not apply to the area where the Japanese propose to dump their nuclear waste.

Maritime boundaries in the southeast Pacific Ocean

Compared to the complex pattern of maritime boundaries in the southwest Pacific Ocean, the pattern in the eastern region is simple. Only Ecuador and Chile have drawn straight baselines along their coasts. Ecuador's baseline was proclaimed on 28 June 1971, and it has already been mentioned (see figure 3.8). There can be no question that this baseline breaches the spirit and letter of the rules of the Convention. There are two parts to the baseline. The first part along the mainland coast consists of four segments totalling 345 nautical miles. The second part about the Islas Galápagos has eight segments totalling 542 nautical miles. The mainland baseline can be criticized because it encloses a coast which is only occasionally, in local areas, deeply indented and cut into, and which is only fringed with islands in its immediate vicinity in the area of the mouth of the Babahoja River in Golfo de Guayaquil. The segments connecting the isolated Isla de la Plata to the mainland total 192 nautical miles and are impossible to justify. It is also an unusual feature of the baseline that it terminates in the open sea. Despite the fact that a number of countries, including Iran, Denmark, Bangladesh, West Germany, Norway, Sweden and Finland have adopted the same technique, there is no provision for it in the Convention.

It has never been conclusively established that baselines may be drawn by coastal states around offshore archipelagos. It has been done by a number of

countries, and if archipelagic states can draw more than one set of baselines, it would be unfair if continental states were prevented from taking similar action. The baselines drawn around the Galápagos seem to be unexceptional, although some might criticize the inclusion of Isla Darwin and Isla Wolf in the system. They are 95 nautical miles from the nearest island in the main group, but historically they appear to have been considered part of the Islas Galápagos.

Chile's straight baseline south of parallel 41° south was proclaimed on 14 July 1977. It is divided into two main parts. The first consists of thirty-five segments and includes one section of low-water mark; it terminates on the Brunswick Peninsula on the north shore of the Strait of Magellan. The second part consists of thirty-one straight segments and five segments of the low-water line. The second part lies entirely south of Magellan Strait, so that the Strait is excluded from Chile's internal waters.

Both parts of the baseline follow closely the general configuration of the coast, and with a single exception Chile's baseline could be adopted as a model straight baseline along a coast which is deeply cut into and indented. The single exception is found at the southern terminus of the southern section. It is located in the open sea, at a point fixed by the Court of Arbitration in the Beagle Channel case. It has already been noted that this is an increasing tendency which is not specifically authorized by the Convention, presumably for the very good reason that if the baseline terminates in the sea then there is no proper definition of internal waters in that area.

Maritime boundaries have been drawn between Colombia and Ecuador, Ecuador and Peru and Peru and Chile. They share the common characteristics that they coincide with the parallel of latitude which passes through the terminus of the land boundary, and that a buffer zone has been created on each side of the boundary to protect vessels of the bordering states from being prosecuted for accidental trespass.

On 18 August 1952 a Declaration on the Maritime Zone was proclaimed by Chile, Ecuador and Peru. This declaration included the provisions that each country should possess control over its adjacent waters to a distance of 200 nautical miles, and that boundaries between their maritime claims should be marked by the parallels which intersect the terminus of the land boundary.

While Ecuador and Peru claim territorial seas 200 nautical miles wide, Chile claims territorial seas 3 nautical miles wide and an economic zone of 200 nautical miles. The maritime boundary between Chile and Peru coincides with parallel 18° 23′ 3″ south, which passes through boundary pillar Number 1. This pillar lies slightly north of the final terminus of the boundary on the shore. In 1969 a joint boundary commission erected two towers almost 1 nautical mile apart on the parallel of the boundary pillar. This device enables mariners to know when they have crossed the parallel and is one of the few cases where maritime boundaries have been marked (The Geographer 1979). The maritime boundary separating the claims of Ecuador and Peru coincides with parallel 3° 23′ 34″ south.

Because of the westwards bulge in the Peruvian coast the claims to a zone 200

nautical miles from that coast terminate seawards of similar claims by Chile and Ecuador. The situation is shown for the Chile–Peru boundary in figure 7.6.

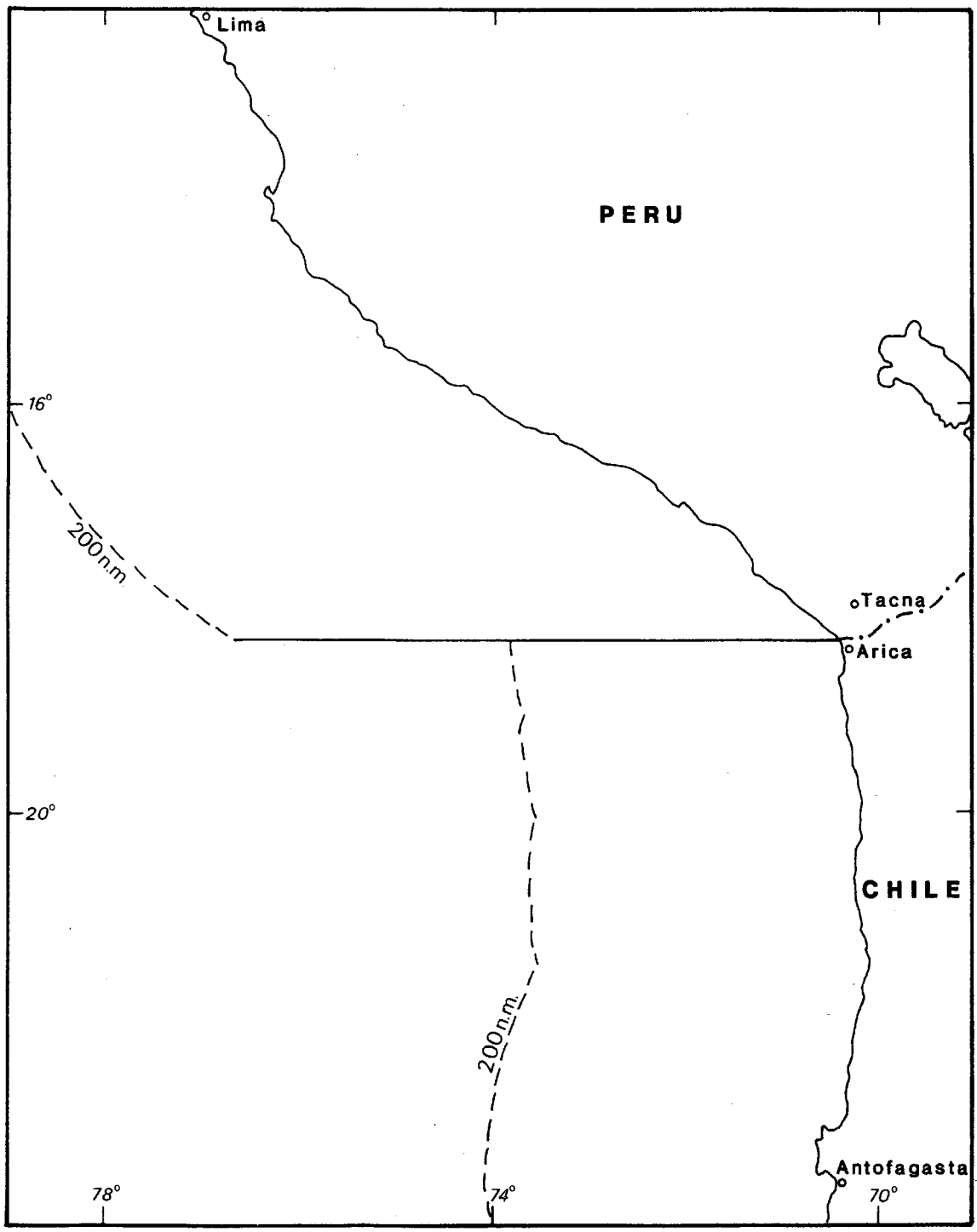

Figure 7.6 The maritime boundary between Peru and Chile

On 4 December 1954 the three countries also agreed to create buffer zones 10 nautical miles wide on either side of the boundary to avoid the risk of incidents being caused by the accidental trespass of boats from the neighbouring country across the parallel. In fact the provision applies to small vessels manned by crews with insufficient knowledge of navigation, or not equipped with the necessary equipment to determine their position accurately. It is specified that this safeguard is not to be considered as a right to fish or hunt with intent in the buffer zone of a neighbouring state.

Ecuador was evidently able to persuade Colombia of the benefits of the system agreed by the three countries, because the boundary separating the zones of the two countries followed the same pattern (The Geographer 1976).

The maritime boundary agreement came into force on 22 December 1975, and while the parallel was not specifically identified, it must be approximately 1° 27′ 24″ north. As in the case of the other two agreements already considered, the buffer zone commences 12 nautical miles from the coast. There is some uncertainty whether the 12 nautical miles is measured from the coast, as mentioned in the text, or from any straight baselines which might have been drawn. It seems certain that the measurements will be from the baselines which have been substituted for the normal baseline along the low-water mark of the coast.

The only maritime boundary dispute in this region occurs at the extreme southern tip of the continent. Argentina and Chile disagree over the ownership of some islands in the Beagle Channel, and the course of the boundary which should separate their maritime claims.

The seeds of the dispute were sown in 1881 when the two countries agreed on a boundary separating their territories on the continent. Defects in the language of the treaty soon became evident and British arbitration was sought and obtained in 1896 and 1966. On these occasions Britain relied on British judges, but in 1971 when arbitration was approved for the Beagle Channel dispute, the judges were selected from Britain, the United States, France, Sweden and Nigeria. The problem was found in the third article of the 1881 treaty.

> In Tierra del Fuego a line shall be drawn, which starting from the point called Cape Espiritu Santo, in parallel 52° 40′, shall be prolonged to the south along the meridian 68° 34′ west of Greenwich, until it touches Beagle Channel. Tierra del Fuego, divided in this manner, shall be Chilean on the western side and Argentine on the eastern. As for the islands, to the Argentine Republic shall belong Staten Island, the small islands next to it, and the other islands there may be on the Atlantic to the east of Tierra del Fuego and of the eastern coast of Patagonia; and to Chile shall belong all the islands to the south of Beagle Channel up to Cape Horn, and those there may be to the west of Tierra del Fuego. (United Kingdom 1977, 9)

Figure 7.7 shows the main features of the eastern Beagle Channel. In its mouth there are three islands called Lennox, Picton and Nueva, and these are the main prize in the dispute, but the concealed reward included the wide areas of sea and

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J. R. V. Prescott and C. Schofield, *The Maritime Political Boundaries of the World*, 2nd edn, 2005

The Maritime Political Boundaries of the World

Second Edition

Victor Prescott and Clive Schofield

MARTINUS NIJHOFF PUBLISHERS
LEIDEN / BOSTON

17. THE PACIFIC OCEAN EXCLUDING THE ASIAN RIM

INTRODUCTION

The Pacific Ocean, lying east of the major islands that form the rim of Asia, has a distinct seabed morphology. It is surrounded by deep trenches bounding narrow continental margins except in the northeast between Cabo Falso, at the tip of Baja California, and Anchorage in Alaska. This sector also has a narrow margin but it is bounded by a broad continental rise. There is a sharp contrast between the east and west divisions of this Ocean. The eastern region is floored by a series of submarine ridges and fracture zones associated with sea-floor spreading. There are only a few islands perched on major peaks associated with Easter and Clipperton Island and the Galapagos and Revillagigedos Islands. The western region is distinguished by a host of small islands perched on individual submarine peaks and the serried peaks of submarine ranges. The eastern region is bounded by 13 continental states of long standing and the existing and potential maritime boundaries are mainly between adjacent coasts. Maritime boundaries have been constructed from the most southerly between Chile and Peru to the line between Panama and Costa Rica, and between Mexico and the United States. The western region is occupied by nearly thirty political units consisting of independent state or colonial territories with varying metropolitan relationships. The potential and maritime boundaries are normally between opposite coasts. With the exception of the boundary delimited between Papua New Guinea and the Solomon Islands in 1989 a colonial or former colonial state has been one of the parties in bilateral negotiations. In the eastern sector the majority of boundaries will separate the territorial seas and exclusive economic zones of the neighbours. In the case of Canada and the United States boundaries, might also involve the margin beyond 200 nm. In the western part of the Ocean there will be very few boundaries that separate territorial waters and probably only Australia and New Zealand will contest the margins beyond 200 nm. In the majority of cases boundaries will separate exclusive economic zones.

islands in the innermost part of the bay and as a result of the Canadian and the United States' conflicting claims to certain islands.

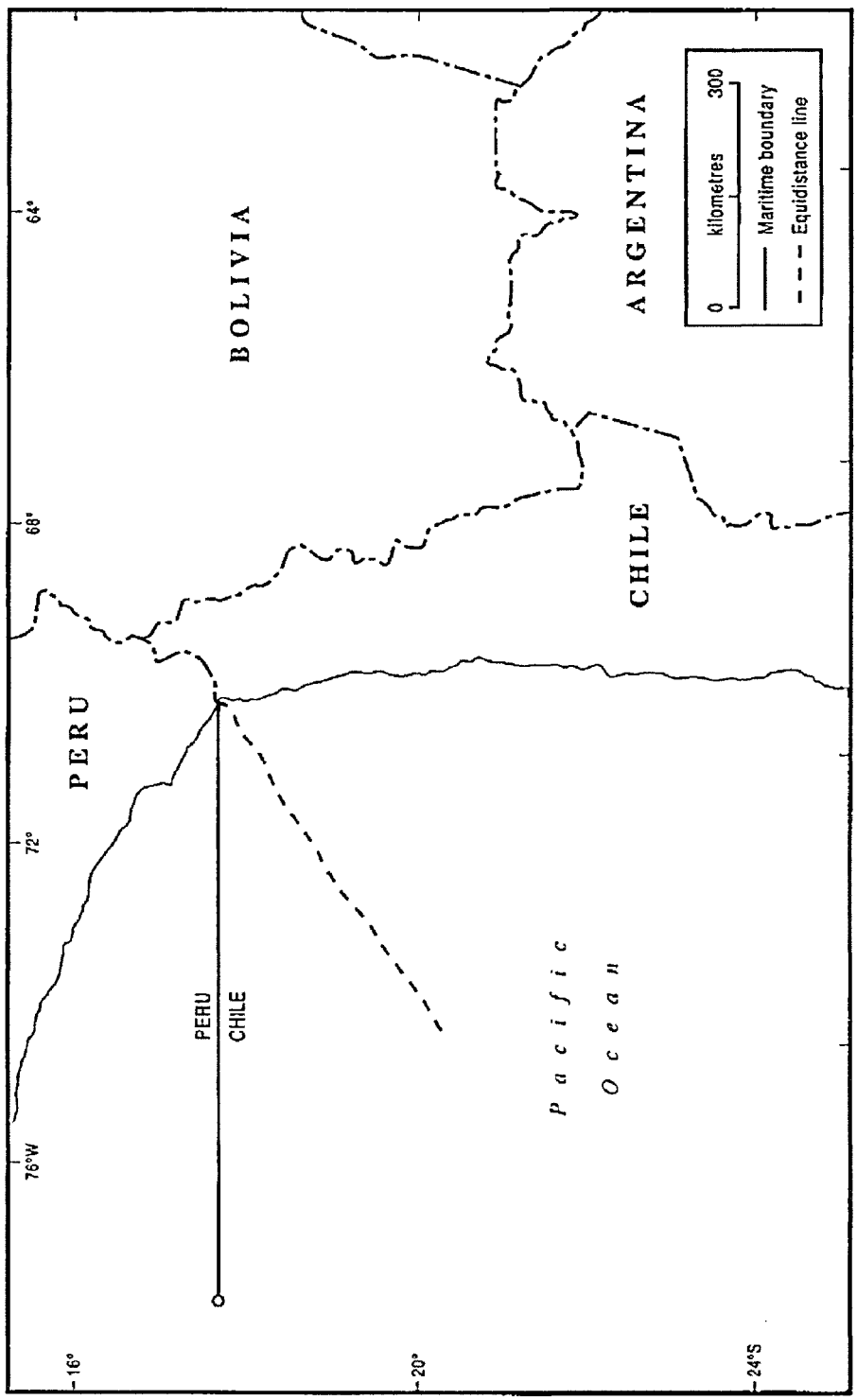
One further variation on this theme, which also holds the advantage of preventing 'cut-off' caused by converging equidistance lines, is the construction of a pair of parallel straight lines. This technique has been used on two occasions by France for the delimitations between Dominica and the French Caribbean islands of Guadeloupe and Martinique and with Monaco (Charney and Alexander, 1993: 705-715 and 1,581-1,590). The same approach was employed by the ICJ in the St. Pierre et Miquelon case between Canada and France (see Figure 10.11).

Parallels and Meridians

In a similar vein, some states have concluded agreements simply based on parallels of latitude or meridians of longitude. Such arrangements between adjacent states often involve the use of a parallel or meridian constructed from the terminus of the states' land boundary on the coast. This approach was applied to the delimitation of Gambia's pair of maritime boundaries with Senegal whose land territory surrounds that of its smaller neighbour save for its coastal front. The use of parallels of latitude westwards into the Atlantic Ocean serves to prevent Gambia's maritime entitlements from enclaved by Senegal's as would have happened had equidistance been applied (Charney and Alexander, 1993: 849-855).

The agreement between Chile and Peru provides another excellent example of this relatively rarely adopted method of maritime boundary delimitation (Figure 10.12). Oxman (1993: 15) notes that this delimitation alignment was prompted by a political desire among Chile, Ecuador and Peru to recognise and support each other's then 'new and controversial' 200 nm claims as well as being facilitated by the fact that the deep waters off the Pacific coast of South America made disputes over resources less likely. It is worth noting, however, that in January 2001 the Peruvian government announced that it did not recognise the parallel of latitude of 18° 21' 00" S as its maritime boundary with Chile – no doubt because a delimitation along this parallel is highly disadvantageous to Peru in comparison, for example, to a delimitation on the basis of equidistance.

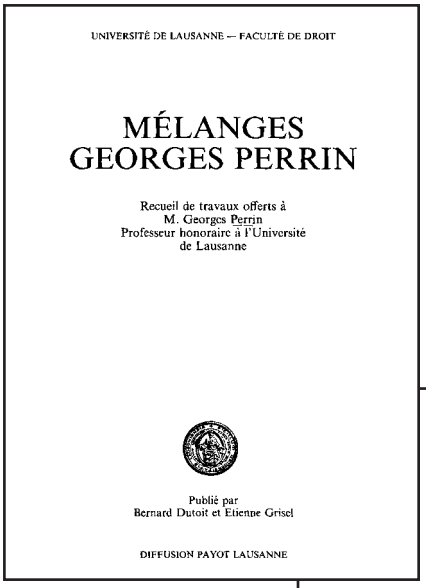
In appropriate circumstances, the advantages of parallels and meridians are similar to those associated with perpendiculars. That is, where there are adjacent states with concave or convex coastlines, or there are numerous islands and rocks, the use of a parallel or meridian can circumvent the possibility of "cut-off" which might occur if equidistance were applied.



10.12 The maritime boundary between Chile and Peru
(Source: The International Boundaries Research Unit. See Carleton and Schofield, 2002: 24).

Annex 307

P. J.-M. Reuter, "Une ligne unique de délimitation des espaces maritimes?", in *Mélanges Georges Perrin*, 1984, p. 251



PAUL JEAN-MARIE REUTER

Une ligne unique de délimitation des espaces maritimes?

Le droit maritime a diversifié le régime des espaces maritimes et accru ainsi le nombre des délimitations qui deviennent nécessaires. Parmi les nombreux problèmes qui en résultent, on a retenu le cas d'une frontière terrestre qui débouche sur le rivage de la mer appelant ainsi une délimitation latérale des espaces maritimes entre les deux Etats contigus.

L'image qui se présente alors tout naturellement à l'esprit est celle d'une ligne qui part de la frontière terrestre au point de son intersection avec la côte et se dirige vers le large en traversant successivement: les eaux intérieures situées entre la laisse de haute mer et la laisse de basse mer et l'espace terrestre qu'elles recouvrent périodiquement (estran), la mer territoriale, le plateau continental, la zone contiguë, et éventuellement une zone de pêche exclusive ou une zone économique exclusive.

Deux questions se présentent à l'esprit: les mêmes principes président-ils au tracé de cette ligne à travers les différents espaces maritimes qu'elle traverse successivement? Cette ligne doit-elle se dédoubler quand elle traverse une étendue maritime soumise à deux régimes différents superposés, par exemple quand une zone contiguë, une zone de pêche exclusive ou une zone économique exclusive recouvre le plateau continental, ou qu'une zone contiguë recouvre une zone de pêche exclusive ou une zone économique exclusive?

On ne saurait prétendre, dans le cadre de ces très sommaires réflexions, traiter ces deux questions d'une manière exhaustive, mais seulement présenter quelques-unes des remarques que suggère un bref rappel des positions prises par les conférences de codification, la jurisprudence internationale et la pratique conventionnelle des Etats.

D'une manière générale, on est amené, en ce qui concerne les grandes conférences de codification de 1958 et de 1973-1982, à souligner combien leur qualité technique et leur esprit diffèrent. La préparation technique des textes de 1958 a été plus poussée et les oppositions politiques y ont été moins marquées qu'en 1973-1982. Il est vrai qu'en 1958, le problème brûlant de la largeur de la

C'est à partir du moment où, sous des noms divers, apparaît dans la pratique internationale une mainmise des Etats côtiers sur des espaces maritimes autres que la mer territoriale, la zone contiguë et le plateau continental, que cette solution apparaîtra. La Déclaration du 18 août 1952 sur la zone maritime signée par le Chili, l'Equateur et le Pérou va conduire à tracer une ligne unique qui sert de frontière latérale à tous les espaces maritimes. Un autre exemple, entre la France et le Portugal, à propos de la Guinée-Bissau opère d'abord une délimitation de la mer territoriale et dans le même acte étend la même ligne droite de manière à délimiter les zones contiguës et les plateaux continentaux[28]. Au terme de «frontière maritime» (*maritime boundary*) va correspondre une nouvelle expression «juridiction maritime» que toutes les langues vont adopter à raison de la commodité de cet anglicisme: il désigne d'une manière indifférenciée tout espace maritime dans lequel un Etat côtier exerce à quelque titre que ce soit une compétence particulière. Ainsi sera établie une frontière maritime entre le Brésil et l'Uruguay par une ligne rectiligne de 200 milles (Accord du 21 juillet 1972); de même l'Argentine et l'Uruguay concluront un traité du Rio de la Plata et de sa frontière maritime le 19 novembre 1973; en dehors du régime particulier de l'estuaire, une ligne unique de frontière maritime et de plateau continental est tracée à partir de la ligne de clôture de l'estuaire.

Depuis 1976 la plupart des Etats ont conclu des négociations de la Troisième Conférence sur le droit de la mer que la création de zones de pêcheries exclusives ou de zones économiques exclusives était licite; la plupart des accords de délimitation envisagent donc une frontière maritime générale portant, dans le cas de délimitation frontale sur les pêches, les ressources du sol et du sous-sol marin, et toutes autres ressources, et en cas de délimitation latérale sur tous les espaces maritimes quelle que soit la nature de la «juridiction» exercée par l'Etat. Devant la vitesse de l'évolution qui conduit à la mainmise sur les espaces maritimes par les Etats côtiers, les Etats se répartissent des espaces sur lesquels ils n'ont pas encore matérialisé leurs prétentions[29], quel que soit le régime de ces espaces[30], et même des espaces dont le droit international n'a pas encore

[28] Il faut relever en passant que cet accord du 26 avril 1960, est un des rares accords qui mentionne la zone contiguë; celle-ci, dans l'expansion des Etats côtiers, est le plus souvent oubliée.

[29] Le 26 juillet 1976, le Mexique qui avait une zone économique exclusive de 200 milles, a délimité avec Cuba la frontière maritime avec une future zone économique exclusive cubaine qui, à ce moment, était seulement possible.

[30] Le 20 novembre 1976, la Colombie et Panama ont par accord établi une frontière entre leurs espaces maritimes et sous-marins «sans considération du système juridique qui a été ou peut être établi à leur sujet» (art. I). *Cf.*, pour une frontière maritime qui n'est pas latérale, l'art. 3 du traité de délimitation maritime entre la France et le Vénézuéla, du 17 juillet 1980: «La limite ainsi fixée constitue la frontière maritime entre les zones sur lesquelles les Parties contractantes exercent ou exerceront des droits souverains ou leur juridiction conformément au droit international.»

Annex 308

S. Rhee, "Equitable Solutions to the Maritime Boundary Dispute between the United States and Canada in the Gulf of Maine", *American Journal of International Law, Vol. 75*, 1981, p. 590

EQUITABLE SOLUTIONS TO THE MARITIME BOUNDARY DISPUTE BETWEEN THE UNITED STATES AND CANADA IN THE GULF OF MAINE

*By Sang-Myon Rhee**

INTRODUCTION

The United States and Canada agreed, by the Boundary Settlement Treaty of March 29, 1979, to submit their decade-long dispute over the maritime boundary in the Gulf of Maine area to a Chamber of the International Court of Justice (ICJ) or to an ad hoc court of arbitration. The treaty, however, has not yet taken effect because the interrelated Fisheries Agreement, which was concluded on the same day and was to take effect simultaneously, was unilaterally scrapped by the United States Government on March 6, 1981, on grounds of its allegedly unfair and inflexible provisions. On April 29, the United States Senate unanimously adopted a resolution supporting the Government's position to delink the two treaties and to settle the maritime boundary problem first by a third-party procedure. Whether or not a new fisheries agreement is concluded in the near future, it is expected that the maritime boundary dispute will ultimately be resolved by binding third-party settlement. The purpose of this article is to examine the legal position taken by each Government regarding the maritime boundary issues, and to suggest equitable principles that should govern their resolution.

I. ATTEMPTS TO SETTLE THE DISPUTES

Origin of the Disputes

In the Gulf of Maine area[1] the United States and Canada paid little attention to the oceanward extension of the territorial sea boundary[2] until the

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[1] The Gulf of Maine covers approximately 25,000 square miles and has an average depth of 150 meters. A major feature in the area is Georges Bank, long a famous fishing ground, now an area of oil and gas potential. Shaped like an oval, Georges Bank is about 180 miles long and 90 miles wide, with an area of approximately 12,000 square miles. To the northeast, Georges Bank is separated from Browns Bank by the Northeast Channel or Fundian Channel, about 240 meters deep; to the southwest, the shallower Great South Channel, about 80 meters deep, lies between the Bank and Cape Cod. Most of Georges Bank is 30 to 80 meters deep. For more geographical information, see generally S. APOLLONIO, THE GULF OF MAINE *passim* (1979).

[2] The territorial sea boundary starts at a designated point in the mouth of the St. Croix River, passes in a southwesterly direction between the U.S. coast of Maine and the Canadian Deer

this case because Canada is not a party to the Convention on Fishing and Conservation.

The rule of Article 6 itself has been controversial because of the unclear relationship between equidistance and special circumstances. The drafting history of Article 6 may shed some light on the nature of this relationship. The International Law Commission, recognizing that there were no established principles or rules on delimitation between states, started its discussion on the assumption that the continental shelf boundary should be delimited by agreement, and that otherwise the case should be decided by arbitration.[81] However, the advice of the Committee of Experts about the delimitation of the territorial sea boundary apparently led the Commission to take a different view. The Committee of Experts came to the following conclusion about lateral delimitation of the territorial sea:

> 1. After thoroughly discussing different methods the Committee decided that the (lateral) boundary through the territorial sea—if not already fixed otherwise—should be drawn according to the principles of equidistance from the respective coastlines.
>
> 2. In a number of cases this may not lead to an equitable solution, which should then be arrived at by negotiation.[82]

Fascinated by the seemingly convenient and practical method of equidistance, the Commission concluded without much difficulty that the equidistance method should be the general rule, subject to modification in cases of special circumstances, such as an exceptional configuration of the coast, the location of islands, or the presence of navigational channels.[83] Following the advice of the Committee of Experts, the Commission in an almost impromptu and contingent manner held that the rules for the territorial sea boundary should also be used for the delimitation of the continental shelf.[84] This formula was adopted in the 1958 United Nations Conference on the Law of the Sea without any substantial change.[85]

Although a majority of the agreements reached by parties to the 1958 Convention on the Continental Shelf have generally followed the equidis-

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sured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

See 516 UNTS 205, 15 UST 1606, TIAS No. 5639.

[81] *See generally* UN Doc. A/CN.4/SR.69 (1950), *reprinted in* [1950] 1 Y.B. INT'L L. COMM'N 232–34; UN Doc. A/CN.4/SR.115–16 (1951), [1951] 1 Y.B. INT'L L. COMM'N 285–94. *See also* Report of the International Law Commission on its 3d session, UN Doc. A/CN.4/SER.A/1951, [1951] 2 Y.B. INT'L L. COMM'N 143.

[82] *See* François, Second Report on the Regime of the Territorial Sea, UN Doc. A/CN.4/61/Add.1, Annex, at 6–7 (1953).

[83] *See* International Law Commission, Report on its 5th session, UN Doc. A/CN.4/ SER.A/1953/Add.1 (1953), [1953] 2 Y.B. INT'L L. COMM'N 216.

[84] *See* note 74 *supra*. *See also* UN Doc. A/CN.4/SR.205, at 13–14 (1953); UN Doc. A/CN.4/SR.236, at 7–9 (1953).

[85] *See* 6 UN CONFERENCE ON THE LAW OF THE SEA, OFFICIAL RECORDS 96–98 (1958), UN Doc. A/CONF.13/42 (1958).

tance-special circumstances rule,[86] quite a few states have chosen not to apply it strictly.[87] Indeed, the applicability of Article 6 was inherently limited because agreement could not be reached in cases where the parties disagreed on the existence and assessment of special circumstances. The recent extensions of maritime jurisdiction have raised additional doubts about the applicability of Article 6 because the farther out the equidistance line is extended, the greater the magnifying effect of diversion becomes.[88]

The first major challenge was issued by the Federal Republic of Germany in the *North Sea Continental Shelf* cases.[89] Dealing with a situation in which the parties to the dispute were not mutually bound by the Convention on the Continental Shelf, the ICJ rejected any mandatory applicability of Article 6 as a matter of customary international law,[90] and firmly stated that delimitation is to be effected "in accordance with equitable principles, and taking account of all the relevant circumstances."[91] The "relevant circumstances," the term the Court substituted for the "special circumstances"

[86] For agreements between opposite states, see, *e.g.*, Finland/Soviet Union Agreement of May 5, 1967, U.S. DEP'T OF STATE, OFFICE OF THE GEOGRAPHER, LIMITS IN THE SEAS, No. 56 [hereinafter cited as LIS]; Norway/United Kingdom Agreement of March 10, 1965, LIS No. 10 Revised; Netherlands/United Kingdom Agreement of Oct. 6, 1965, *ibid.*; Denmark/Norway Agreement of Dec. 8, 1965, *ibid.* For agreements between adjacent states, see, *e.g.*, German Democratic Republic/Poland Agreement of Oct. 29, 1968, LIS No. 65; Norway/Sweden Agreement of July 24, 1968, LIS No. 2; Finland/Soviet Union Agreement of May 20, 1965, LIS No. 71; Norway/Soviet Union Agreement of Feb. 15, 1957, LIS No. 17.

[87] Lateral sea boundaries delimited between states not mutually bound by the 1958 Convention:

Colombia/Panama (East)	Nov. 20, 1976	LIS No. 79
Colombia/Panama (West)	Nov. 20, 1976	LIS No. 79
Colombia/Ecuador	Aug. 24, 1975	LIS No. 69
Gambia/Senegal	June 4, 1975	LIS No. 85
E. Germany/W. Germany	June 29, 1974	LIS No. 74
France/Spain	Jan. 29, 1974	LIS No. 83
Argentina/Uruguay	Nov. 19, 1973	LIS No. 64
Turkey/USSR	April 17, 1973	LIS No. 59
Brazil/Uruguay	July 21, 1972	LIS No. 73
W. Germany/Denmark	Jan. 28, 1971	LIS No. 10
W. Germany/Netherlands	Jan. 28, 1971	LIS No. 10
Indonesia/Malaysia	Oct. 27, 1969	LIS No. 1
Abu Dhabi/Qatar	March 20, 1969	LIS No. 18
Guinea-Bissau/Senegal	April 26, 1960	LIS No. 68
Chile/Peru	Aug. 18, 1952	LIS No. 86
Ecuador/Peru	Aug. 18, 1952	LIS No. 88

This tendency to disregard the equidistance method has even appeared in agreements between parties to the 1958 Geneva Convention. For example, in the Malaysia/Thailand Agreement of December 21, 1971, a lateral boundary in the northern part of the Malacca Strait was established for a distance of 89.32 miles without applying equidistance at all. *See* LIS, *supra* note 86, No. 81.

[88] *See, e.g.*, F. T. Christy, Jr., & H. Herfindahl, A Hypothetical Division of the Sea Floor, a map prepared for the Law of the Sea Institute, 1967, *reprinted in* W. FRIEDMANN, THE FUTURE OF THE OCEANS 4–5 (1971).

[89] [1969] ICJ REP. 3.

[90] *Id.*, paras. 24, 45–46, 82–83, and 89.

[91] *Id.*, para. 101(C)(1).

Annex 309

J. A. Roach and R. W. Smith, *United States Responses to Excessive Maritime Claims*, 2nd edn, 1996

United States Responses
to Excessive Maritime Claims
Second Edition

J. ASHLEY ROACH
and
ROBERT W. SMITH

MARTINUS NIJHOFF PUBLISHERS
THE HAGUE / BOSTON / LONDON

2. Under Annex 2 to the Chicago Convention civil aircraft which expect to transit a Flight Information Region (FIR) must file a flight plan, either at least 30 minutes prior to take off or at least 10 minutes prior to entering a particular FIR, so to that extent civil aircraft are subject to a prior notification requirement. Civil aircraft must also abide by local flight regulations and instructions while in that FIR. While Annex 2 envisions variations from the 30/10 minute filing rule, the U.S. is generally opposed to efforts by any country to impose more burdensome requirements in the absence of compelling circumstances.

3. The Embassy can approach appropriate GOE officials to reiterate our concern that such an incident not happen again, that the U.S. does not recognize Ecuadoran territorial sea/airspace claims beyond 12 nautical miles from the coast, and our hope that any new Ecuadorian regulations will be in full conformity with international aviation standards. Should the Ecuadorans seek advice or consultations on drafting their regulations, we would, of course, be happy to assist.[7]

The United States protested **Libya**'s establishment in 1973 of a "restricted area" of airspace within 100 mile radius of Tripoli.[8]

In 1986, **Peru** complained that a USAF C–141 aircraft did not receive permission to fly into Peruvian claimed airspace. The United States responded as follows:

> The USG makes reference to an incident which occurred on August 8, 1986, in which Peruvian authorities claimed the right to require a flight clearance request/approval for a US Air Force C–141 aircraft, tail number 50250, flying no closer than 80 miles off the Peruvian coast enroute from Santiago to Panama. Customary international law permits a state to claim a territorial sea and a corresponding territorial airspace up to twelve miles in breadth. Beyond this limit, military or other state aircraft operate

[7] State Department telegram 262333, Aug. 20, 1986.

[8] 1973 DIGEST 302–303 and UN Security Council Doc. S/10956, June 20, 1973; 1975 DIGEST 451–452; and 1977 DIGEST 636.

> in international airspace and are not subject to the jurisdiction and control of air traffic control authorities of other countries. Accordingly, no clearance or approval is required for flights of U.S. military aircraft in international airspace. The USG wishes to call the attention of the GOP to this incident and reiterates that there was no justification under international law for such interference with the freedom of overflight by US Air Force aircraft.[9]

Information provided to the Embassy for use in connection with delivery of this note included the following:

> International law does not support the Peruvian claim to a 200nm territorial sea. USG respects Peruvian claim only out to a distance of 12nm, beyond which the high seas freedoms of navigation and overflight exist.
>
> Although under the Chicago Convention, civil aircraft operating in international airspace are subject to certain International Civil Aviation Organization (ICAO) procedures when passing through a Flight Information Region (FIR) of another country, the military aircraft operating in international airspace are not subject to these procedures. State aircraft are not bound to comply with instructions of another nation's Air Traffic Control authorities while operating in international airspace.
>
> As a matter of policy, US military aircraft operating in international airspace normally comply with ICAO procedures except when compliance would not be in the best interests of the US because of military contingencies, classification of missions, political necessity or mission accomplishment. Aircraft then fly under "due regard" for safety of other aircraft.[10]

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[9] American Embassy Lima Note delivered August 15, 1986, American Embassy Lima telegram 9602, Aug. 19, 1986.

[10] State Department telegram 255297, Aug. 14, 1986.

Following several similar incidents with Peru in 1987 and 1988, the United States protested as follows:

> . . . to refer to an incident occurring on 10 January 1988. On that date, a C–135 aircraft of the United States Air Force was flying over the Pacific Ocean off the coast of Peru, its closest point of approach to the Peruvian coast having been approximately 80 nautical miles. While the aircraft was thus operating in international airspace, it was challenged by Peruvian authorities on the grounds that it was operating in claimed Peruvian airspace without authorization.
>
> This is the fourth such incident to have occurred since August 1986. During one such incident, which occurred on 5 August 1987, not only did Peruvian authorities unjustifiably challenge the right of the U.S. Air Force aircraft to transit off the Peruvian coast, but an intercepting aircraft of the Peruvian air force operated in a manner that unnecessarily and intentionally endangered the safety of the transiting U.S. Air Force aircraft and its crew. The Government of the United States vigorously protests all of these incidents.
>
> Customary and conventional international law, including that reflected in the 1982 United Nations Convention on the Law of the Sea, permits a state to claim a territorial sea and corresponding territorial airspace up to twelve nautical miles in breadth. Beyond this limit military or other state aircraft operate in international airspace exercising the internationally recognized freedoms of navigation and overflight and are not subject to the jurisdiction or control of the coastal state. No coastal state clearance or approval is required to exercise such freedoms of navigation and overflight.
>
> The United States, therefore, vigorously protests the actions of the Government of Peru and reaffirms the right to continue to exercise the internationally recognized freedom of overflight in the international airspace more than twelve nautical miles from the baselines from which Peru may measure its territorial sea.

> The United States shall continue to exercise such overflight freedoms without prior notification to, or permission from, Peru or any other coastal State.[11]

Talking points provided the Embassy included the following:

> I understand that the Peruvian military is primarily concerned with identifying the nationality of aircraft off its coast. While the United States Government can accept no Government of Peru right to restrict our freedom in international airspace, there are two simple and unobjectionable ways for the Government of Peru to identify such aircraft.
>
> The first and simplest method is to instruct military controllers to consult the ICAO flight plans routinely filed by [these] U.S. aircraft. This would enable the Government of Peru to reliably identify [these] aircraft off its coast.
>
> The second method would involve visual identification of transiting aircraft by Government of Peru aircraft. So long as such identifications are made in conformance with internationally recognized safe procedures, the United States Government would offer no objection.
>
> While I recognize that our Governments will not agree on this issue, I trust that we understand one another, and that the Government of Peru will consider one of these potential solutions.[12]

Thereafter, twice in 1992 Peru diverted U.S. military aircraft flying in international airspace within 200 miles of Peru's coast. On April 24, 1992, a Peruvian jet fighter fired upon an unarmed USAF C–130 on a routine anti–drug surveillance flight 60 miles off shore. One crewman was

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[11] American Embassy Lima Note delivered March 16, 1988, American Embassy Lima telegram 03574, Mar. 17, 1988, pursuant to instructions contained in State Department telegram 061624, Feb. 27, 1988.

[12] State Department telegram 061624, Feb. 27, 1988, para. 4.

killed and two others were hurt.[13] Following strenuous diplomatic protests and extensive investigation, Peru paid more than $300,000 in compensation to the family of the USAF sergeant who was killed.[14] On June 8, 1992, Peru diverted a USAF KC-135 on a routine flight from Panama to Argentina 100 miles west off the Peruvian coast.[15] On July 7, 1992, the American Embassy Lima strongly protested this diversion along the lines quoted above.[16] On February 11 and 21, 1995, Peru claimed the right to require diplomatic clearance for USAF aircraft enter its FIR even though the flights were merely transiting international airspace and did not intend to enter Peruvian airspace.[17]

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[13] Washington Post, Apr. 28, 1992, at A17.

[14] Washington Post, Dec. 10, 1993, at A49; Council on Ocean Law, 10 Ocean Policy News, No. 8, at 5-6.

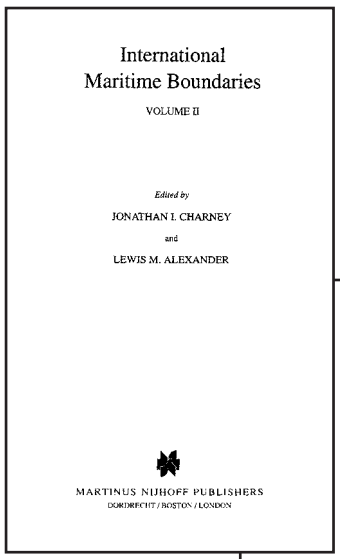
[15] Washington Post, June 23, 1992, at A-14.

[16] American Embassy Lima telegram 09328, July 4, 1992, pursuant to instructions contained in State Department telegram 204139, June 22, 1992.

[17] USCINCSO SCJ3 Quarry Heights PM message 131343Z Mar 95.

Annex 310

T. Scovazzi, "Turkey-Soviet Union (Territorial Sea)" in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries, Vol. II*, 1993, p. 1685



Protocol between the Government of the Republic of Turkey and the Government of the Union of the Soviet Socialist Republics Concerning the Territorial Sea Boundary between the Two States in the Black Sea

Article I

The contracting parties have agreed that the territorial waters limit between the Turkish and Soviet territorial waters in the Black Sea begins at the last point on the shore of the land border between the Republic of Turkey and the USSR, stretching along a 290 degree azimuth to the outer limit of the territorial waters (12 nautical miles) of the Turkish Republic and the USSR.

Article II

The contracting parties will set up a Joint Turkish–Soviet Commission for Demarcating the Territorial Waters Limit with the participation of five persons from each side, on the basis of equality, for the purpose of demarcating the territorial waters limit between the Turkish and Soviet territorial waters in its actual location in the Black Sea.

Article III

The contracting parties will share equally all expenses in connection with the work involved in the demarcating of the territorial water limit between the Turkish and Soviet territorial waters in the Black Sea.

Article IV

This protocol is subject to ratification and the ratified documents will go into force on the day of their exchange.

The documents of ratification will be exchanged in Moscow in the shortest possible time.

DONE in Ankara in April 1973 in two originals each being drawn up in two authentic texts in the Turkish and Russian languages.

Protocol-Description of the Course of the Soviet–Turkish Sea Boundary Line between the Territorial Seas of the Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea

The sea boundary line between Soviet and Turkish territorial seas in the Black Sea is defined by the Protocol between the Government of the Union of Soviet Socialist Republics and the Government of the Republic of Turkey, of April 17, 1973.

The Joint Soviet–Turkish Commission on Delimiting the Sea Boundary (hereinafter called Joint Commission), formed in accordance with the Soviet–Turkish Protocol of April 17, 1973, conducted work in 1975–80 on delimiting the Soviet–Turkish sea boundary line and drew up this Protocol-Description of the course of the Soviet–Turkish sea boundary line between the territorial seas of the Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea, with appendices thereto.

The Joint Commission was composed of delegations appointed by the governments of the Union of Soviet Socialist Republics and the Republic of Turkey.

[delegation lists follow]

The following were the result of the work done and the documents compiled on delimiting the sea boundary line:

– Protocol between the Government of the Union of Soviet Socialist Republics and the Government of the Republic of Turkey to Delimit the Sea Boundary Line between Soviet and Turkish Territorial Seas in the Black Sea, of April 17, 1973.

– Protocol No. 15 of the meeting of the Joint Soviet–Turkish Commission on Delimiting the Sea Boundary, of December 13, 1976, which contains a decision to distribute the work between the Parties on the design and construction of range marks with lighting (beacon) equipment and also to emplace a sea spar buoy.

All work connected with defining the sea boundary line at a locality was carried out in accordance with the aforementioned protocols, as well as with other documents and instructions approved by the Joint Commission, including:

1. Work Regulations of the Joint Soviet–Turkish Commission on Delimiting the Sea Boundary.

2. Decision of the Joint Soviet–Turkish Commission on Delimiting the Sea Boundary regarding the crossing of the Soviet–Turkish boundary by personnel of both countries, engaged in work on defining the sea boundary.

3. Decision of the Joint Soviet–Turkish Commission on Delimiting the Sea Boundary regarding the calculation of the geographic and rectangular coordinates of points which define the sea boundary line.

4. Instructions on the tasks of technical working groups formed to define the sea boundary line between Soviet and Turkish territorial seas in the Black Sea.

5. Instructions on the design and construction of range marks and a sea

spar buoy which define the sea boundary line between the territorial seas of the Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea.

6. Decision of the Joint Soviet–Turkish Commission on Delimiting the Sea Boundary regarding the question of the nature of delimiting the sea boundary between Soviet and Turkish territorial seas in the Black Sea.

7. Instructions on compiling, drawing up and publishing a map of the sea boundary between the territorial seas of the Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea.

8. Technical design of the rear range mark and design of the lighting (beacon) equipment, prepared by the Soviet delegation.

9. Decision by the Joint Soviet–Turkish Commission on Delimiting the Sea Boundary regarding the question of the title, form and content of the main document on delimiting the sea boundary line between Soviet and Turkish territorial seas in the Black Sea.

10. Instructions on the topographical surveying of the boundary zone of the Soviet–Turkish boundary in the region where the range marks are located.

11. Technical design of the front range mark and design of the lighting (beacon) equipment, prepared by the Turkish delegation.

The sea boundary line between the Soviet and Turkish territorial seas in the Black Sea is defined at the locality of two leading marks and one sea spar buoy in the sea.

In order to construct range marks, install a sea spar buoy, mutually monitor that construction and installation, as well as make a topographical survey of the boundary zone in the region where the range marks are located, the Sides each had to form a technical working group.

The topographical and research work carried out at the locality that is related to the construction of the front range mark located on the territory of the Republic of Turkey, the design and construction of that mark, the manufacture of the lighting (beacon) equipment and its installation on the front range mark were carried out by the Turkish Side.

The topographical and research work carried out at the locality that is related to the construction of the rear range mark located on the territory of the Union of Soviet Socialist Republics, the design and construction of that sign, the manufacture of the lighting (beacon) equipment and its installation were carried out by the Soviet Side.

The research work at sea to determine the site of the sea spar buoy was carried out jointly by the Soviet and Turkish Sides. The manufacture and installation of the sea spar buoy in the sea were carried out by the Soviet Side.

The geodetic work on defining the rectangular coordinates of the centers of the front and rear range marks was carried out by Soviet and Turkish specialists from geodetic points of the joint triangular network created during the redemarcation of the Soviet–Turkish boundary in 1969–1973. Calculation of the rectangular coordinates of the centers of the front and rear range marks,

as well as the installation point of the sea spar buoy and the terminal point of the sea boundary line were done under the Turkish system of coordinates, under the Gauss-Krüger projection on the Hayford ellipsoid in the coordinated zone with axial meridian $L_0 = 42°$. The elevations indicated in the documents were calculated on the mean level of the Black Sea.

The map of the sea boundary between the territorial waters of the Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea is compiled on a scale of 1 : 100,000.

Moreover, the topographic plan was compiled of the border zone of the Soviet–Turkish boundary in the region where the range marks are located, on a scale of 1 : 5,000.

With respect to the range marks which define the sea boundary line, the following documents have been compiled: protocol of the front range mark, protocol of the rear range mark, rough sketch-diagram on a scale of 1 : 2,500, and protocol of the sea spar buoy.

A map, plan and rough sketch-diagram were complied by each side independently in its own language in accordance with instructions approved by the Joint Soviet–Turkish Commission on Delimiting the Sea Boundary.

The initial point of the sea boundary line between the territorial waters of the Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea is the final point of the Soviet–Turkish state land boundary, defined during the redemarcation of the boundary in 1969–1973.

In accordance with documents of the border redemarcation of December 29, 1973, this point is located at the place where the shoreline of the Black Sea intersects with the continuation of the perpendicular dropped from the center of the special boundary mark, which is located on the land boundary line, onto the direct line uniting the Soviet and Turkish column of the main boundary mark No. 450.

The geographic and rectangular coordinates of the initial point of the sea boundary line are as follows:

latitude = 41° 31′ 18.39″ longitude = 41° 32′ 55.06″
X = 4,596,860.80 Y = 462,337.80

From the point indicated above, the Soviet–Turkish sea boundary line between the territorial waters of the Union of Soviet Socialist Republics and the Republic of Turkey passes along a straight line in a northwesterly direction along the 290° azimuth, and approaches the final point of the Soviet–Turkish sea boundary line at a point that intersects the external boundary of the territorial seas of the Union of Soviet Socialist Republics and the Republic of Turkey.

The final point of the sea boundary line between the U.S.S.R. and Turkey in the Black Sea is defined as the point where the 12-mile boundary of Soviet and Turkish territorial seas, formed by arcs drawn at a distance of 12 miles from the Soviet and Turkish coasts, intersects the boundary line between the territorial seas, passing along the 290° 00′ 00″ azimuth.

The geographic and rectangular coordinates of the final point of the sea boundary line are as follows:

latitude = 41° 35′ 43.41″ longitude = 41° 16′ 40.88″
X = 4,605,187.44 Y = 439,827.34

The length of the sea boundary line between Soviet and Turkish territorial seas equals 12.96 nautical miles (24.01 km).

A sea spar buoy is emplaced in order to define the sea boundary line near the coast at a distance of 400 meters from the center of the front range mark.

The range marks built on the extension of the sea boundary line on the territory of the Union of Soviet Socialist Republics and the Republic of Turkey are located at a distance of 288.50 meters from one another and are situated as follows: the front range mark in the region of main boundary mark No. 450, and the rear range mark in the region of main boundary mark No. 448.

The range marks provide shields for daytime visibility and for the lighting (beacon) equipment, and are counted on to ensure daytime and nighttime visibility during good atmospheric conditions all along the sea boundary line.

At night the direction of the sea boundary line is defined by combining the light of the rear range mark with the white light of the central light sector of the front range mark along the vertical line.

The lighting (beacon) equipment of the front range mark is equipped with a red and green light filter, each having a lighting sector of 10°. The red light warns vessels approaching from the Turkish side, and the green light warns vessels approaching from the Soviet side that they are nearing the boundary line.

Two lateral white lights of the lighting sector of the front range mark point out to the vessels the location of that sign.

In terms of locality, the distance between range marks is slight (288.50 m). Therefore the range marks will be seen as overlapping at a certain distance on both sides from the sea boundary line. In the middle of the boundary this distance is approximately 150 meters, while at the end of the boundary it is approximately 550 meters to each side of the sea boundary line.

The sides have agreed that vessels belonging to the other side should not be delayed in that sector on both sides of the sea boundary line where the range marks are seen as overlapping.

The Appendices to this Protocol-Description are as follows:

– Map of the sea boundary between the territorial seas of the Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea, on a scale of 1 : 100,000;

– Topographical plan of the border zone of the Soviet–Turkish boundary in the region where the range marks are located, on a scale of 1: 5,000;

– Protocol of the front range mark installed at the locality in order to define the Soviet–Turkish sea boundary line between the territorial waters of the

Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea;

– Sketch of the front range mark;

– Description of the lighting (beacon) equipment installed on the front range mark;

– Protocol of the rear range mark installed at the locality in order to define the Soviet–Turkish sea boundary line between the territorial seas of the Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea;

– Sketch of the rear range mark;

– Description of the lighting (beacon) equipment installed on the rear range mark;

– Rough sketch of the site of the range marks;

– Protocol of the sea spar buoy placed in the sea in order to define the Soviet–Turkish sea boundary line between the territorial seas of the Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea;

– Sketch of the sea spar buoy;

– Description of the sea spar buoy;

– Diagram of the lighting sectors of the front and rear range marks;

– Instructions on monitoring, withdrawing, repairing and restoring front and rear range marks and the sea spar buoy, which define the sea boundary line between the territorial seas of the Union of Soviet Socialist Republics and the Republic of Turkey in the Black Sea.

This Protocol-Description, with all appendices thereto, will be subject to approval in accordance with the laws of each Contracting Party, and will enter into force on the date of the exchange of notes notifying of its approval by both Parties.

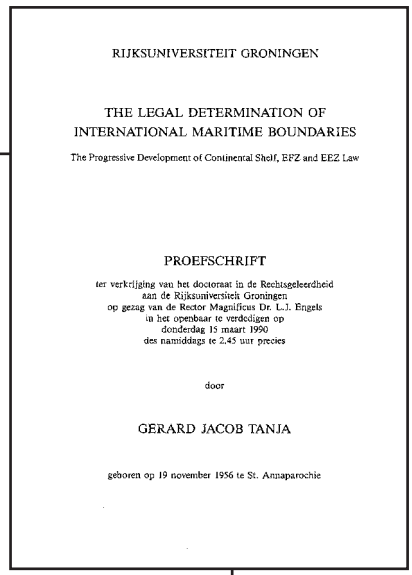
Done in Tbilisi this 11th day of September, 1980, in duplicate, in the Russian and Turkish languages, both texts being equally authentic.

JOINT SOVIET–TURKISH COMMISSION ON DELIMITING THE SEA BOUNDARY

Chairman of The Soviet Delegation	Chairman of The Turkish Delegation
(signed) Ambassador P. S. Kuznetsov	(signed) Ambassador Asaf Inkhan

Annex 311

G. J. Tanja, *The Legal Determination of International Maritime Boundaries*, 1990


RIJKSUNIVERSITEIT GRONINGEN

THE LEGAL DETERMINATION OF
INTERNATIONAL MARITIME BOUNDARIES

The Progressive Development of Continental Shelf, EFZ and EEZ Law

PROEFSCHRIFT

ter verkrijging van het doctoraat in de Rechtsgeleerdheid
aan de Rijksuniversiteit Groningen
op gezag van de Rector Magnificus Dr. L.J. Engels
in het openbaar te verdedigen op
donderdag 15 maart 1990
des namiddags te 2.45 uur precies

door

GERARD JACOB TANJA

geboren op 19 november 1956 te St. Annaparochie

CHAPTER 5

DELIMITATION OF CONTINENTAL SHELVES, (EXCLUSIVE) FISHERY ZONES AND (EXCLUSIVE) ECONOMIC ZONES 1975-1989: STATE PRACTICE, CASE LAW AND DOCTRINE.

1. Introduction

This Chapter will evaluate the main developments which took place in state practice, case law and doctrine during the convening of UNCLOS III and after the conclusion of the 1982 LOSC. A few brief general remarks can be made in this respect. First, it appears that after 1974 many states established (E)EZs and (E)FZs regimes. This has strongly affected delimitation law, for it has led to the conclusion of many delimitation agreements. Secondly, it appears that the deadlock at UNCLOS III and the diametrically opposed views at that Conference between the pro-equidistance and pro-equity proponents has not operated as a legal bar to the conclusion of these agreements. Many states, belonging to different groups at UNCLOS III, have been able to agree about their maritime boundaries. State practice will, therefore, be reviewed first in this Chapter (paragraph 2.). In this respect some preliminary remarks seem appropriate, however.

As was stated in the conclusions on state practice with respect to the preceding period the system of the combined rule was frequently referred to and had undoubtedly contributed to the maturation of international delimitation law. Furthermore, three types of special circumstances were regularly invoked in order to reach an equitable result. As shown, the combined rule received a new impetus at UNCLOS III. It was submitted, therefore, that the combined rule had received a certain normative quality (even for states not parties to the 1958 Convention), already at the beginning of the Conference. However, the Judgment in the NSCSC introduced the concept of (corrective) equity and the application of equitable principles into the realm of international law, stressing the relative lack of detailed customary principles. Nevertheless, the ICJ felt able to define a 'fundamental norm' which, as far as it was directed at the obligation to reach an equitable result, coincided with the objective and purpose of the 1958 provision. Chapter IV revealed that the pro-equity states basically referred to the observations put forward by the ICJ in 1969 to sustain their arguments that a maritime delimitaion

international land frontiers to be the most equitable solution.[120] In the opinion of Prescott, the *"... slight deviation near the coast was designed to prevent the boundary from passing too close to the Gambian shore ..."*.[121]

The Agreement between Ecuador and Colombia follows the regional delimitation practice of the Latin American countries for the areas off the west coast of the South American continent, where Peru and Chile, and Ecuador and Peru have established maritime boundaries making use of the parallel of latitude and creating special zones on either side of the parallel or boundary for small private fishing vessels of both states.[122] Although Colombia was a very active member of the pro-equidistance group it apparently followed a pragmatic course in the negotiations with Ecuador and did not pursue a solution constructed along the lines of the proposals of the pro-equidistance group.[123] The UNCLOS position of Colombia, therefore, was probably dictated by political considerations relating to various other delimitation negotiations to which Colombia was a party in 1975. These negotiations, which resulted in several agreements, were discussed above and were indeed primarily based on the adapted version of article 6. It would, therefore, go too far to consider the 1975 Agreement as an example of Colombian support for the existence of an alleged delimitation rule based on equity *infra legem*.

A rather complicated situation has been dealt with in the Treaty of Peace and Friendship between Argentina and Chili of 29 November, 1984.[124] The Treaty was a logical sequence to the Beagle Channel Arbitration and determines *inter alia* the maritime boundary between the Argentinian and Chilean EEZ in, what is described by the parties, the *"Sea of the Southern Region"* (article 9 of the Treaty). The boundary is partly based on equidistance points and makes use of straight lines between carefully defined reference points. Accordingly, the boundary consists of five segments. It appears that navigational interests and the location of resource deposits have influenced the actual location of the maritime boundary.[125]

The remaining five lateral delimitation agreements establishing comprehensive boundaries are, in one way or another, based on equidistance, although this is not always clear from the texts of the agreements itself. The 1976 Agreements between Panama and Colombia and the 1980 Agreement between Panama and Costa Rica explicitly refer to equidistance and apply either equidistance in its residual capacity or take

120. *See*, for example Jagota, *supra*, note 1, at 97. In 1961 Senegal acceded to the 1958 Convention, but by a communication of 1 March, 1976 to the secretary-general denounced its obligations under this Convention. *See*, ST/LEG/SER.E/6, at 728, 731. *See*, also Attard, *supra*, note 10, at 255. Under the combined rule the last segment of the land frontier could, indeed, qualify as a special circumstance to the disadvantage of Gambia, but this was probably not in the minds of the Gambian respresentatives at UNCLOS III.

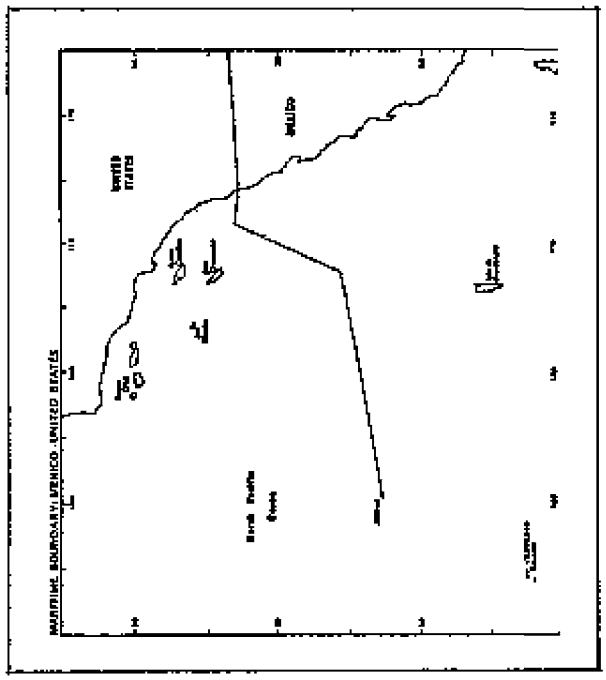
121. Prescott, *supra*, note 9, at 324. This seems to imply that in the opinion of Prescott Gambia was *favoured* by the outcome of the agreement. At the same time this would put, however, the Gambian insistence on an equidistance boundary in a rather strange context.

122. *See*, Chapter III, subparagraph 2.2.3., *supra*.

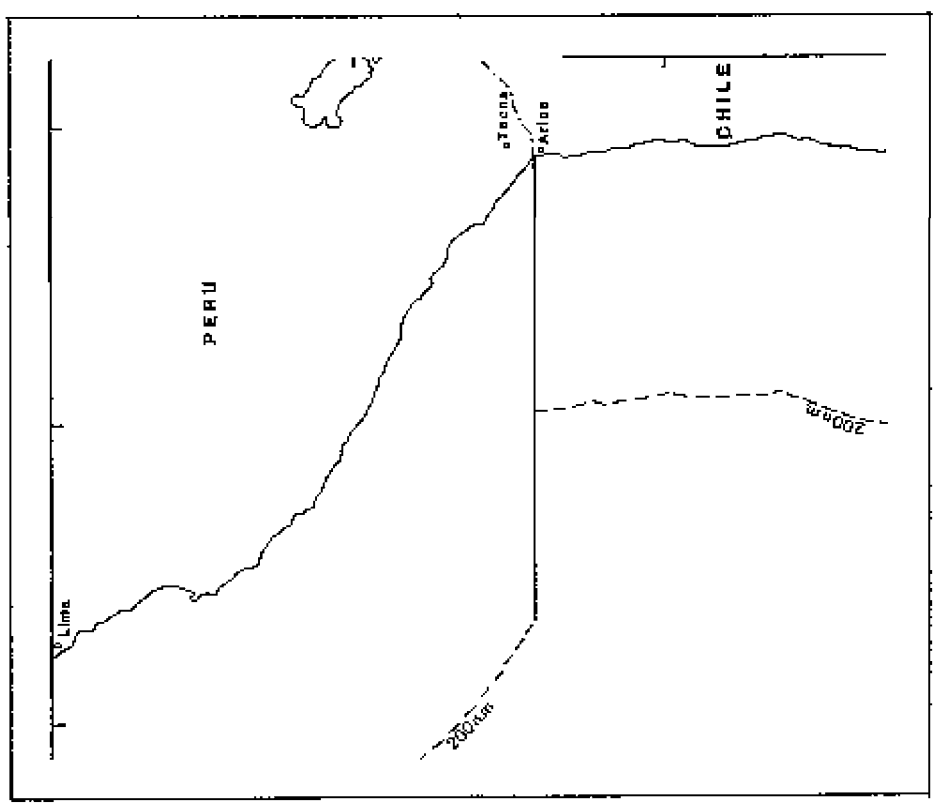
123. At UNCLOS III the pragmatic approach of Colombia on delimitation became very obvious during the discussions on the delimitation provision inserted in ICNT/Rev. 3. In its desire to reach a compromise formula, the Colombian delegate stated that a reference to international law was *"... precisely the necessary point of balance between opposing positions"*. Chapter IV, subparagraph 3.3., *supra*.

124. Repr. in XXIV ILM 11 *et seq.* (1985), including map at 15.

125. *See*, in general M.A. Morris, The Strait of Magellan 45-48, 78, 84-87 (1989).



Source: UN Sales Publ. E.87.V.12



Source: Prescott, 1985

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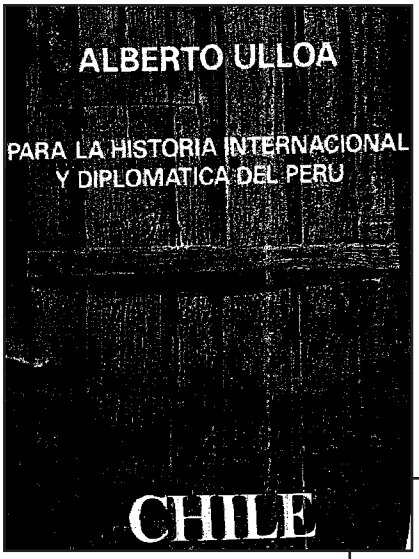
A. Ulloa, *Para la Historia Internacional y Diplomática del Perú: Chile*, 1987



cionales: con la serenidad que deben tener el patriota, el observador y el crítico, cuando presentan a los demás el resultado de su estudio, faltaría a mis deberes morales e intelectuales si no dijera, como piensan muchos pero dicen pocos en el Perú, que el Tratado de 1929 fue un buen arreglo para nuestro país.

ANALISIS DEL TRATADO DE 1929

El Tratado de 1929 y su Protocolo Complementario contienen:

a) Una solución territorial: la división de las provincias disputadas, con el señalamiento de la nueva frontera (artículos 1º, 2º, 3º y 4º).

b) Un derecho recíproco de veto por parte del Perú y de Chile, para que ninguno de ellos pueda ceder, sin previo acuerdo entre sí, a una tercera potencia, la totalidad o parte de los territorios que quedan bajo sus respectivas soberanías ni construir a través de ellos, nuevas líneas férreas internacionales. (Protocolo, Art. 1o.).

c) Un régimen de servidumbres para el tránsito del ferrocarril de Tacna y para el uso del puerto de Arica (Tratado, Art. 5o.; Protocolo, Art. 2o.) y el paso de los canales del Uchusuma y Azucarero.

d) Un régimen de nacionalidad para los hijos de peruanos nacidos en Arica, que se considerarán peruanos hasta los 21 años, edad en que podrán optar por su nacionalidad definitiva; y los hijos de chilenos nacidos en Tacna que tendrán el mismo derecho. (Tratado, Art. 10o.).

e) Un régimen de respeto a los derechos privados, inclusive la concesión del ferrocarril de Tacna a Arica, otorgada por el Perú en 1852. (Tratado, Art. 7o.).

f) Un régimen para la valorización económica del arreglo, mediante el cual, los dos países se condonan toda obligación pecuniaria pendiente entre ellos, derivada o no del Tratado de Ancón; Chile entrega al Perú las obras públicas y los bienes de propiedad fiscal en Tacna y le paga seis millones de dólares. (Tratado, Art. 8o. y 6o.).

g) Un pacto de arbitraje para el caso de desacuerdos de interpretación, señalándose como árbitro al Presidente de los Estados Unidos de América. (Tratado, Art. 12o.).

h) Un compromiso para desmilitarizar el Morro de Arica. (Protocolo, Art. 3o.); y

i) Un compromiso para conmemorar la consolidación de la amistad mediante la construcción, a costo del Gobierno de Chile, de un monumento simbólico en el morro de Arica. (Tratado, Art. 11o.; Protocolo, art. 3º).

De los puntos a) y b), ya nos hemos ocupado.

El Tratado tenía que subordinar al interés político de realizarlo la reglamentación de las situaciones jurídicas que crea. Cuando se llega

[…]

… with the clear-headedness that the patriot, the observer and the critic must have, when they present to others the result of their study, I would be neglecting my moral and intellectual duties if I did not say, like many think but few say in Peru, that the Treaty of 1929 was a good settlement for our country.

[…]

Annex 313

L. Valencia Rodríguez, *Análisis de la Posición Jurídica Ecuatoriana en las Doscientas Millas*, 1980

LUIS VALENCIA RODRIGUEZ,
ex Ministro de Relaciones Exteriores

ANALISIS DE LA POSICION JURIDICA ECUATORIANA EN LAS DOSCIENTAS MILLAS

(Conferencia pronunciada en el Comité de Información de Contacto Externo, en Quito, el 16 de diciembre de 1980)

constituye uno de los antecedentes que llevan al segundo párrafo dispositivo, donde expresamente se afirma que "como consecuencia de estos hechos" —uno de ellos sin duda el reconocimiento de esa insuficiencia— los tres Estados proclaman "como norma de su política internacional marítima, la soberanía y jurisdicción exclusivas . . . sobre el mar que baña las costas de sus respectivos países hasta una distancia mínima de 200 millas". De acuerdo con la más sana lógica, los suscriptores de la Declaración estaban estableciendo, a través de este instrumento, una "nueva" extensión del mar territorial, en reemplazo de la "antigua" que ya no satisfacía a las exigencias vitales de estos tres países. En consecuencia, de lo que aquí se trató verdaderamente fue de una ampliación o extensión del mar territorial.

Hay que añadir a lo anterior la referencia que se hace en el párrafo resolutivo 5 de la Declaración al paso "inocente e inofensivo", institución que, de conformidad con el derecho internacional, es propia del mar territorial.

En cuanto a la segunda objeción, es errado sostener que la Declaración de Santiago no tiene el carácter jurídico de un tratado o convención. La Corte Permanente de Justicia Internacional declaró lo siguiente: "Desde el punto de vista de la eficacia de las obligaciones internacionales, es sabido que es posible asumir tales obligaciones en forma de tratados, convenciones, declaraciones, acuerdos, protocolos o canjes de notas". (1)

Conviene recordar, por otra parte, la definición que aparece en el artículo 2 de la Convención de Viena sobre el Derecho de los Tratados, donde se lee que "se entiende por 'tratado' un acuerdo internacional celebrado por escrito entre Estados y regido por el derecho internacional, ya conste de un instrumento único o de dos o más instrumentos conexos y cualquiera que sea su denominación particular".

Lo que en esencia dice la Convención de Viena sobre el Derecho de los Tratados y lo que sostenía la Comisión de Derecho Internacional es que el nombre o denominación del instrumento no es lo fundamental. Porque si así no sería, ciertos instrumentos básicos para la actual vida internacional no tendrían valor y los Estados podrían violarlos impunemente. La Carta de las Naciones Unidas no se llama tratado o convención y, sin embargo, es el máximo tratado público y solemne en que descansa la vida jurídica interna-

(1) Caso del Régimen aduanero austro-alemán. Series A/B, Nro. 41, pág. 47.

cional.

La crítica de que la Declaración de Santiago ha creado únicamente una zona ficticia, que sólo puede corresponder a la realidad en la medida en que se pueda hacerla respetar, carece de base de sustentación. En efecto, aceptar el criterio de que la existencia de un derecho o la facultad para establecerlo depende de los medios de que se disponga para hacerlo respetar es confundir la posesión de un derecho con su ejercicio y, contrariando el principio de la igualdad soberana de los Estados, reconocer tan sólo el derecho del Estado más fuerte y poderoso, es decir del que dispone de los medios suficientes para crear derechos. La soberanía de un Estado no puede quedar subordinada a sus medios bélicos disponibles, ni puede ser disminuída por la mayor o menor capacidad operativa de sus fuerzas defensivas.

La última crítica de importancia contra la Declaración se refiere a que carece de un sistema de demarcación de las aguas territoriales. Suficiente es recordar, a este respecto, el cuarto párrafo dispositivo de la Declaración y el artículo 1 del Convenio sobre Zona Especial Fronteriza Marítima (ratificado por el Ecuador por Decreto Supremo No. 2556 de 9 de noviembre de 1964, Registro Oficial 376, de 18 del mismo mes y año), según los cuales el límite entre las aguas territoriales de los Estados colindantes está constituído por el paralelo del punto en que llega al mar la frontera terrestre de dichos Estados.(1) Finalmente, en aplicación de la Declaración, de dicho Convenio y del artículo 628 del vigente Código Civil, el Gobierno ecuatoriano dictó el Decreto Ejecutivo No. 959-A, de 28 de junio de 1971 (Registro Oficial Nro. 265, de 13 de julio de 1971) por el cual determinó el trazado de las líneas de base rectas desde las cuales debe medirse la anchura del mar territorial de la República. En este Decreto se aplica el sistema del paralelo. He allí que se halla determinada, con toda claridad, la delimitación del mar territorial.

LA LEGISLACION ECUATORIANA.— Las últimas cuatro Constituciones del Ecuador (1945, 1946, 1967 y 1979 reformada) indican que la soberanía o el territorio nacional comprende el "mar territorial". En ninguna de las anteriores a ellas se hizo mención a

(1). En las actas de la II Conferencia Extraordinaria del Pacífico Sur, realizada en Lima en 1954, se afirma el principio del paralelo y se reconoce que ello se debió a la iniciativa del delegado ecuatoriano. Allí se lee: "A propuesta del señor Salvador Lara se incorporó en este artículo el concepto, ya declarado en Santiago, de que el paralelo que parte del punto limítrofe de la costa constituye el límite entre los Estados signatarios vecinos".

[…]

The final important criticism against the [Santiago] Declaration refers to the lack of a system of demarcation of the territorial waters. In this respect, suffice it to note the fourth dispositive paragraph of the Declaration and article 1 of the Agreement Relating to a Special Maritime Frontier Zone (ratified by Ecuador through Supreme Decree No. 2556 of 9 November 1964, Official Registry 376, of 18 [November 1964]), according to which the boundary of the territorial waters between the neighbouring States is constituted by the parallel at the point at which the land frontier of those States reaches the sea.

[…]

Annex 314

E. Vergaray Lara, "El Mar del Perú es una Región Geográfica", Asociación Nacional de Geógrafos Peruanos, *Anales, Vol. III*, 1962

LA ASOCIACION NACIONAL DE GEOGRAFOS PERUANOS, continúa con la presente publicación, la divulgación de temas de importancia geográfica.. En ella, los especialistas, los estudiosos de nuestros centros universitarios y el público interesado, encontrará motivos de interés nacional.

Este trabajo es un estudio geográfico del mar que baña nuestras costas. Se concreta, por una parte, a analizar científicamente las relaciones que existen entre los fenómenos morfológicos, oceanográficos, climatológicos, biológicos y económicos del litoral y a establecer la estrecha vinculación de estos elementos con el hombre. En efecto se demuestra cómo la actividad del hombre, en este medio ha logrado humanizar al mar, creando un nuevo paisaje nacional. El mar costero se presenta en esta forma como un conjunto propio, original y con características de verdadera región geográfica.

Por otra parte, la obra cobra, verdadera importancia nacionalista, cuando nos demuestra el inmenso valor del mar y sus ingentes riquezas. La presencia del mar ha determinado, desde tiempos inmemoriales, la actividad económica y el típico modo de vida del poblador costeño; precisando que la economía nacional y las finanzas del Estado dependieron siempre, en gran parte, de esta región marina.

En un afán peruanista, la obra concluye, haciéndonos ver que este mar es realmente un fenómeno nacional, consecuencia de la situación y de la disposición de nuestro territorio, por eso es continuación del Perú y, por eso es que jurídicamente lo denominamos Mar Territorial. Los argumentos de esta obra corroboran con el D. S. Nº 781 de 1º de agosto de 1947, por el que el Perú declaró su jurisdicción sobre este Mar Territorial. Y aquí el autor propone modificar la Constitución del Perú, en el sentido de que la unidad y la extensión del territorio peruano comprende el mar territorial, la costa, la sierra, la selva y el espacio aéreo.

La ASOCIACION NACIONAL DE GEOGRAFOS PERUANOS, consciente de su labor orientadora, en el campo de la investigación que le compete, y considerando la importancia de este trabajo ha dispuesto, con justa razón, la edición de "EL MAR DEL PERU ES UNA REGION GEOGRAFICA" del Dr. Eráclides Vergaray Lara, tesis que tiene el mérito de haber sido aprobada en las JORNADAS GEOGRAFICAS, organizada por la Sociedad Geográfica de Lima, en 1949; en el INSTITUTO DE GEOGRAFIA de la Universidad Nacional Mayor de San Marcos, el 15 de junio de 1954; en el SEMINARIO SOBRE EL DERECHO DEL MAR, organizado por la FACULTAD DE DERECHO de la Universidad Nacional Mayor de San Marcos, noviembre - diciembre de 1959; y, aprobada también en este PRIMER CONGRESO NACIONAL DE GEOGRAFIA..

La ASOCIACION NACIONAL DE GEOGRAFOS, cree cumplir con esta edición con un deber científico, nacional y patriótico. Y, aprovecha de estas líneas para felicitar al autor, por esta magnífica contribución.

CAPITULO V

CARACTERISTICAS GENERALES DEL MAR PERUANO

1.— El paisaje.
2.— La extensión.
3.— El relieve.
4.— El zócalo continental.
6.— El shelf marino.
6.— Las fosas.
7.— Las islas.

1.— El paisaje.— Aunque es difícil dar un panorama de esta completa faja, sin embargo, lo más sorprendente es el eterno dinamismo de sus aguas; de cerca, un vaivén; de lejos, un real horizonte; aguas verdes, rojas, pardas, azules; cielos nublados y claros; multitud de islas rompen la monotonía de su extensión y alientan la existencia de un fantástico mundo biológico; por sus ámbitos transita el hombre con sus botes, sus vapores o instala sus cosas para cosechar la bendición de la madre naturaleza.

2.— La extensión.— Esta región marina, colinda con el E. con nuestro litoral y por el W. está limitada por una línea imaginaria que sigue las sinuosidades del perfil costero. Está comprendida entre las siguientes coordenadas: L. S. 3°23'33" a la altura de Punta de Boca de Capones. L. S. 18°21'03" a la altura del hito de Pascana del Hueso, Orilla del Mar. Siendo en longitud W. en el extremo Norte 80°19'16" y en el extremo Sur 70°22'56" por un lado y, su longitud W. llega en el extremo Norte, a 83°44'16" y en el extremo Sur, a 73°47'56" por el otro lado.

Por otra parte, su ancho, de acuerdo a las declaraciones de nuestro Gobierno, por el Decreto Supremo Nº 781 del 1º de agosto de 1947, (1)

(1) LA SOBERANIA Y JURISDICCION NACIONALES SOBRE LA PLATAFORMA CONTINENTAL.

DECRETO SUPREMO Nº 781
EL PRESIDENTE DE LA REPUBLICA

CONSIDERANDO:

Que la plataforma submarina o zócalo continental forma con el continente una sola unidad morfológica y geológica;

Que en dicha plataforma continental existen riquezas naturales, cuya pertenencia al patrimonio nacional es indispensable proclamar;

Que es igualmente necesario que el Estado proteja, conserve y reglamente el uso de los recursos pesqueros y otras riquezas naturales que se encuentran en las aguas epicontinentales que cubren la plataforma submarina y en los mares continentales adyacentes a ella, a fin de que tales riquezas, esenciales para la vida nacional, continúen explotándose o se exploten en lo futuro en forma que no causen detrimento a la economía del país ni a su producción alimenticia;

Que la riqueza fertilizante que depositan las aves guaneras en las islas del litoral peruano requieren también para su salvaguarda la protección, conservación y reglamentación del uso de los recursos pesqueros que sirven de sustento a dichas aves;

1), llega a 205 millas marinas (2) mar adentro; porque considera que asta esas distancias llega nuestro zócalo continental, que determina l mar territorial del Perú, con sus características y fenómenos propios e plataformas continental, de Corriente Peruana, de islas, etc., etc. que

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Que el derecho a proclamar la soberanía del Estado y la jurisdicción nacional sobre toda la xtensión de la plataforma o zócacubren y sobre las del mar adyacentes a éllas, en toda la exten-ón necesaria para la conservación y vigilancia de las riquezas allí contenidas, ha sido declarado or otros Estados y admitido prácticamente en el orden internacional (Declaración del Presiden-de los Estados Unidos de América del 28 de setiembre de 1945);

Declaración del Presidente de México del 29 de octubre de 1945; Decreto del Presidente de Nación Argentina, del II de octubre de 1946;

Declaración del Presidente de Chile del 23 de Junio de 1947).

Que el artículo 37 de la Constitución del Estado establece que las minas, tierras, bosques, ua y, en general todas las fuentes naturales de riqueza pertenecen al Estado, salvo los derechos galmente adquiridos;

Que en ejercicio de la soberanía y en resguardo de los intereses económicos nacionales, es ligación del Estado fijar de una manera inconfundible el dominio marítimo de la Nación dentro l cual deben ser ejercitadas las protecciones, conservación y vigilancia de las riquezas naturales tes aludidas;

Con el voto consultivo del Consejo de Ministros;

DECRETA:

1º—Declárase que la soberanía y jurisdicción nacionales se extienden a la plataforma sub-rina o zócalo continental o insular adyacente a las costas continentales o insulares del territorio cional, cualesquiera que sean la profundidad y la extensión que abarque dicho zócalo.

2º—La soberanía y la jurisdicción nacionales se ejercen también sobre el mar adyacente a costas del territorio nacional, cualesquiera que sean la profundidad y en la extensión necesaria rá reservar, proteger, conservar y utilizar los recursos y riquezas naturales de toda clase que en lebajo de dicho mar se encuentran.

3º—Como consecuencia de las declaraciones anteriores el Estado se reserva el derecho de es-lecer la demarcación de las zonas de control y protección de las riquezas nacionales en los mares tinentales e insulares que quedan bajo el control del Gobierno del Perú, y de modificar dicha de-rcación de acuerdo con las circunstancias sobrevinientes por razón de los nuevos descubrimientos, udios, o intereses nacionales que fueran advertidas en el futuro; y, desde luego, declara que ejer-á dicho control y protección sobre el mar adyacente a las costas del territorio peruano en una a comprendida entre estas costas y una línea imaginaria paralela a ellas y trazado sobre el mar a distancia de doscientas (200) millas marinas, medida siguiendo la línea de los paralelos geo-ficos. Respecto de las Islas nacionales esta demarcación se trazará señalándose una zona de mar figua a las costas de dichas islas, hasta una distancia de doscientas (200) millas marinas medida de cada uno de los puntos del contorno de ellas.

4º—La presente declaración no afecta el derecho de libre navegación de naves de todas las ionalidades, conforme el dercho internacional.

Dado en la Casa de Gobierno, en Lima, el día primero de agosto de mil novecientos cuarenta iete.

J. L. BUSTAMANTE. E. García Sayán. (3)

Pues, si el primer acápite de la tercera parte del citado Decreto declara que la soberanía y la jurisdicción nacionales llegan exactamente hasta las 200 millas marinas, medidas a partir de la costa, el segundo acápite de dicha parte dice que respecto de las islas nacionales, estas 200 millas marinas se medirán desde cada uno de los puntos del contorno V de cada isla. Quiere decir, por ejemplo, que de las islas Lobos de Afuera, las 200 millas marinas que se cuentan a partir de la costa de Eten, sino a partir del contorno V. de las islas y como estas islas, distan 46 millas marinas de la costa y tienen 1.5 millas de ancho, la distancia real hasta donde llega nuestra soberanía y jurisdicción nacionales, será en este punto de 247.5. Y, si ahora tenemos en cuenta que así como las islas Lobos de Afuera, unas islas distan más y otras menos de la costa, para facilitar nuestros cálculos, por ahora, sacamos el promedio de distancias de las 84 islas y encontramos que son 5 millas marinas, por lo que generalizando, podemos estimar que el ancho promedio de nuestro mar es de 205 millas marinas.

Según el acuerdo tripartito de Santiago de Chile, 1952, la milla marina es de 1,852.8 Mts. Tiene la extensión de 1' de arco medido sobre el Ecuador.

"El Peruano". — Lima, lunes 14 de agosto de 1947, Pág. 2.

forman el habitat y dan lugar al mundo biológico marino que constituye verdadera riqueza para la nación peruana. Su largo llega exactamente a 889.24 millas marinas

Ahora bien, si deseamos calcular la superficie de esta parte, convertiremos, para su mayor facilidad, las millas marinas, a kilómetros y, teniendo en cuenta que el valor de la milla marina es de 1,852.0 Mts. tendremos por un lado que las 205 millas equivalen a 380 Kms. y las 889.24 millas, equivalen a 1,648 Kms.; luego multiplicamos el largo por el ancho de dicha área y tendremos 626,240 Kms 2 (seis cientos veintiséis mil doscientos cuarenta kilómetros cuadrados), que es la verdadera superficie del mar peruano (1) Este dato se comprueba en el mapa adjunto, escalado al millón y hecho de acuerdo al Mapa de 1950, levantado por el Instituto Geográfico Militar del Perú (2)

3.—**El Relieve**—El fondo de nuestro mar no es plano como el fondo de una piscina, sino que presenta relieves complicados, del cual, en general, se distinguen, como en todos los mares, tres escalas principales a partir del continente: La nerítica que va hasta los 200 metros; la Batial que llega a los 1,000 metros y la Abisal que pasa los 1,000. Pero viendo en forma más analítica los sondajes realizados, nos encontramos con caprichosos isobatas que van desde los 10 m. hasta los 6,000. Ellas nos revelan que el relieve marino es el mismo que existen en la superficie terrestre, se encuentran los mismos accidentes y los mismos aparatos geomorfológicos. Existen cadenas de montañas, mesetas, quebradas, llanuras, enormes fosas y elevados picos. El relieve submarino está sujeto a las leyes de erosión, de acentamiento tectónico, de geosinclinal, etc., mecanismos que regulan el equilibrio isostático. Entonces la configuración general de este piso no es estático sino que varía continuamente.

Cabe indicar, muy especialmente, que una de las causas fundamentales de este relieve se debe a la posición de nuestro litoral que al oponerse a las aguas con sus cuatro direcciones hacen que estas aguas trabajen el fondo y las paredes del zócalo. Efectivamente examinando las isóbatas constatamos que el mar es más profundo en el S que el N. Así en el S las isobatas de 200 m. llegan apenas a 10 millas mar afuera en cambio en el N esta isobata de 200 m. llega hasta 100 millas afuera; lo mismo sucede con las isobatas de 1000, de 2000, de 3000 que en el S se pegan mucho al litoral y en el N se abren, incluso la isobata de 4,000 llega hasta 90 km. cerca de Chala y frente a Salaverry se aleja 240 Km. Ahora bien, veamos parcialmente estas direcciones del perfil costero. La zona de La Yarada a San Gallán con dirección SE se opone casi transversalmente al sentido de la corriente y resulta ser la parte más afectada, más cavada. La zona de San Gallán a Punta Aguja con dirección NE no presenta casi obstaculos al deslizamiento de las aguas y resulta ser la parte menos afectada con una plataforma ancha, aunque en su parte extrema en Punta Aguja como un codo hace resistencia a las aguas que suben y sufre la excavación y la isobata de 4,000 se aproxima. La zona de Punta Aguja a Cabo Blanco que no ofrece resistencia alguna tiene un piso llano y extendido, su dirección

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(1) Quiere decir que la superficie del Perú calculada por el Instituto Geográfico Militar del Perú, en 1'285,215. Km2. y 60 Cm. considerado dato oficial, es un dato incompleto, porque considera al Perú mutilado, sin mar. Este trabajo nos dice que la vastedad del Perú comprende parte del Amazonas y parte del Pacífico; por lo tanto, hay que agregar a dicho dato la extensión de nuestro mar y tendremos 1'911,456 Kms. cuadrados, más 545 metros cuadrados que hasta hoy es la superficie más exacta del verdadero Perú.

(2) Este dato es provisional.

[…]

The NATIONAL ASSOCIATION OF PERUVIAN GEOGRAPHERS, being aware of its leading work in the field of research which it undertakes, and considering the importance of this task, has rightly sponsored the edition of "THE PERUVIAN SEA IS A GEOGRAPHIC REGION" by Doctor Eráclides Vergaray Lara, a thesis that has the merit of having been approved during the GEOGRAPHIC DAYS, organized by the Geographic Society of Lima in 1949; at the INSTITUTE OF GEOGRAPHY of the *Universidad Nacional Mayor de San Marcos* on 15 June 1954; in the SEMINAR ON THE LAW OF THE SEA, organized by the FACULTY OF LAW of the *Universidad Nacional Mayor de San Marcos*, between November and December 1959; and also approved in this FIRST NATIONAL CONGRESS OF GEOGRAPHY.

[…]

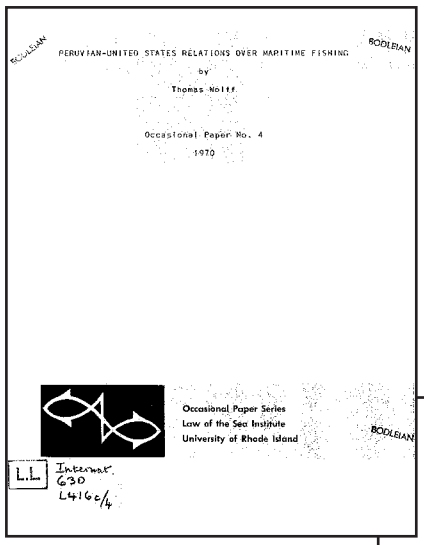
2. – The extension. – This maritime region borders to the E. with our coastline and is limited to the W. by an imaginary line that follows the sinuosity of the coastline. It is located between the following coordinates: L. S. 3° 23' 33" at the level of the Point of Boca de Capones. L. S. 18° 21' 03" at the level of the Pascana del Hueso boundary marker, seashore. It has a longitude W. to the far North 80° 19' 16" and to the far South 70° 22' 56" to one side and its longitude W. to the other side arrives to the far North at 83° 44' 16" and to the far South at 73° 47' 56".

Moreover, its width in accordance with the declarations of our Government, by Supreme Decree No. 781 of 1 August 1947, (1) reaches 205 nautical miles (2) seaward; because it is considered that up to these distances lies our continental shelf which determines the territorial sea of Peru, …

[…]

Annex 315

T. Wolff, *Peruvian-United States Relations over Maritime Fishing,* Law of the Sea Institute University of Rhode Island, *Occasional Paper No. 4*, 1970



seas off the coasts of Peru...[15] [italics mine]. In light of these facts, the United States government refused to recognize the Peruvian acts.

Thus, in 1948, the legal controversy over the breadth of the territorial sea was enjoined between Peru and the United States. In 1952, the legal differences between those two nations were compounded when Peru joined with Ecuador and Chile (CEP nations) at the First Conference of Exploitation and Conservation of Maritime Resources of the South Pacific. On August 18, the three nations issued a Declaration on the Maritime Zone which declared a 200-mile territorial sea. (Costa Rica adhered to this declaration on October 5, 1955). In 1954, the three nations issued an Agreement Relating to Penalties for violation of their Maritime Zone.[16]

II. 1969 Seizures: A Sample

Peru seized its first United States tuna vessel in 1947.[17] Since 1961, not including this year's seizures, Peru seized 74 United States ships.[18] This year, the Mariner, the San Juan, the Cape Anne, and the Western King, have all been seized by this Latin American government. The most dramatic seizure and harassment of the current year occurred on February 14-16 and involved both Peru and Ecuador. A description of these events reveal the difficulties experienced by our tuna fishermen off west coast Latin America.

In the pre-dawn hours of February 14, an English-built Peruvian PT boat, armed with machine guns and 20 mm cannon fore and aft, began shadowing United States tuna vessels 40 miles off Peru's coast. At dawn, the naval vessel headed for the Mariner and collided with the vessel in an attempt to board her. Neither her skipper, Joe Louis, nor any of his crew of 13 were hurt. The collision, however, smashed a small whale boat and damaged the superstructure of the Mariner. The Peruvians then landed a boarding party which guided the damaged San Diego based seiner to Talara[19] where her captain was forced to buy a "licence and matricula, and fined, the total coming to about $10,500."[20]

Meanwhile, the Peruvian vessel headed for the San Juan. Failing to board the elusive ship, the Peruvians fired between 40 and 60 machine gun bullets into her upper parts. Gun fire hit the skiff, destroyed windows in the pilot house, damaged the vessel's radio, sprayed the port side of the crew's quarters, damaged the radar antenna and barely missed the captain.[21] The crew stayed below, with the vessel running on automatic pilot, and no one was hurt. Suddenly the pursuit ended, either because the Peruvian commander "did not want to make the incident any worse, or because other American vessels in the vicinity (There were about five other tuna clippers nearby.) began moving in threateningly".[22]

Two days later, on February 16, when the San Juan sailed into Salinas, Ecuador, for inspection by United States diplomatic and military officials, she gave her logbook and documents to the port captain as was customary under Ecuadoran law. The inspection was carried out by officials from Ecuador and the United States, but after the North American officials left

> the port captain told the skipper of the San Juan that an examination of his logbook showed that he had fished 'illegally' off Ecuador last November, 1968, and therefore he was not permitted to depart the port. (Actually the vessel was at New Orleans in November, having just returned from an eastern Atlantic cruise.) The captain of the San Juan had had it with South American shakedown specialists by that time, so he returned to his vessel and headed out to sea full speed, possibly pursued by a couple rifle shots, leaving his logbook and documents behind...[23]

III. The United States Congress Reacts: 1954-1969

Over the years the United States Congressmen and fishermen have been concerned about harassment and seizures similar to those of 1969. By 1954, twenty tuna clippers had been seized by Peru, Ecuador, Columbia, El Salvador, and Panama. Seizures usually brought fines which ran into thousands of dollars. These seizures, imprisonments, and fines forced the United States into a defense policy. Under pressure from American fishing interests, the United

[16]United Nations, Office of Legal Affairs, Laws and Regulations on the Regime of the Territorial Sea, (New York, 1957), pp. 726-735. For the 1954 legislations see U.S., Naval War College, International Law Situation and Documents 1956, Situation Documents and Commentary on Recent Developments in the International Law of the Sea by Brunson MacChesney, NAVPERS, Vol. 51 (Washington, D. C., 1957), pp. 276-279.

[17]Chapman Letter, op.cit.

[18]Los Angeles Times, February 15, 1969.

[19]Los Angeles Times, February 15, 1969.

[20]Letter from Wilvan G. Van Campen, Foreign Affairs Officer, Office of the Special Assistant for Fisheries and Wildlife to the Secretary, U.S. Department of State, March 7, 1969. (Hereafter cited as the Van Campen Letter.)

[21]Los Angeles Times, February 15, 1969.

[22]Van Campen Letter, op.cit. Also see Los Angeles Times, February 15, 1969.

[23]Van Campen Letter, ibid. Also see The New York Times, February 18, 1969, San Francisco Chronicle, February 18, 1969, Arizona Daily Star (Tucson), February 17, 1969, and Excelsior, (Mexico City) February 18, 1969. For other seizures by Peru in 1969 see The New York Times, March 20, 1969; San Francisco Chronicle, March 20, 1969; Los Angeles Times, March 20, 1969; The Christian Science Monitor March 22, 1969; Los Angeles Times, May 17, 1969; Arizona Daily Star, May 21, 1969.

[24]U.S., Statutes at Large, V: 68, Part 1, p. 883.

[25]Ibid., p. 883.

[26]Public Law 90-482, August 12, 1968.

[27]U.S., Statutes at Large, 89th Congress, LXXIX: 660 (1965).

[28]U.S., Congress, House of Representatives, Congressional Record, 90th Congress Second Session, 114:146 (September 10, 1968), 8455. Public Law 90-629 cited in U.S., Congress, Congressional Record-Daily Digest, 114:175 (November 1, 1968), D959.

[29]Los Angeles Times, May 17, 1969; The Arizona Daily Star, May 21, 1969.

[30]Zerox copy of Congressman Lionel Van Deerlin's letter to President Richard M. Nixon, February 20, 1969. Also see Los Angeles Times, February 22, 1969.

[31]New York Times, February 26, 1969.

[32]U.S., Congress, House, Hearing Before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, Foreign Seizures of U.S. Fishing Vessels, 90th Congress, 1st Session, 1967, p. 67. (Hereafter cited as 1967 Hearings.)

Annex 316

R. Young, "Recent Developments with Respect to the Continental Shelf", *American Journal of International Law, Vol. 42*, 1948, p. 849

RECENT DEVELOPMENTS WITH RESPECT TO THE CONTINENTAL SHELF

By Richard Young

Harvard University Law School

The proclamation of the President of the United States on September 28, 1945,[1] declaring as a matter of policy that the natural resources of the subsoil and sea bed of the continental shelf appertain to the United States, proves to have offered a marketable concept in the marts of international law. Six States have followed the example in the last three years, with certain notable modifications of their own, and it appears not improbable that the principle thus put forward may gain increasing acceptance in international practice. It seems appropriate therefore briefly to review various developments with respect to jurisdiction over the continental shelf, the epicontinental sea, and their resources.

The United States proclamation has already been the subject of comment in this Journal, where its significance as a new departure has been remarked upon.[2] While it undoubtedly turned fresh ground in undertaking by such means to extend national jurisdiction over submarine areas outside of territorial waters, its approach was not without harbingers, both in the writings of publicists and in the practice of states. As early as 1916 a Spanish expert, concerned over the depletion of fisheries, urged that territorial waters be extended to include the whole continental shelf, where the important food species chiefly flourished.[3] Similar recognition of the importance of the shelf with respect to fisheries was being voiced simultaneously by Argentine writers[4] who emphasized the need for adequate controls, and this concern was reiterated some years later in the League of Nations Committee of Experts for the Progressive Codification of International Law.[5] In quite another connection, the year 1916 also saw the assertion by the Russian Imperial Government of a claim to certain uninhabited islands north of Siberia on the ground that they formed "the

[1] Proclamation No. 2667, 10 *Federal Register* 12303.

[2] Edwin Borchard, "Resources of the Continental Shelf," this Journal, Vol. 40 (1946), p. 53; J. W. Bingham, "The Continental Shelf and the Marginal Belt," *ibid.*, p. 173.

[3] DeBuren, later Spanish Director-General of Fisheries, cited in League of Nations Document C.196.M.70.1927.V. (1927), p. 63.

[4] S. R. Storni, *Intereses Argentinos en el Mar* (1916), p. 38 ff.; J. L. Suarez, *Diplomacia Universitaria Americana* (1918), pp. 174, 180 ff.

[5] Committee Report, League of Nations Document C.196.M.70.1927.V. (1927), pp. 63–65.

northern continuation of the Siberian continental shelf''—an assertion repeated by the Soviet Government in 1924.[6]

Also of significance as a precedent, although it did not refer in terms to the continental shelf, was the treaty of February 26, 1942, between Venezuela and the United Kingdom, undertaking to dispose of the submarine areas of the Gulf of Paria.[7] The Gulf, which separates Venezuela from Trinidad, is about 70 miles long by 35 miles wide, with openings at each end of some six and ten miles respectively; it is very shallow, and petroleum deposits are reported to lie beneath its waters. By the agreement, each state undertook to recognize ''any rights of sovereignty or control which have been or may hereafter be lawfully acquired'' by the other over submarine areas on their respective sides of an arbitrary boundary line. ''Submarine areas'' were defined as ''the sea bed and sub-soil outside of the territorial waters of the High Contracting Parties.'' It was expressly provided that nothing in the treaty should affect in any way the status of the waters of the Gulf, or any rights of navigation on the surface of the sea outside of territorial waters. Subsequently Great Britain, by Order-in-Council of August 6, 1942, annexed the submarine areas on its side of the boundary and attached them to Trinidad for administrative purposes; Venezuela was described as having taken similar action in its part of the Gulf.[8] While these transactions can be supported on other grounds,[9] the location of the Gulf on the continental shelf makes the arrangement one of particular interest.

* * *

1. *United States of America*

President Truman's proclamation of 1945 made no claim on behalf of the United States to ''sovereignty,'' ''title,'' or ''ownership'' of the continental shelf. It only declared it to be the national policy to regard the natural resources of the subsoil and sea bed of the shelf as ''appertaining to the United States, subject to its jurisdiction and control.'' The language is reminiscent of the Guano Islands Act of 1856, which provides that under specified conditions guano islands may, ''at the discretion of the President of the United States, be considered as appertaining to the United States.'' [10] The character as high seas of the waters above the shelf, together with the right to their free navigation, was unconditionally recognized, and it was further provided that where the continental shelf extended to the shores

[6] Imperial declaration of Sept. 29, 1916; Soviet memorandum of Nov. 4, 1924. French texts in V. L. Lakhtine, *Rights over the Arctic* (1928), pp. 43–45.

[7] Great Britain, *Treaty Series*, No. 10 (1942), Cmd. 6400.

[8] Great Britain, *Statutory Rules and Orders*, 1942, Vol. I, p. 919.

[9] See F. A. Vallat, ''The Continental Shelf,'' *British Year Book of International Law*, Vol. XXIII (1946), p. 333.

[10] 11 Stat. 119.

of another state, or was shared with an adjacent state, the boundary should be determined by mutual agreement based on equitable principles.

By the terms of an executive order issued on the same day, the natural resources thus claimed were placed for administrative purposes under the jurisdiction and control of the Secretary of the Interior, pending the enactment of any relevant legislation.[11] Neither the proclamation nor the order defined the term "continental shelf," but an accompanying press release described it as that area adjacent to the continent covered by no more than 100 fathoms of water. The order further stated that neither it nor the proclamation should be deemed to affect the determination by legislation or judicial decree of any issues between the Federal Government and the several States regarding the ownership or control of the continental shelf within or outside the three-mile limit.[12]

With respect to the attitude of other governments, it is understood that the substance of the proclamation was communicated to the Governments of Canada, Mexico, the Soviet Union, and the United Kingdom, as the states more directly affected by the United States' claim.[13] None of these is known to have made any public objection; of the four, only Mexico has announced any similar action of its own.

2. *Mexico*

On October 29, 1945, the President of Mexico issued a declaration, modelled on the American proclamation of a month earlier, asserting Mexican jurisdiction, protection and control over the continental shelf bordering its territory, and announcing that appropriate legislation, and, if necessary, treaties, would be sought by the government to implement this position.[14] Any intent to challenge legitimate rights of third parties based on reciprocity, or rights of free navigation on the high seas, was expressly disclaimed; the sole purpose of the action was said to be the conservation of resources for "the welfare of the nation, the continent and the world."

Pursuant to its announcement, the Executive subsequently sent proposals for the amendment of Articles 27, 42, and 48 of the Mexican Constitution to both houses of Congress, where they are reported to be pending. The proposals would effect the following alterations. In Article 27, ex-

[11] Executive Order No. 9633, Sept. 28, 1945, 10 *Federal Register* 12305. No administrative actions appear to have been taken by the Secretary of the Interior under this order, and no legislation has yet been enacted.

[12] At the time this question was about to be litigated in the case of *United States* v. *California*, 332 U. S. 19, decided on June 23, 1947. Although action by States of the United States with respect to the continental shelf falls outside the scope of this comment, mention may be made in passing of the Texas Act of May 23, 1947, extending that State's boundary to the edge of the continental shelf. *General Laws of Texas*, 1947, Ch. 253.

[13] Letter from the Department of State, April 28, 1948.

[14] *Excelsior* (Mexico City), Oct. 30, 1945.

press statements would be inserted declaring direct national ownership not only of the continental shelf and sea bed, but also of the sea waters covering them, to the extent fixed by international law; this would assimilate the status of these waters to that of territorial waters under the present wording of the article. Article 42, defining the national territory, would be amended to include the continental shelf "covered by sea waters up to two hundred meters of depth at the level of the low tide" and the submarine bed of Mexican islands, naming specifically Guadelupe and Revillagigedo in the Pacific Ocean. Article 48 would be re-phrased to provide that islands in both oceans, the continental shelf, and the submarine bed be attached directly to the Federal Government, with the exception of those islands over which the States had theretofore exercised jurisdiction. Except for the reference to international law in Article 27, the actual text of the proposed amendments makes no specific allowance for rights of other states or for recognition of the high seas character of waters above the continental shelf.

3. *Argentina*

Argentina, which has a broad expanse of continental shelf off much of its coast, followed the example of the United States and Mexico about a year later. On October 11, 1946, a decree of the President of the Argentine Republic declared the Argentine epicontinental sea and continental shelf to be "subject to the sovereign power of the nation," but with a guarantee that this would not affect the character of the waters for purposes of free navigation.[15] Reference was made in the preamble to an earlier decree of January 24, 1944, as having asserted categorical sovereignty over the shelf and sea; but this earlier decree in fact only established zones of mineral reserves along the coasts and in the epicontinental sea without mention of the continental shelf or of the basis for its action.[16] The 1946 decree, after referring to the statements of the American and Mexican Presidents as assertions of sovereignty over their respective peripheral seas and shelves (an error with respect to the United States proclamation), went on to describe the doctrine as being "implicitly accepted in modern international law."[17]

[15] Decree No. 14,708/46, *Boletin Oficial de la Republica Argentina*, Dec. 5, 1946; English translation in this JOURNAL, Supp., Vol. 41 (1947), p. 11.

[16] Decree No. 1,386/44, *Boletin Oficial*, March 17, 1944.

[17] Professor P. C. Jessup ("Sovereignty in Antarctica," this JOURNAL, Vol. 41 (1947), p. 117) has noted that the doctrine had earlier received some support in writings of modern Argentine jurists, particularly Dr. Ruiz Moreno and Dr. Podestá Costa. Both these writers, though not referring to the continental shelf as a basis for a claim, admit that the bed of the high sea may be acquired through occupation. I. Ruiz Moreno, *Derecho Internacional Publico* (1940), Vol. II, p. 49; L. A. Podestá Costa, *Manual de Derecho Internacional Publico* (1943), p. 99.

The extent of the shelf and sea claimed by Argentina is nowhere defined in the instrument. This studied lack of precision may be of practical importance in connection with Argentina's Antarctic claims, which comprise a sector bounded by the 25th and 74th meridians west of Greenwich. In support of these, Argentina has laid considerable stress on the argument of geographical propinquity; and though the waters between South America and Antarctica considerably exceed 100 fathoms in depth, there are connecting geological structures between the two land masses which might be brought within an expanded continental shelf doctrine.[18]

4. *Nicaragua*

According to press reports, the Congress of Nicaragua on May 1, 1947, adopted a declaration extending the national sovereignty over the adjacent continental shelf, which, on the Atlantic side, is the most extensive in Central America.[19] The text of this act has not been available to the writer, but it is understood to set the boundary of the area claimed at the 200-meter line, thus following the Mexican precedent in fixing a precise limit on a basis of depth.

5. *Chile*

By a Presidential declaration dated June 23, 1947, it was announced that "the Government of Chile confirms and proclaims the national sovereignty" over the continental shelf and the epicontinental sea adjacent to its coast.[20] While in the preamble reference was duly made to the prior actions of the United States, Mexico and Argentina as being evidence of international recognition of the validity of such a step, the operative provisions indicate a somewhat different and more ambitious approach. Clearly rejecting any implied limit of jurisdiction at the 100-fathom or 200-meter line, the declaration made an express assertion of sovereignty over the continental shelf regardless of the depth of water, and also over the epicontinental sea regardless of depth and to whatever extent necessary to preserve the natural resources therein. A line 200 marine miles distant from and parallel to the coast was then laid down as the limit of the waters within which Chile proposed to exercise protection and control, but without prejudice to any subsequent changes; a similar zone was also claimed on all sides of Chile's island possessions, presumably including such points as Juan Fernandez, which is some 400 miles from the mainland, and Easter Island, which is more than 2,000 miles distant. The declaration further

[18] It may be noted in connection with Argentine claims that the Falkland (Malvinas) Islands are located on the South American continental shelf, even under the 100-fathom definition.

[19] *New York Times*, May 2, 1947.

[20] *El Mercurio* (Santiago), June 29, 1947.

recognized "similar legitimate rights of other states, on the basis of reciprocity," and repudiated any intent to affect "the rights of free navigation on the high seas."

The reasons for Chile's departure from the formula developed in the earlier actions of other states are probably to be found in the facts of its geographical position. The continental shelf, in the strict 100-fathom sense, is narrow along the Chilean coast (as it is along the entire Pacific coast of South America), and a claim thus limited by depth would yield far less than it would yield, for example, off the shores of Yucatan. In advancing a shelf doctrine not thus restricted, Chile may be looking hopefully toward a successful claim to the so-called "Chilean Rise," a high submarine plateau adjoining the coast which, though deeply submerged, is still distinctly set off from the neighboring abysses of the eastern Pacific. In addition, Chile has the same reasons as Argentina for advancing a view with respect to the continental shelf which will lend support to its claim of a segment of the Antarctic between 53° and 90° west longitude.[21]

6. *Peru*

Peru lost little time in following up the action of its neighbor to the south. On August 1, 1947, a Presidential decree was promulgated in terms which adhered closely to those of the Chilean declaration.[22] As in the earlier instrument, full sovereignty was asserted over the continental shelf and epicontinental sea regardless of depth, and a similar 200-mile limit for protection and control was established parallel to the mainland coast and around the Peruvian islands. The "right of free navigation of ships of any nation, as per international right," was declared to remain unaffected. Doubtless the form of the claims put forward was governed by reasons similar to those in the case of Chile, inasmuch as Peru has an even narrower coastal shelf above the 100-fathom line, and even greater depths of water close to shore. An additional ground for protecting the fishery resources, however, was advanced in a statement that the fish were an essential food supply of the birds which produced the important guano deposits on islands of the Peruvian littoral.

7. *Costa Rica*

The most recent development to come to the notice of the writer is the action of Costa Rica. A decree-law of July 28, 1948, is reported to have put forth a claim to the continental shelf on both the Atlantic and Pacific coasts of Costa Rica out to a limit 200 miles offshore, regardless of the depth of water. The action therefore appears to follow in form the precedents established by Chile and Peru.

[21] On his visit to the Antarctic in February, 1948, the President of Chile declared that Chilean territory now "extends from Arica to the South Pole." *New York Sun*, Feb. 24, 1948.

[22] Decree No. 781, *El Peruano—Diario Oficial*, Aug. 11, 1947.

Annex 317

J. Zavala, *Consenso y Confrontación en la Delimitación de la ZEE y de la Plataforma Continental*, 1998

cial de las fronteras marítimas tanto en el Pacífico como en el Atlántico. La parte restante de la línea se determinó siguiendo métodos alternativos, tales como valores de latitud, longitud o un acimut final en el Caribe y valores de latitud en el Pacífico; todos estos métodos parecen haber guiado la proporción más extensa de la línea fronteriza. En el Caribe, el método de la equidistancia se aplicó a lo largo de 215 millas que representan el 40% de la línea trazada entre los primeros ocho puntos (desde el punto A hasta el punto H). A partir de aquí se modifica la dirección con ventaja para Colombia a lo largo de una corta distancia, entre los 6 puntos restantes (puntos H al M). La línea de delimitación mide un total de 523 millas (968,5 km) y está realizada sobre trece puntos. Esta línea se prolongó 15 millas más en virtud de un acuerdo concluido entre Colombia y Costa Rica el 17 de marzo de 1977[205].

En el Pacífico se adoptó un proceso semejante. Se trazó una línea media en los primeros seis puntos de la línea fronteriza (A-F), cuya longitud representa el 39% de su longitud. El resto de la línea (punto F) está constituido por el paralelo 5° 00' 00" de latitud norte, la línea mide en total 180 millas (333 km aproximadamente), está realizada sobre 6 puntos y concluye donde se establece la frontera marítima con Costa Rica[206] (véase la figura 39 del anexo cartográfico).

Conviene señalar que en el área del Caribe la línea fronteriza es jurídicamente importante respecto de la disputa entre Colombia y Nicaragua sobre la validez de la frontera marítima que ambos trazaron a lo largo del meridiano 82° 00' 00" O, mediante el tratado Bárcenas-Esguerra de 1928-30, ya que la línea se extiende a través de mar abierto hasta unirse con un área marítima bajo soberanía costarricense, potencialmente conflictiva entre Nicaragua y Costa Rica[207].

c.14. COLOMBIA - ECUADOR

Para delimitar las áreas marinas y submarinas situadas entre Colombia y Ecuador en el Océano Pacífico, ambos Estados decidieron aplicar los métodos de delimitación establecidos en la Declaración de Santiago, adoptada por Chile, Perú y Ecuador el 19 de agosto de 1952. Si bien Colombia no formó parte de la Declaración desde sus orígenes, se adhirió a ella en 1979 con el fin

205. *Limits in the Seas*, 15 de febrero de 1979, No. 84; *New Directions in Law of the Sea*, 1980, vol. VIII, pág. 93; *Charney & Alexander*, t. I, pág. 474.
206. PRESCOTT, *The Maritime Political Boundaries...*, pág. 340.
207. «Nicaragua advierte que capturará a pescadores costarricenses ilegales», diario *La Prensa*, sección de Centroamérica, San Pedro Sula, Honduras, 18 de diciembre de 1997.

de que la delimitación se realizara a través del paralelo geográfico trazado desde el punto en que la frontera terrestre entre ambos Estados llega al mar[208]. Colombia se adhirió a la declaración porque ofrecía más ventajas, tomando en cuenta las características geográficas del área delimitada, realizar la delimitación a través del paralelo geográfico que aplicando una línea media.

La línea fronteriza está constituida por el paralelo 01° 27' 24". Esta alcanza una longitud de 200 millas (370,4 km) y es aplicable a la ZEE y a la Plataforma Continental, aunque el acuerdo no se refiera específicamente a esas áreas y zonas marítimas (art. 3). La línea de delimitación difiere considerablemente de una hipotética línea equidistante. En su recorrido no se detecta la presencia de ninguna circunstancia especial (islas, rocas, arrecifes o elevaciones en baja mar) que altere la dirección de su recorrido, situación favorecida para el método de delimitación empleado. Tampoco influyeron en su recorrido las líneas de base rectas establecidas por las partes para medir la anchura del mar territorial (art. 4)[209]. Debido a la configuración de las costas de ambos Estados, el área marítima de Ecuador es más pequeña de la que le hubiese correspondido, si la delimitación se hubiese realizado mediante el método de la equidistancia. Esta situación se produce hacia el final de la línea fronteriza, en la que Ecuador ganó una pequeña área que no se compensa con la que correspondió a Colombia (véase la figura 40 del anexo cartográfico).

La línea fronteriza se complementa con la creación de una «zona especial» de 10 millas de ancho a cada uno de sus lados, con la finalidad de que la presencia accidental de pescadores de uno u otro país en la referida zona no sea considerada violación del límite marítimo (art. 2). Los artículos restantes del acuerdo (5 al 9) se encargan de regular la más amplia cooperación entre las partes para conservar y explotar los recursos localizados en sus respectivas áreas marítimas, la investigación científica, la colaboración técnica, la formación de empresas mixtas y facilitar la navegación internacional en aguas sometidas a su soberanía o jurisdicción.

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208. Convenio sobre delimitación de áreas marinas y submarinas y cooperación marítima entre las Repúblicas de Colombia y del Ecuador, firmado el 23/8/75, entró en vigor el 22/12/75; *Limits in the Seas*, No. 69, 1 de abril de 1976; *Acuerdos sobre fronteras marítimas* 1970-1984, pág. 250; *Conforti & Francalanci*, 1987, pág. 195; *Charney & Alexander*, t. I, pág. 815; HOLGUIN SARRIA, *Límites de Colombia...*, págs. 55-57; *Beer-Gabel*, f. 54.

209. Ecuador proclamó un sistema de líneas de base rectas a lo largo de sus costas de tierra firme y alrededor de las Islas Galápagos (*Limits in the Seas*, No. 42) y Colombia, por su parte, promulgó el Decreto 1436 el 13 junio de 1984 para establecer un sistema de líneas de base rectas en el Pacífico, desde la Bahía San Ignacio hasta el Cabo Manglares (*Limits in the Seas*, N0. 103); REMIRO BROTONS, A., «Problemas de fronteras en Iberoamérica: la delimitación de espacios marinos», *La Escuela de Salamanca y el Derecho Internacional en América: Del pasado al futuro*, Ed. Araceli Mangas Martín, Salamanca 1993, pág. 119 y ss.

c.15. CHILE - ECUADOR - PERÚ

El 18 de agosto de 1952, Chile, Ecuador y Perú celebraron la primera conferencia sobre la Explotación y Conservación de los recursos marítimos del Pacífico Sur. Los Estados aprovecharon la oportunidad para proclamar en el art. 2 de la Declaración sobre Zonas Marítimas (Declaración de Santiago de 18 de agosto de 1952)[210] que cada uno de los tres Estados ejerce soberanía y jurisdicción en las áreas marítimas adyacentes a sus costas hasta una distancia de 200 millas[211].

Para delimitar el suelo y subsuelo del mar adyacente a sus costas, los tres Estados decidieron establecer una línea fronteriza trazada a lo largo de paralelos de latitud, desde el punto en que la frontera terrestre entre ellos llega al mar (art. IV). De esta manera, la línea fronteriza entre Chile y Perú se extiende a lo largo del paralelo de latitud Sur 18° 23' 03" que coincide con el paralelo de latitud con el que ambos Estados han fijado el punto nº 1 de su frontera terrestre. Entre Ecuador y Perú la línea de delimitación está constituida por el paralelo 03° 33' 96", que comienza en la desembocadura del Río Tumbers en el Océano Pacífico. Las líneas fronterizas poco tienen que ver con una línea equidistante, en consecuencia, el área marítima correspondiente a Perú es mucho más pequeña de la que hubiera correspondido, de haberse trazado una línea media en ambos flancos.

Para completar el proceso de delimitación, los tres Estados crearon una zona fronteriza especial, mediante la adopción de una segunda declaración tripartita el 4 de diciembre de 1954[212]. La Declaración crea una zona especial de 10 millas náuticas a cada lado de los paralelos de latitud que forman la frontera marítima entre las partes respectivas. La zona especial fue creada a partir de las 12 millas de las costas respectivas para evitar conflictos entre las

210. Declaración de Chile, Ecuador y Perú sobre la Zona Marítima (Santiago de Chile, 18 de agosto de 1952). Véase, *La Actual Revisión del Mar* II, pág. 306, en relación a sus fundamentos TEITELBOIM S., *Chile y la Soberanía en el Mar*, Editorial Andrés Bello, 1966, pág. 154; AGUILAR MAWDSLEY, A. «Law of the Sea: The Latin American View», *The New Order of the Oceans: The Advent of a Managed Environment*, ed. Giulio Pontecorvo, Columbia University Press, New York, 1986, págs. 166-7. El prof. SCOVAZZI califica de imaginativas y extralegales, las justificaciones que los Estados firmantes de la Declaración, esgrimieron para invocar derechos de soberanía sobre una zona marítima de 200 millas: «Explaning Exclusive Fishery Jurisdiction», *Marine Policy*, 1985, vol. 9, pág. 120.

211. Acuerdo entre el Gobierno de Chile y el Gobierno de Perú relativo a la delimitación marítima entre Chile y Perú, firmado el 18/8/1952 y entró en vigor el 23/9/1953, *Limits in the Seas* No. 86, 2 de julio de 1979 y No. 88, 2 de octubre de 1979; *Conforti & Francalanci*, 1987, pág. 199; *Charney & Alexander*, t. I, pág. 799; *Beer-Gabel*, f. 2.

212. *Charney & Alexander*, t. I, pág. 836.

partes, por la presencia accidental de pescadores de uno y otro Estado en referida zona (véanse las figuras 41 y 42 del anexo cartográfico).

A finales de los años ochenta, Perú intentó reabrir la delimitación realizada con Chile, proponiendo la aplicación de principios equitativos e invocando los nuevos límites de la ZEE y la gran extensión de zona marítima donde se encuentra situada el área delimitada. Como era de esperar, Chile se negó a discutir el asunto y a realizar cualquier modificación en los tratados que regulan la cuestión[213].

c.16. SUECIA - NORUEGA

Con la solución del Caso *Grisbadarna* el 23 de octubre de 1909 por un tribunal de arbitraje, quedó definida la frontera marítima que separa los mares territoriales entre Noruega y Suecia[214]. Un acuerdo concluido por las partes en 1968 extendió la línea fronteriza a través de la plataforma continental entre *Skgerrak* y *Kattegat*[215]. La línea empieza su recorrido en el este, a partir del punto en que concluye la frontera que delimita el mar territorial (58° 54' 50.2" latitud norte, 10° 45' 28.1" longitud este), desde aquí se extiende hacia el oeste hasta concluir en un punto de convergencia triple con Dinamarca (58° 15' 41.2" latitud norte, 10° 01' 48.1" longitud este).

Se trata de un línea equidistante simplificada (art. 1), que mide 48 millas (89 km) de longitud y está realizada sobre cinco puntos, cuya posición fue definida mediante coordenadas de latitud y longitud entre las costas adyacentes del sector noreste y las costas opuestas del sector suroeste. La posición de los 5 puntos fue definida según *datum* de Europa (primer ajuste de 1950). Conviene señalar que las partes habían ratificado el Convenio de Ginebra de 1958 sobre Plataforma Continental, lo que potenció la aplicación del método de la equidistancia previsto en su art. 6.

Los segmentos que unen los puntos 1, 2 y 3 fueron trazados en forma de líneas rectas (líneas de compás); en cambio, los segmentos que unen los pun-

213. ORREGO VICUÑA, F., «International Ocean Developments in the Southeast Pacific: The Case of Chile», *The International Implications of Extended...*, pág. 221.

214. Award delimiting the Maritime Frontier between Norway and Sweden, given at the Hague, *The Consolidated Treaty Series*, Edited and Annotated by Clive Parry, Beccles and London, 1980, vol. 209 (1909), pág. 396; SHARMA, *Delimitation of Lan...*, págs. 139-140; O'COONNELL, *The International Law of the Sea*, vol. II, pág. 663.

215. Agreement between Norway and Sweden Relating to the Delimitation of the Continental Shelf, firmado el 24/7/1968, entró en vigor el 18/3/1969, *UNTS* vol. 968, pág. 243; *Acuerdos sobre sobre fronteras marítimas* 1970-1984, pág. 25; *Conforti & Francalanci*, 1979, pág. 25; *Charney & Alexander*, t. II, pág. 1876; *Beer-Gabel*, f. 20.

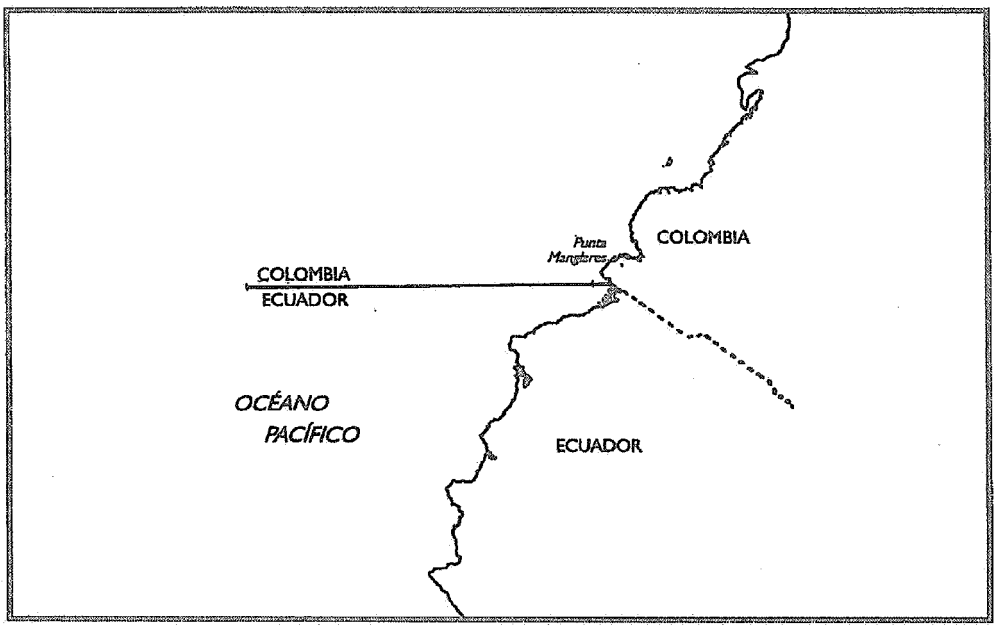


Figura 40 Colombia - Ecuador

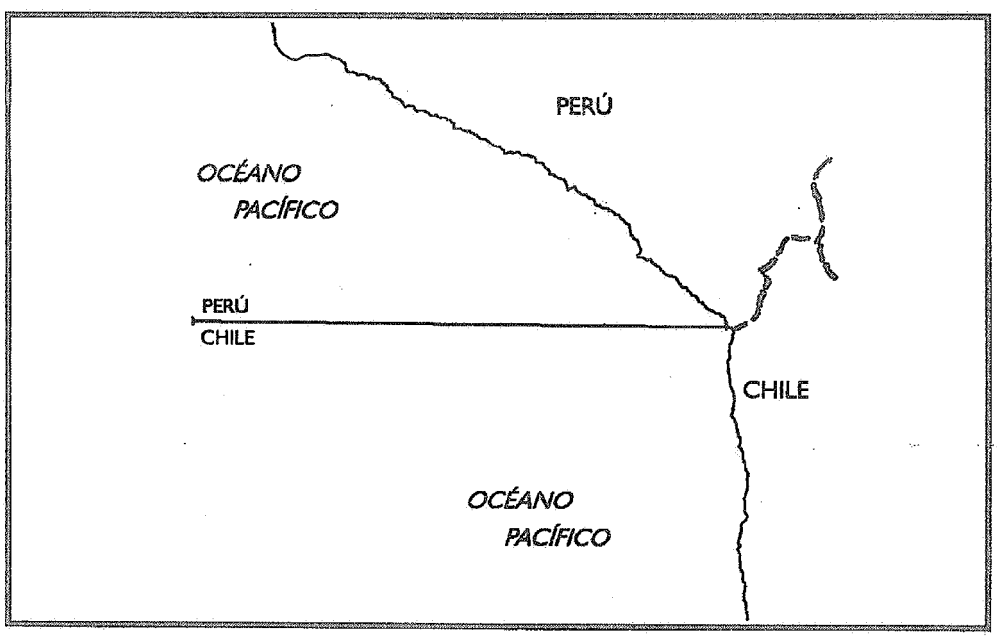


Figura 41 Chile - Ecuador - Perú

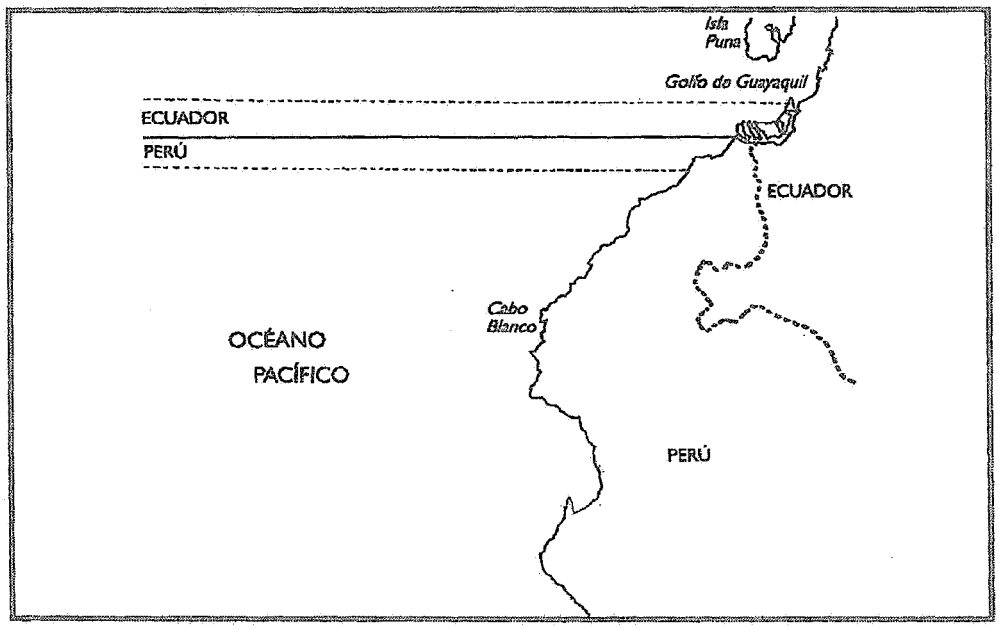


Figura 42 Ecuador - Perú

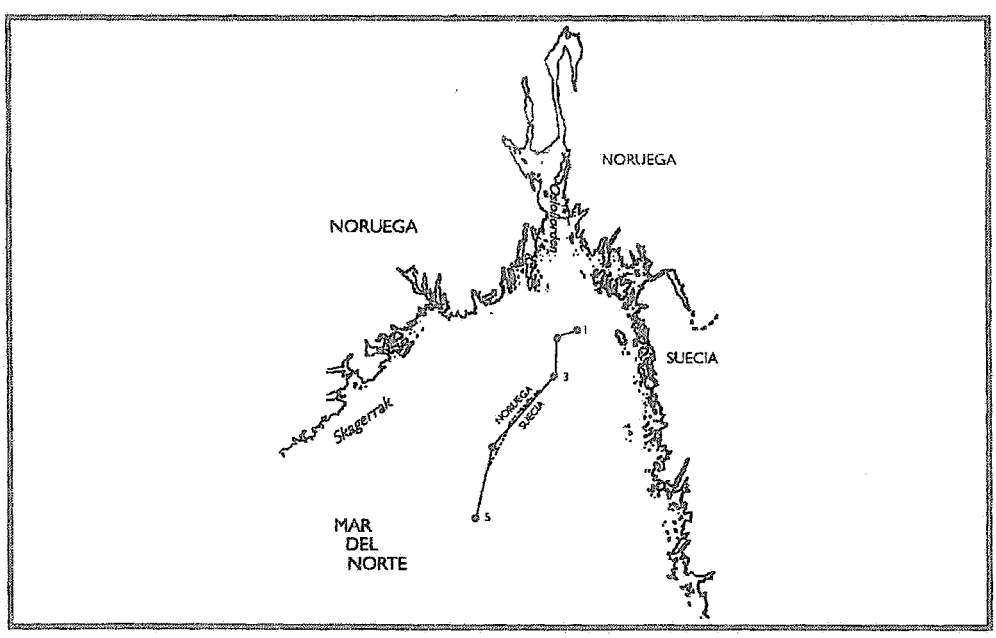


Figura 43 Suecia - Noruega

[…]

To delimit the marine and submarine areas located between Colombia and Ecuador in the Pacific Ocean, both States decided to apply the delimitation methods established in the Santiago Declaration, adopted by Chile, Peru and Ecuador on 19 August 1952.

[…]

To delimit the seabed and subsoil of the sea adjacent to their coasts, the three States decided to establish a frontier line drawn along the parallels of latitude, from the point where the land frontier between them reaches the sea (art. IV). This way, the frontier line between Chile and Peru extends along the parallel of latitude South 18º 23' 03", which coincides with the parallel of latitude with which the two States have set point No. 1 of their land frontier.

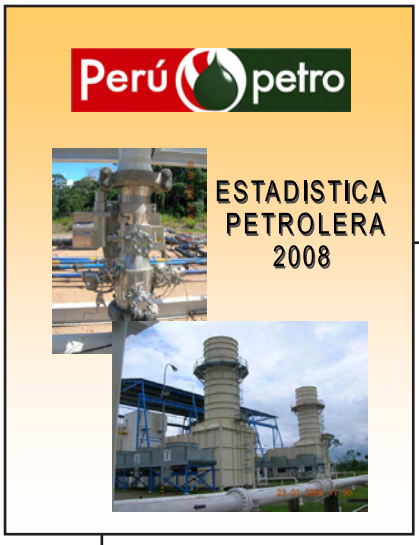
[…]

OTHER DOCUMENTS

Annex 318

Perupetro, *Estadística Petrolera 2008*

Website of Perupetro



CONTENIDO

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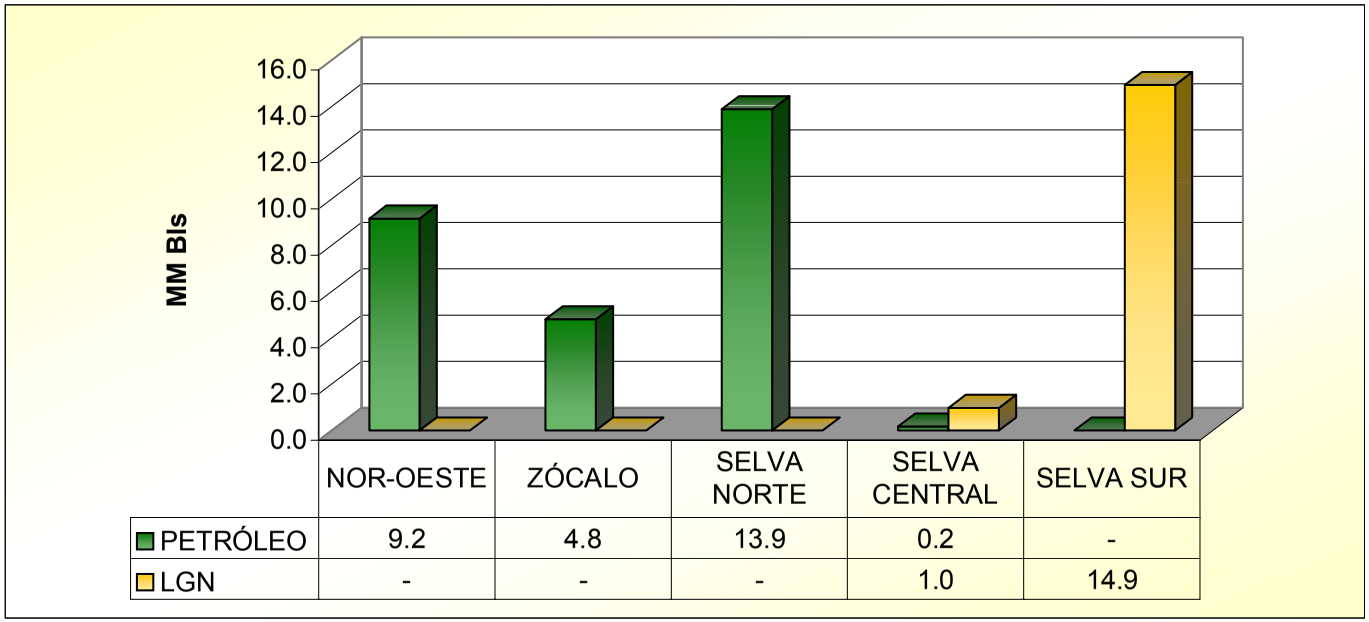
10 CONVENIOS VIGENTES AL 31.12.2008

11 MAPAS

PRODUCCIÓN FISCALIZADA POR ZONA GEOGRÁFICA - 2008

ZONA	PRODUCCIÓN FISCALIZADA (Bls)		TOTAL	PROMEDIO	(%)
	PETRÓLEO	LGN	(Bls)	(Bls/d)	
NOR-OESTE	9,158,644	-	9,158,644	25,024	20.8
ZÓCALO	4,805,579	-	4,805,579	13,130	10.9
SELVA NORTE	13,885,691	-	13,885,691	37,939	31.6
SELVA CENTRAL	177,167	976,226	1,153,393	3,151	2.6
SELVA SUR	-	14,927,069	14,927,069	40,784	34.0
TOTAL	**28,027,081**	**15,903,295**	**43,930,376**	**120,028**	**100.0**

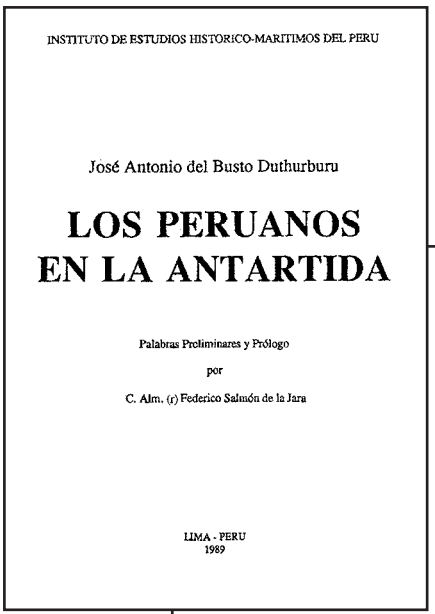


FISCALIZED PRODUCTION BY GEOGRAPHIC ZONE - 2008

ZONE	FISCALIZED PRODUCTION (Bbl)		TOTAL	AVERAGE	(%)
	OIL	LNG	(Bbl)	(Bbl/d)	
North -West	9,158,644	-	9,158,644	25,024	20.8
Shelf	4,805,579	-	4,805,579	13,130	10.9
North Forest	13,885,691	-	13,885,691	37,939	31.6
Central Forest	177,167	976,226	1,153,393	3,151	2.6
South Forest	-	14,927,069	14,927,069	40,784	34.0
TOTAL	**28,027,081**	**15,903,295**	**43,930,376**	**120,028**	**100.0**

Annex 319

J. A. del Busto Duthurburu, *Los Peruanos en la Antártida*, 1989


INSTITUTO DE ESTUDIOS HISTORICO-MARITIMOS DEL PERU

José Antonio del Busto Duthurburu

LOS PERUANOS EN LA ANTARTIDA

Palabras Preliminares y Prólogo

por

C. Alm. (r) Federico Salmón de la Jara

LIMA - PERU
1989

PALABRAS PRELIMINARES

La realización del viaje científico del B.I.C Humboldt *a la Antártida es el primer paso del Perú para alcanzar su reconocimiento como Miembro Consultivo del Tratado Antártico y cumplir así un justo anhelo nacional que comienza a hacerse realidad con la declaración de la Asamblea Constituyente de 1979, seguida por la adhesión del Perú al Tratado Antártico el 10 de abril de 1981.*

Como consecuencia lógica se crea la Comisión Nacional de Asuntos Antárticos en 1983, elemento administrativo de carácter permanente en relación con todos los aspectos políticos, jurídicos, económicos, científicos, técnicos y otros vinculados a la Antártida. La comisión de carácter multisectorial, incluye los ministerios, organismos y entidades relacionadas con su misión.

Este libro escrito por el Dr. José Antonio del Busto, destacado historiador y Miembro de Número fundador del Instituto, embarcado en el B.I.C. Humboldt *como cronista del viaje, no es sólo el relato de la primera expedición científica a la Antártida de un buque enarbolando el pabellón peruano. El Instituto de Estudios Histórico Marítimos del Perú desea también en él, testimoniar su homenaje a quienes lo hicieron posible y lo hicieron bien:*

El Alto Mando Naval
El Director Ejecutivo de la Expedición
El Jefe de la Expedición
El Instituto del Mar del Perú
La Dirección de Hidrografía y Navegación de la Marina
El Comandante del B. I. C. Humboldt
Los oficiales y la dotación del buque
El personal científico y técnico
Oficiales de nuestro Ejército y Fuerza Aérea presentes a bordo
El representante a bordo de Relaciones Exteriores.

puerto de Pisco. Las aguas verdes, mansas, ligeramente rizadas, más quietas no podían estar. Un pelícano flotaba con el pico descansado sobre el pecho, varias gaviotas se disputaban aleteantes los despojos de un pez. Los piqueros, por su parte, quebraban su vuelo y se precipitaban en inesperada zambullida creando flores de espuma.

El buque recibía el sol a plomo. La tierra que quedaba a su costado-tierra seca, arenosa, sin vegetación- no decía nada a decía poco sobre su esplendoroso pasado. Allí había morado el Hombre de Paracas, primer horticultor de nuestra costa e inventor de las redes de pescar; después surgió la Cultura Paracas, que brindó al mundo los famosos mantos bordados y policromados. Del horticultor-pescador nos separaban 10,000 años, de la gran cultura textil 2,500. Pero el Hombre de Paracas era uno de nuestros antepasados que subían hasta el Hombre de Paccaicasa, en Ayacucho, el primer habitante conocido del Perú; y la Cultura Paracas, una de las veinte grandes culturas aborígenes hasta la aparición de los Incas, culminación de este proceso. El Perú como Patria tenía 20,000 años de existencia. En otras palabras, éramos la patria más vieja de América del Sur. Las costas paraquenses serían hoy áridas, desérticas, sin vida, pero no exentas de historia y de mensaje. Al recalar en este sitio, la expedición recibía el aliento de los antepasados.

En el terminal San Martín, repito, pasamos la mañana y la tarde. Al finalizar ésta, a la cinco y cuarto, se dio la orden de zarpar. Empezamos a salir al mar en medio de un centenar de gaviotas. Pasamos frente a El Candelabro, geoglifo muy antiguo en la falda de un cerro peninsular -obra de indios prehispánicos, según unos, de piratas seiscentistas, según otros-mientras a estribor estaban las islas Ballestas con sus crestas blancas de guano. Allí habitan lobos marinos y pingüinos peruvianos, remotamente oriundos de la Antártida. Comenzó a soplar el viento y a inquietarse el mar, se dio un último rodeo a la península arenosa, entramos de lleno a la mar salada y la proa se puso en dirección a Valparaíso.

Miércoles 6 de enero de 1988

El clima comenzó a cambiar levemente. Los pasamanos exteriores empezaron a cubrirse de sal. Una gaviota nos sigue, volando paralelamente al buque, desde temprano. Estamos a 150 millas de la costa, el mar está tranquilo, el horizonte luce completamente circular.

En algún momento de la mañana hubo un simulacro de incendio, interviniendo, como era de rigor, el Grupo de Ataque y el Grupo de Apoyo, todos sus

integrantes con sus uniformes de faena y cascos colorados. Mandaba el Grupo de Ataque el Jefe del Departamento de Ingeniería y lo integraban el hombre-máscara con su atuendo aluminizado, el hombre-pitón y el hombre-manga, el segundo hombre-pitón con su correspondiente hombre-manga, el hombre hacha, dos hombres-extintores, un electricista y tres tripulantes con la bomba, el sistema Ridde y la moto-bomba. Conformaba el resto un mensajero, dos camilleros y el médico con un par de enfermeros, corriendo a cargo de estos últimos el servicio de enfermería y primeros auxilios. El Grupo de Apoyo lo mandaba el Jefe de Cubierta y reunía trece hombres señalados entre los tripulantes y pescadores. Este postrer agrupamiento hacía actuar a sus hombres sólo como suplentes del Grupo de Ataque. El zafarrancho de incendio fue el primero de varios simulacros que advertían fuego a bordo y se convocaban por medio de cinco timbradas. En síntesis, fue rápido, organizado y espectacular, y daba confianza de efectividad.

La tarde se empleó en perfeccionar algunas operaciones, por eso hubo ruido de martillos y taladros. Todos los trabajos se realizan al son de música peruana que brota de las grabadoras de los tripulantes. Unas veces se escuchan huaynos cordilleranos; otras, valses litoraleños. Los tripulantes son costeños y serranos en su mayoría, siendo los de la selva relativamente pocos por que cumplen su servicio esencialmente en los ríos de la Amazonía. Pero todos saben que el Perú es un país andino y cholo y eso los hace hijos de la Nación peruana. En otras palabras, los une la conciencia nacional.

Alrededor de las cuatro de la tarde, el Segundo Comandante dictó a los tripulantes una charla sobre la Antártida, para que terminen de conocer el tema y aclaren sus posibles dudas.

Hora y media después, algo antes del ocaso, el cielo se puso rojo y cruzamos el paralelo limítrofe con Chile.

Jueves 7 de enero de 1988

Hoy, dentro de la rutina de la mañana, se oyó y vio un avión militar chileno pasar sobre el *Humboldt*, de proa a popa, dar un gran rodeo y regresar, perdiéndose luego hacia el sur. Era de la base de Iquique y estaba en misión de patrulla. Dicen que dejó un mensaje de bienvenida. Lo importante es que su presencia a 200 millas de la costa, a las nueve y diez de la mañana, nos hizo ver que el tiempo a seguir estaba bueno.

Los tripulantes trabajan en las misiones que tienen asignadas. Es lo que se llama la rutina de a bordo y ellos la tienen que cumplir. Y la cumplen con

[…]

Wednesday, 6 January 1988

[…]

Around four in the afternoon, the Second Commandant gave a speech about Antarctica to the crew, in order that they understand fully the topic and clarify any doubts they may have had.

One and a half hours later, just before sunset, the sky turned red and we crossed the boundary parallel with Chile.

[…]

Annex 320

FAO Fisheries Statistics Query Results.

Website of the Food and Argriculture Organization

FAO Fisheries Statistical Query Results

World Catch in 1970 by country: Quantity (tonnes)

Land Area	Ocean Area	1970
Canada	Marine areas	1 127 098
Chile	Marine areas	1 101 200
China	Marine areas	1 592 500
Colombia	Marine areas	16 000
Denmark	Marine areas	1 183 900
Ecuador	Marine areas	80 820
Iceland	Marine areas	722 400
India	Marine areas	941 400
Japan	Marine areas	7 225 148
Norway	Marine areas	2 895 767
Peru	Marine areas	12 467 900
South Africa	Marine areas	1 204 700
Spain	Marine areas	1 213 864
United Kingdom	Marine areas	1 017 867
United States of America	Marine areas	1 569 300
Grand total		34 359 864

FAO Fisheries Statistical Query Results

World Catch by year: Quantity (tonnes)

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Land Area	1952	1960	1961	1962	1963	1964	1965
Africa	1 131 700	1 607 100	1 788 781	1 913 449	2 019 949	2 267 988	2 298 319
Americas	2 623 663	6 849 331	8 835 392	10 930 909	10 834 756	13 347 785	11 445 849
Asia	6 230 479	9 315 488	9 936 656	10 158 638	10 184 345	10 895 165	11 614 470
Europe	6 472 109	7 024 114	7 386 272	7 491 595	7 847 827	8 572 086	9 724 495
Oceania	70 200	99 189	100 234	106 315	109 096	106 773	112 127
Un. Sov. Soc. Rep.	1 018 400	2 175 476	2 287 413	2 623 495	3 161 392	3 508 448	3 954 396
Grand total of world catch	17 546 551	27 070 698	30 334 748	33 224 401	34 157 365	38 698 245	39 149 656

Land Area	1966	1967	1968	1969	1970	2007
Africa	2 515 146	2 806 118	3 199 861	3 134 728	2 526 902	4 398 744
Americas	13 365 147	14 361 276	15 336 870	13 711 778	17 502 689	17 580 208
Asia	12 113 487	13 025 100	14 144 589	14 682 149	15 416 802	30 837 511
Europe	10 430 033	10 887 961	10 667 676	10 095 139	10 765 706	11 674 073
Oceania	123 054	124 277	125 707	127 005	147 243	1 071 362
Un. Sov. Soc. Rep.	4 248 676	4 605 847	5 070 058	5 615 399	6 151 031	-
Grand total of world catch	42 795 543	45 810 579	48 544 761	47 366 198	52 510 373	65 561 898

Peru's Catch by year: Quantity (tonnes)

Land Area	1952	1960	1961	1962	1963	1964	1965
Peru	106 600	3 496 600	5 208 800	6 877 500	6 815 700	9 028 100	7 376 700

Land Area	1966	1967	1968	1969	1970	2007
Peru	8 702 500	10 046 500	10 433 500	9 132 300	12 467 900	6 655 123

Peru's Share of the Total World Catch by year

	1952	1960	1961	1962	1963	1964	1965
Grand total of world catch	17 546 551	27 070 698	30 334 748	33 224 401	34 157 365	38 698 245	39 149 656
Peru's catch	106 600	3 496 600	5 208 800	6 877 500	6 815 700	9 028 100	7 376 700
Peru's share of the total world catch by year	**0,60%**	**12,9%**	**17.2%**	**20.7%**	**19.9%**	**23.3%**	**18.8%**

	1966	1967	1968	1969	1970	2007
Grand total of world catch	42 795 543	45 810 579	48 544 761	47 366 198	52 510 373	65 561 898
Peru's catch	8 702 500	10 046 500	10 433 500	9 132 300	12 467 900	6 655 123
Peru's share of the total world catch by year	**20.3%**	21.9%	**21.5%**	**19.2%**	**23.7%**	10.1%

Statistical Query Results
Production: Quantity (t)

Land Area	Ocean Area	1952	1970	2007
Chile	Marine areas	95 300	1 101 200	3 567 232