PERUVIAN-UNITED STATES RELATIONS OVER MARITIME FISHING: 1945-1969

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Nineteen hundred sixty-nine has been a year of unprecedented acrimony between the governments of Peru and the United States. Ill-will between the two nations has resulted from difficulties surrounding the International Petroleum Company (IPC), the curtailment of the sales of United States Arms to Peru; a recent Peruvian-Soviet trade pact, and the seizure of United States tuna vessels by the peruvian Navy on the high seas. While many United States citizens have been shocked by the recent attacks upon our vessels, historical record indicates that maritime difficulties between the two nations date back to the years immediately following World War II. In addition to the fact that Peru has seized four United States vessels since January, other Latin American Republics, including Mexico, Honduras, Panama, Colombia and Ecuador have also participated in similar activities. In fact, the relations between the United States and Peru with regard to fishery interests constitute a kind of fugue, with acute conflict breaking out against a background of tentative conciliation.

The following is a short study of Peruvian-United States relations over maritime fishing. In looking into the nature of the problem between these two nations, it is relevant to examine the historical-legal background of the problem; the recent seizures, and the response by the United States Government. Despite the hemispheric scope of the problem, and its existence for over two decades, it is significant that agreements over fishing have been hammered out which may yet serve as legal-fishery precedents for this knotty maritime issue. It is not only important that this problem be settled so as to improve inter-American relations, but also, to guard for the future, the continued productivity of world fishery stocks.

I. Legal Background

The seizure of United States tuna vessels off Peru in 1969 is the result of that nation's claim to sovereignty to waters beyond the 12 mile limit designated and recognized by international law as high seas. Although actual claim

to extended territorial limits is the result of post World War II legislation by Peru, legal precedent for Peru's actions can be traced back to the opening years of the First World War, when that nation was particularly concerned with the conduct of hostilities off its coast. On December 8, 1914, the Governing Board of the Pan American Union met in Washington, D. C., where Senor Federico Alfonso Pezet, Minister of Government from Peru, presented a memorandum concerning the rights of neutral American States. Pezet declared that the American republics "...cannot admit that their commerce, within the maritime area belonging to the continent - supposedly bounded equidistant on the Atlantic side - be subject to the contingencies of the present war..." and that the nations of this hemisphere should establish a zone of neutrality which "... would impose respect for the affected American interests, a respect that up to the present time does not seem to have entered into the minds of the belligerent powers".[1] This proposal, along with similar proposals from other Latin American States, was the first manifestation of concern by these countries regarding maritime rights. The concern about acts of war in 1914 would, after 1945, be transferred to concern over the intrusion of United States tuna vessels into what they claimed as their territorial waters.

The seed planted by one of the Latin American republics in World War I sprouted with the onset of World War II. The United States now gave the impetus to champion the rights of hemisphere and its coastal states. At the meeting of the hemispheric foreign ministers at Panama in September, 1939, the United States government was instrumental in encouraging its neighbors to create a maritime zone or belt that would protect the neutral American nations from involvement in the European war. In the Declaration of Panama, the American republics insisted that

> the waters to a reasonable distance from their coasts shall remain free from the commission of hostile acts or from the undertaking of belligerent activities by nations engaged in a war in which the said governments are not involved.[2]

This zone circled the hemisphere from the Canadian border with the United States on Passamaquoddy Bay in 44°46'36" north latitude, and 66°54'11" west longitude, around the hemisphere to the Pacific terminus of the United States-Canadian boundary in the Straits of Juan de Fuca,[3] in some places extending out 300 miles.

In the year following the Declaration of Panama many jurists commented on the legality of this new statute. In November, 1940, Professor William E. Masterson of Temple University wrote, "The Declaration of Panama observes this distinction: its zone of security does not extend territorial waters beyond their existing limits." Masterson evaluated the Declaration as legitimate law and concluded:

> The legality of the zone of security may, perhaps be tested by the law of self-preservation. This well-known law underlies creation itself and supersedes all that would oppose it. It may be invoked when it is necessary to secure existence, supply essential economic wants, and to insure freedom from political tyranny. This cherished doctrine of freedom of the seas gives way before it. Consequently, if the Declaration of Panama is found to be essential to our security of existence and our democratic way of life, it has the support of the law of nations [italics mine].[4]

The words "security of existence and our democratic way of life" were of primary importance in 1939 as a rationale for the Declaration of Panama. In the years following the Declaration, Peru, along with other Latin American states, would claim extended territorial waters for the purposes of conservation and natural resources. Thus the Declaration of Panama and the actions by Peru and her sister Latin American republics stemmed from different origins. It should be noted, however, that whenever they were threatened, all American nations regarded the waters adjacent to their coasts as special areas wherein they could exercise rights of jurisdiction and de facto sovereignty. Thus the Declaration of Panama was a tacit legal precedent for the substutition of a broader zone of territorial waters than had previously been legally accepted. In the years following the Second World War, inter-American devices used to

inhibit aggression towards the western hemisphere were again utilized by some Latin American nations to inhibit the actions of United States fishing fleets.

The incident which triggered a flood of Latin American unilateral proclamations extending territorial waters resulted from actions by the United States. In the mid-1930's the salmon industry of the Pacific Northwest and Alaska demanded protection from the intrusion of Japanese motherships. The industry requested aid from Washington to help solve this complex fishery problem. Secretary of State, Cordell Hull, assured Senator Lewis B. Schwellenbach from Washington that something would be done by the United States Government to aid the fishermen. The United States and Japan began the negotiations on this matter in 1937

> which resulted in the Japanese withdrawing their fleet from salmon fishing in Bristol Bay in 1938 and for subsequent years...This problem was not brought to any solution until the conclusion of the convention establishing the International North Pacific Fisheries Commission in 1953...[5]

All the West coast fisheries were disrupted by the Second World War. In 1945 the Alaskan fishermen again sought government help for the protection of their fishery. They hoped that the President would assert United States rights in the high sea similar to his claim to 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 pertaining to the United States subject to its jurisdiction and control".[6] The fishermen believed that a similar action by the President to assert the right of the United States to proclaim exclusive conservation zones in the high seas off its coasts would solve their pressing problems. On September 28, 1945, President Harry S. Truman issued his proclamation regarding the Policy of the United States with respect to Coastal Fisheries in Certain Areas of the High Seas. The most important section of the proclamation contained the following sentences:

> ...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 activities have been or shall be subject to the regulation and control of the United States. Where such activities have been or shall hereafter be legitimately developed and maintained jointly by nationals of the United States and nationals of other States, explicitly bounded conservation zones may be established under agreements between the United States and such other States; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements.[7]

Great confusion has arisen from this paragraph. Some nations, especially in Latin America, believed that the Truman Proclamation set up conservation zones in the high seas which the United States administered. This was not done. Dr. Wilbert M. Chapman, the Special Assistant to the Under Secretary of State for Fisheries and Wildlife, succinctly interpreted the meaning of the fishery proclamation when he wrote in United States Department of State Bulletin in 1949 what the Proclamation did do. Chapman noted that the President "might set up zones in the high seas in order to conserve fisheries without regard to the limitations of territorial waters.."[italics mine].[8] Eighteen years later, in 1967, Chapman wrote what the Truman Proclamation did not do.

> While the proclamation claimed the right of the United States to establish such fishery conservation zones on the high seas adjacent to its coasts, it did not purport to claim any right by the United States to regulate the activities of foreign fishermen in these zones except by agreement between the United States and those nations. In essence, this second proclamation not only did not purport to change existing international law, it confirmed it so far as the United States was concerned [italics mine].[9]

Within a few months after the issuance of the Truman Proclamation, the first group of Latin American coastal nations extended their territorial sea and their fishing rights. These acts not only imitated the trend of the

Truman Proclamation but were seen by Latin American nations as the way to protect their own sea resources.

Another reason for the new Latin American actions in regard to the territorial sea was the chaotic state of international law of the subject. Perhaps the differences of interpretation of international law were the key reasons for all these Western Hemisphere statements. Since there was no agreement that all nations accepted, the door was left open for any nation to state a theory.

The Latin American nations bordering the Pacific advanced unique reasons for their extended claims. They were based on a new scientific theory which concerned fishing and other industries. The following one was put forward by Peru: "Under a 'biological complex' or 'bioma' theory there is asserted to be an anchovy-cormorant-guano relationship. Depletion of anchovy by overfishing leads to depletion of bird flocks and hence a decrease of guano deposits."[10]

If clippers from the United States and other foreign countries "stole" their fishing crop, the Peruvians believed they would lose not only their fish but also their guano.

At the same time that west coast Latin American nations championed the above theory, they also believed that many small organisms, including plankton, sardines, sprats, and menhaden, lived near the shore and appeared at

> certain times and places for the purpose of feeding and in doing so provide food for the larger pelagic fish...the larva of these feed on the plankton in the water above the continental shelf, which are generally more productive than that of off-shore waters.[11]

However, Dr. Milner B. Schaefer, Director of the Institute of Marine Resources at Scripps Institute of Oceanography in La Jolla, California, disavows their hypothesis and wrote in 1967

> The statement to the effect that the fish and other sea life in most places are heavily dependent on the waters above the continental shelf is not generally true. Many

> rich fishing areas of the sea have no connection with the shelf, such as the high seas fisheries off Peru, and the fisheries along the equatorial zone in the Pacific and Atlantic Oceans, which are dependent on upwelling phenomena having nothing to do with the shelf.[12]

An analysis of the Latin American proclamations over territorial waters reveals that they were not based on the Continental Shelf because some of them went so far as to claim a minimum of two hundred miles. There was also a difference between the Truman Proclamation, which considered the rights of other nations, and the nonexistence of such recognition in the Latin American unilateral proclamations. Many Latin American doctrines were pretexts to extend the territorial sea, a motive foreign to the concept of the Truman Proclamation regarding coastal fisheries. These extended Latin American boundaries were a move to raise revenue from the high-seas area at the expense of some states to permit foreign fishermen if they paid a license or entry fee. Latin American claims were based on economic considerations - the most important being fisheries.[13]

Sixteen Latin American nations have issued proclamations on the Continental Shelf and territorial waters. These decrees have been stated in presidential proclamations, legislative acts, and constitutions. The Peruvian Government, in Presidential Decree No. 781, of August 1, 1947, claimed sovereignty over the Continental Shelf and a zone of 200 miles. Misinterpreting the Truman Proclamation on Coastal Fisheries, the Peruvian Government cited the United States action as precedent setter in claiming sovereignty over high seas areas. On July 2, 1948, the United States government protested the actions of the Peruvian Government and noted that the Peruvian act differed in large measure from the United States Proclamation in that (1) the Peruvian Decree declare[d] national sovereignty over the continental shelf and over the seas adjacent to the coast of Peru outside the generally accepted limit of territorial waters and (2) the Decree fail[ed], with respect to fishing, to accord recognition to the rights and interests of the United States in the high

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

States government moved toward enactment of a law to help the fishing industry. On August 27, 1954, Public Law 680[24] stated that if a United States vessel were seized by a foreign country on the basis of rights and claims not recognized by the United States government, the Secretary of State would as soon as possible take action to aid the crews and vessel. The Secretary of the Treasury would reimburse the owners of the vessel if fines had been levied and payment made for the crew and the vessel's release. It stated finally, that the Secretary of State

> shall take such action as he may deem appropriate to make and collect on claims against a foreign country for amounts expended by the United States under provisions of this Act because of the seizure of a United States vessel by such country.[25]

In summarizing this action, it is significant that the United States Congress took a definite position to back up its fleets with the prestige and power of the government, not just its sentiment.

Fourteen years after the enactment of the above mentioned law, the United States passed "An Act to Amend the Act of August 27, 1954, relative to the unlawful Seizure of Fishing Vessels of the United States by Foreign Countries".[26] Under the provisions of this act, the Secretary of State, upon receipt of an application filed with him, by the owner of any vessel which is documented and certified as a commercial fishing vessel, shall enter into an agreement with such owner subject to the provisions of the act in which the Secretary of State shall guarantee the owner of such vessels for "all costs...incurred by the owner during the seizure and detention period and as a direct result thereof, as determined by the Secretary, resulting (a) from any damage to, or destruction of, such vessel, or its fishing gear or other equipment, (b) from the loss or confiscation of such vessel, gear, or equipment, or (c) from dockage fees or utilities..." The act also stipulated that Secretary of State would also pay the owner of such vessel and its crew for the market value of fish caught before seizure of such vessel as well

as confiscated or spoiled during the period of detention. Another key feature of the act authorized the curtailment of foreign aid funds by the United States Government to the nation which seized the fishing vessel "if such country fails or refuses to make payment in full within one hundred and twenty days after receiving notice..." by the Secretary of State "equal to such unpaid claim..."

Another tactic employed by the United States Government has been to scale down foreign aid to those nations seizing our fishing vessels. On September 6, 1965, Public Law 89-171 stated that the President could use his discretion

> in determining whether or not to furnish assistance under this Act, consideration shall be given to excluding from such assistance any country which hereafter seizes, or imposes any penalty or sanction against, any United States vessel on account of its fishing activities in international waters. The provision of this subsection shall not be applicable in any case government by international agreement to which the United States is a part.[27]

The United States Congress has also tried to curtail the seizures by Peru and its neighbors by stopping the sales of military weapons to such nations. On October 22, 1968, the Foreign Military Sales Act carried the following amendment sponsored by Representative Thomas M. Pelly of Washington. Public Law 90-629 states that

> no defense article or defense service shall be sold by the United States Government under this Act to any country which, after the date of enactment of this Act, seizes or takes into custody or fines an American fishing vessel engaged in fishing more than twelve miles from the coast of that country. The President may waive the provisions of this subsection when he determines it to be important to the security of the United States, and promptly so report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.[28]

This law was activated on February 14, when Peru seized the Mariner and harassed the San Juan. The curtailment of arms has caused concern in Lima and has encouraged anti-United States feeling which contributed to the diminished tour of Governor Nelson A. Rockefeller.[29]

This year's seizures have encouraged United States Congressman to advocate new measures which they hope will deter further aggression by Latin American riparian states. On February 20, Congressman Lionel Van Deerlin of San Diego, California, wrote President Richard M. Nixon and suggested that "our government assign to each fishing boat bound for areas known to be dangerous a small party of U.S. Marines, similar to the detachments placed on many Navy vessels".[30] Van Deerlin noted that the Marines would play merely a "defensive role". He believed that their presence on the tuna vessels would force the Latin Americans to "have second thoughts about boarding or firing on a fishing boat if they knew U.S. military personnel were aboard, for any hostility toward the vessel would constitute an act of aggression against the United States itself". The President has not yet acted on Van Deerlin's suggestion.

One of the problems complicating the seizure of United States vessels by Peru and other nations has been their use of United States naval vessels to carry out their acts. On July 18, 1958, this government enacted Public Law 85-532 "To Authorize the Transfer of Naval Vessels to Friendly Foreign Countries". For a period of five years Latin American nations including Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Uruguay, and Peru, received 18 ships. Under this act, one destroyer, the Isherwood, was loaned to Peru. Since 1966, Peru has been using the Isherwood on what United States officials refer to as an informal "tendency at will" arrangement.[31] On December 26, 1967, Public Law 90-224 authorized the extension of transfer of such vessels which included the destroyer, but also stipulated that any

> agreement for a new loan or for the extension of a loan executed pursuant to this Act shall be subject to the condition that the agreement will be immediately terminated upon a finding made by the President that the country with which such agreement was made seized any United States fishing vessel on account of its fishing activities in international waters... (By mid-1967, the United States had loaned Peru nine vessels for coastal patrol.)[32]

Following the February 14, 1969, incident, Edward A. Garmatz, Chairman of the House Committee on Merchant Marine and Fisheries wrote the President "requesting that the American destroyer, Isherwood, be recalled from Peru".[33] In late February, Garmatz received a letter from the President's office, dated February 24, stating that Presidential advisors were considering the Maryland Representative's proposals. Seizures of the Cape Anne and San Juan on March 19, 1969, by Peruvian naval vessels touched off a harsh reaction in Washington. The Maryland Democrat, along with 22 other House members introduced and were instrumental in managing the passage of House-Congress Resolution 173 (House and Senate) calling for the President not to extend the loan to Peru "of the destroyer which he is authorized to do under Public Law 90-224, and in view of the expiration of the original loan agreement authorized by Public Law 85-532, he should immediately take such action as may be necessary to insure the return of that vessel to the United States".[34] The resolution, expressing the feeling of the House and Senate, was sent to the Department of Defense. To date, no world has been heard on action taken by this Department.[35] In concluding this section it appears that all defensive actions taken by the United States government have been ineffective in stemming the tide of vessel seizures by Peru and West Coast Latin American nations.

IV. The United States, Chile, Ecuador and Peru: Attempts at Cooperation

Joint agreements between the three nations, Chile, Ecuador and Peru, in 1952 and 1954, have made it even more difficult for the United States to reach any separate agreement with Peru. In dealing with the three nations, the United States Government has had a most difficult time in working out equitable solutions over fishery matters with any one of them. Before looking at the attempts of the United States to work out accord with these three nations, it is significant to note that as late as 1967 Chile had a very small tuna indus-

try; Peru's is still very small while her anchovy industry is the greatest in the world. Peru, does however, have a bonito fishery. Ecuador, has a growing tuna industry, which is the result of great assistance by United States private capital and technology, especially from the Van Camp Sea Food Company.[36]

After two incidents in early 1955 between the Ecuadoran Navy and two United States fishing vessels, the United States government proposed that the CEP nations submit their claims to extended sovereignty and jurisdiction over the high seas to the International Court of Justice. The three nations refused. The United States, however, was successful in bringing about a meeting with the three nations in September, 1955. Conversations revolved around the Truman Proclamations, the "Bioma" theory, and the CEP claims. Although the United States Delegation had hoped to work out a modus vivendi with the three delegations it was only successful in carrying out a conference unmarred by disharmony and ill will. The Final Communique noted that the conference would be reconvened after the delegations had a chance to consult their respective governments.

A second full-scale conference between the United States and Representatives of the CEP block is expected to take place. In February, 1967, however, the Department of State proposed that the legal disputes regarding the question of territorial waters be submitted to the International Court of Justice, or to arbitration adjudication or that it be made the subject of a conference to be attended also by Japan and Canada, as these two countries were also significantly engaged in the tuna fishery off the Pacific coast of South America. Such a conference would preserve the legal position of participants but would attempt "an agreement setting up a conservation and management system for the waters off the west coast of South America with special consideration for the fishery problems of the coastal countries, and discuss a high seas fishery regime providing for full and wise use of the fishery resources

of the area".[38] After consulting amongst themselves, the three governments informed the United States that they were unwilling to participate in a conference of the kind proposed, and insisted upon maintaining their juridicial position and refused to consider the inclusion of Canada or Japan.[39]

By June 8, 1967, however, after apparent reconsideration of a United States' proposal, the CEP governments expressed their willingness to enter into talks of a technical and scientific nature for the purpose of arriving at a broader knowledge of the resources of the southeast Pacific Ocean. In November that year, the United States proposed a conference on conservation matters which, without affecting legal positions, would help to prevent difficulties arising from varying legal positions. In January, 1968, at a meeting in Lima, the proposal was studied. On February 8, 1968, Santiago, Lima, and Quito indicated their acknowledgement of the usefulness of holding a preliminary meeting clarifying the United States' proposal. Between April 17-19, 1968, the representatives from the four Governments and also the Secretary General of the Permanent Commission of the South Pacific Conference met in Santiago, Chile, to discuss fishery matters. Through Ambassador Donald L. McKernan, the United States delegation outlined a proposal for technical and scientific cooperation, and "among alternatives, the proposal of creating a possible organization that would cooperate in solving the problems relating to the matters that gave rise to the meeting".[40] The CEP delegations listened to proposals by the United States regarding a future meeting. The Communique, issued by the United States delegation on April 19 noted that these governments would "express an opinion on those proposals and...consider the advisability of a later conference..." The document also noted no shift in position by the governments on their respective legal positions but did note that "there were genuinely interesting prospects of attaining objectives that could only be achieved within the framework of a spirit of scientific,

technical, and commercial cooperation, which does not exclude the common desire to eliminate, in so far as possible, situations likely to give rise to disputes".[41]

In late January, 1969, it appeared that the solid CEP block, had indeed shattered. While Ecuadoran and Chilean governments appeared interested in a new conference, the Peruvian Foreign Minister, General Edgardo Mercado Jarrín insisted that the CEP block had agreed in December, 1968, in Peru to turn down Washington's proposal for a four power meeting. The Ecuadoran Government was interested in a conference as long as there was no diminishing of exclusive sovereignty and jurisdiction by the block of their claim to 200 miles.[42]

The chances of an early conference between the United States and the CEP block seemed to evaporate with the gunshots of Saint Valentine's Day. After the February 14 incident, however, one Latin American daily indicated that after the April, 1968, meeting only Chile had sustained interest in continued conversations on fishery matters with the United States.[43] Nevertheless, when United States Secretary of State, William P. Rogers spoke on March 17, 1969, to the United States Senate Foreign Relations Committee, he spoke on the desire of the United States Government to have another conference.

> In the light of our conflicting views on sovereignty, we would like such a conference to put aside the legal dispute and instead take up conservation, development of the fishing industry, and methods of permitting regulated fishing in the area by fishermen of all countries. Recent seizures have made it even more urgent that a practical solution be found.[44]

Hence, despite the continuing difficulties with the CEP block, the United States has not flagged in its enthusiasm for a fishery conference.

V. Peru and the United States: Towards Cooperation

This year's seizure of four United States tuna vessels by Peru is a high point of Peruvians' hostility toward United States fishery interests.

Nevertheless, the efforts at accommodation between the two countries continues. After the termination of the 1955 United States-CEP, two of the key advisors of the United States delegation, Charles R. Carry and Dr. Wilbert M. Chapman, were suddenly contacted by the Chief of the Peruvian delegation. The Peruvians suggested to the two United States advisors that they fly immediately to Lima where it was possible that a modus vivendi between the California tuna industry and the Peruvian government might be agreed upon. Such an agreement would stop the friction between the California tuna clippers and the Peruvian gunboats. The two advisors flew to Lima and an agreement was hammered out. A new decree by President Manuel A. Ordía was signed on January 5, 1956. It was published in the official government newspaper, El Peruano on January 17, 1956, under the title "Regulations Governing the Issuance of Fishing Permits to Foreign Vessels in the Jurisdictional Waters of Peru".

The decree has four sections which covered general provisions under which foreign fishermen could use the waters claimed by Peru; the actual obtainment of the fishing permits; the obligations and rights of the permit holder; violations and penalties. A final portion of this five-page document dealt with the allocation of funds from the fishing licenses. These would be set aside for "Funds for Hydrobiological Research," and would be made available to the "Superior Council for Hydrobiological Research," created by Supreme Resolution No. 390 of November 14, 1954.[45]

Seven months after President Ordía signed the fishing decree, Secretary of State John Foster Dulles met with Peru's new President, Dr. Manuel Prado y Ugarteche. The latter accepted in principle the United States proposal that a South Pacific fisheries agreement be signed with his government and other interested countries in which Peru would drop its claim to the 200-mile sovereignty. The agreement was reached in a closed-door conference.

The agreement would allow the fleets of the signatory nations to fishing the speciied areas off Latin America. On his way home, Dulles stopped in Quito,

Ecuador, where he discussed the same issue. Any agreement would have to be preceded by the CEP bloc's dropping their 200-mile sea claim.[46]

Dulles' plane had barely touched down in Washington when trouble over his efforts began. The coverage of his visit in Peru, as reported in the New York Times, noted that Dulles had persuaded Dr. Prado to change his country's stand on the nature of the 200-mile sea and its threat to hemispheric security. The publication surprised the Ecuadoran and Chilean governments. The New York Times' publication of what had taken place at a secret meeting had placed Peru in a "delicate position" because it appeared that Peru had virtually abandoned its cosigners of the 1952 pact. Dr. Prado, in the face of Ecuadoran and Chilean wrath, stated that his government would be faithful to its new neighbors. Peruvian officials acknowledged that Dr. Prado's agreement in principle with Dulles still remained.[47]

The above account indicates that in the mid 1950's it was possible for the United States to work out at least a temporary accommodation with Peru. In 1963, the United States was successful in working out an agreement with Ecuador which lasted three years.[48] Thus it was not inconceivable that an agreement could be worked out with Peru in the 1960's. This was the thought of Ambassador Donald McKernan in June, 1967. In that month he informed the House Subcommittee of Fisheries and Wildlife Conservation that he believed it was

> not impossible to think of ways that could, for example, possibly be sold in Peru as maintaining her position about sovereignty but which at the same time would in fact preserve our own position of freedom of fishing on the high seas...I think we can come up with sufficient criteria, as we have applied in certain circumstances in the North Pacific ocean with salmon on the so called abstention principle, some of these criteria on which we could sit down and work would perhaps give some special interest in the anchovy fishery and provide the protection that they need and yet allow us to fish for yellowfin that they are not fishing at all and get them to participate in the present Inter-American Tropical Tuna Commission to insure the protection of the yellowfin so that when they were ready to start harvesting them they would be there in abundance...[49]

Doubtless McKernan was thinking along the lines of the two Modus Vivendi's. Also he realized that the United States had itself, on October 12, 1966, created its own twelve-mile fishery zone,[50] as well as the fact that the United States adhered to the Convention of the High Seas which recognizes the freedoms of navigation, fishing, the laying of submarine cables and pipelines, and the freedom to fly over the high seas. The United Nations treaty recognizes that

> the general principles of international law shall be exercised by all States with reasonable regard to the interests of Other States in their exercise of the freedom of the high seas [italics mine].[51]

Hence the United States Government is itself in a position to acknowledge the rights of Peru to come within our twelve miles, a position it would not accept in 1955.

Current United States-Peruvian difficulties over oil and fishing have led to a renewed effort by the United States to work out a viable solution to these delicate issues. President Nixon, March 11, 1969, appointed John N. Irwin II, as special emissary to Lima to discuss current problems.[52] On March 14, Irwin began negotiations in Lima despite displays of anti-United States sentiment.[53] By April 9, Peru's President, Major General Juan Velasco, and Ambassador Irwin had concluded the first phase of their conversations and the Peruvian Government announced it had agreed to send a mission to Washington to continue the bilateral discussions.[54] The Peruvian delegation arrived in Washington on April 25 to begin negotiations April 28. Discussions included Ambassador Irwin and Ambassador Donald L. McKernan (Special Assistant to the Secretary of State for Fisheries and Wildlife).[55] The inclusion of McKernan indicated that fisheries and fishing would play a key part in the discussions. Meanwhile, in a discussion of "Current U.S.-Peruvian Problems", Assistant Secretary of State for Inter-American Affairs, Charles A. Meyer, implied, on April 17, that it would be very difficult to come to a fishery agreement with

Peru apart from dealing with Chile and Ecuador. Nevertheless he believed "that it can be treated within the context of our overall difficulties with Peru, and we shall continue to press for a constructive and amicable solution to this problem".[56]

Surprisingly, the Peruvian-United States deadlock over fishing may indeed be broken by one of the CEP nations. Rumor indicates that Chile's Foreign Minister, Gabriel Valdes, has presented Secretary of State, William P. Rogers, with an interesting proposal: if the United States rescinds its ban on military aid to Peru, Chile, Ecuador, and Peru "would join the United States in discussing fisheries problems off the western coast of South America".[57] Although the Department of State has not yet commented on this proposal, it is interesting that Chile's action conforms with its stand on reaching accord with the United States on this issue.

VI. The Basic Issue: The Welfare of Fish

Despite the fact that there has been a great amount of inter-American controversy over maritime fishing, it should not obscure the fact that American nations have also cooperated in the study and preservation of tuna. Inter-American cooperation involving tuna fishery stocks resulted from the desires of the Costa Rican government to study the fishery situation off its coasts. (In 1947, bait fishing by United States tuna clippers was carried on extensively off Costa Rica.) As a result of this request, the United States dispatched a fishery expert that year to survey the situation, who, in turn, recommended that a convention be concluded between the two nations to investigate problems of common concern. As a result of these investigations, both nations established the Inter-American Tropical Tuna Commission which entered into force on March 3, 1950. Since that time, Mexico, Panama, Canada, and Ecuador entered the convention. (Ecuador withdrew in 1968.) Tuna stock in

the eastern Pacific have been under study since 1951, as well as the bait fishes, and the oceanographic conditions which affect the tuna stock.

Although the United States has continued to bear the largest portion of the cost of the Commission, other member states have also played an important role. Two non-member nations, Japan and Peru, have cooperated in carrying out important research activities in coordination with the Commission. In a recent letter, John L. Kask, Director of Investigations for the Commission, noted that "we work very closely with the Instituto del Mar del Peru and we have enjoyed a regular exchange of scientists with the scientific fisheries institutes of all three CEP countries...We have had statistical agents working in Peru and Ecuador for a number of years".[58]

Thus, the legal and political acrimonies over territorial waters with Peru, do not completely preclude cooperation over fishery stocks.

In the light of the modernization and increased efficiency of modern fishing vessels and fishing techniques, not to mention the increasing numbers of fishermen and fishing nations, the once believed unlimited stocks of tuna are now under the threat of total annihilation. Throughout the post World War II era, scientists have been concerned over the continued productivity of fishery stocks. In the realm of tuna fishing, for example, fishery conventions covering both the Pacific and Atlantic have been created. In 1966, the Inter-American Tropical Tuna Commission recommended a catch quota for yellowfin tuna.[59] Commenting on the effect of quotas of yellowfin tuna, John L. Kask wrote earlier this year that

> it now appears that the yellowfin stocks of this area have been restored to their average maximum sustainable level and so far at least are being maintained there. There is no evidence that the highly fluctuating second species, the skipjack, fished by surface gear, is yet in need of protective measures.[60]

In 1962, however, the Food and Agricultural Organization, after noting the falling catch rates of tuna all over the world, called a 'World Scientific

Meeting on the Biology of Tunas and Related Species". One result of this meeting was the creation of an Expert Panel for the Facilitation of Tuna Research which called a special meeting in 1968 lest "the state of the tuna stock may be continuing to deterioriate" on a world wide basis.[61] The Panel of Experts studied the situation and noted that the Pacific tuna fishery

> is based on the same species, is largely carried out by the same countries (and indeed, often the same vessels), and supplies the same market as the Atlantic and Indian Ocean fisheries. It is therefore unrealistic to consider any one of these oceans in isolation as regards statistics, scientific research, or management [italics mine].[62]

These sobering statements reveal the true issues at hand - what is at stake is the continued productivity of the world tuna fishery stock. This will not be saved by nations unilaterally proclaiming extended territorial waters and by seizing foreign fishing vessels. Hence a look at the relations between the United States and Peru, as one example of discord regarding the rights of the coastal state and fishing, has a sound of unreality. It misses the main point, namely the continued welfare and productivity of the resources of the sea. While it is admittedly difficult to create a world tuna convention, an important start has begun with the two regional organizations mentioned above. In the light of the continued welfare of tuna and world fishery needs in the future, it is best that the CEP block come to terms with the United States along conservation lines. As stated by United States Department of State representatives, accords are needed to provide continued productivity and maximum sustainable yield by the United States and Peru in the years ahead.

NOTES

[1]Pan American Union, Special Neutrality Commission, 1915-1916, Documents. Copies of the Official Minutes and reports at the Hoover Library, Stanford University, California, p. 21-22. During the first World War the governments of Argentina, Brazil, Chile, Colombia, and Ecuador advanced individual proposals that belligerent nations must refrain from committing hostile acts within a reasonable distance from their shores. See above document collection and Pan American Union, Congress and Conference Series, No. 29, Report of the Meeting of the Ministers of Foreign Affairs of the American Republics, Panama, September 23 - October 3, 1939 (Washington, D. C.: 1939), p. 11. (Cited hereafter as Pan American Union, Report of Meeting of Ministers of Foreign Affairs of the American Republic.)

[2]Pan American Union, Report on Meeting of Ministers of Foreign Affairs of the American Republics, p. 20.

[3]Ibid.

[4]William E. Masterson, "The Hemisphere Zone of Security and the Law," American Bar Association Journal, XXVI (1940), 860, 863.

[5]Letter from Dr. Wilbert M. Chapman, Director of Marine Resources, Ralston Purina Company, San Diego, April 1, 1968. (Cited hereafter as the Chapman Letter.)

[6]U.S. Department of State Bulletin, 13:327 (1945), 485. (Hereafter cited as USDSB.)

[7]U.S., Statutes at Large, LIX, Part 2 (1946), 884.

[8]USDSB, 20:498 (1949, 71.

[9]Letter from Wilbert M. Chapman, Director of Marine Resources, Van Camp Seafood Company, to Dayton L. Alverson, January 11, 1967. (Hereafter cited as Alverson Letter, January 11, 1967.)

[10]Henry Reiff, The United States and the Treaty Law of the Sea (Minneapolis: University of Minnesota, 1959), p. 51.

[11]Barry B. L. Auguste, The Continental Shelf (Geneva: Librarie E. Droz, 1969), p. 35.

[12]Letter from Dr. Milner B. Schaefer, Director of the Institute of Marine Resources, University of California, La Jolla, July 11, 1967.

[13]August, op.cit., p. 73, 102.

[14]Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatamala, Honduras, Mexico, Nicaragua, Panama, Peru, and Venezuela.

[15]United Nations, Legislative Series, Volume I, Laws and Regulations on the Regime of the High Seas, New York, 1951, p. 17-18.

[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.)

[33]News Release from Edward A. Garmatz, March 19, 1969. (Hereafter cited News Release.)

[34]U.S. 91st Congress, 1st Session, H. Con. Res. 173. Garmatz also planned to introduce a measure asking the World Bank to reject Peruvian applications for loans amounting to $32 million. News Release.

[35]Information relayed by the District Office of Congressman William S. Mailliard, in San Francisco, June 10, 1969.

[36]1967 Hearings, op.cit. Also, Chapman Letter, op.cit.

[37]U.S., Department of State, Santiago Negotiations on Fishery Conservation, September 14 - October 5, 1955 (Washington, D. C.: Public Service Division). In 1953, following seizures by Ecuador in 1951 and 1952, a United States Department of State delegation travelled to Quito to discuss a fishery and legal matters. While the conference was successful in clarifying some issues, it also did not end the seizures. Although there was a plan to reconvene the conference between the two governments, it never occurred. See U.S., Department of State, The Conference on United States-Ecuadoran Fishery Relations: The Final Act of the Conference and Record of the Proceedings, Quito, Ecuador, March 25 - April 14, 1953, (Washington, D. C.).

[38]1967 Hearings, op.cit., p. 59.

[39]Ibid., p. 59.

[40]Communique issued by the Department of State from Santiago, Chile, April 19, 1968. Supplied by Wilvan Van Campen, Department of State Foreign Affairs Officer to the Special Assistant for Fisheries and Wildlife to the Secretary.

[41]Ibid.

[42]Times of the Americas, January 29, 1969, p. 3. Chile at the present moment is very interested in withdrawing from the CEP block. Chapman Letter, op.cit.

[43]Excelsior, (Mexico City), February 18, 1969. Also see February 24, 1969.

[44]U.S., Department of State, Newsletter, No. 96, April 1969, p. 5.

[45]Copies of the official Department of State (United States) translation on file in the records of Dr. Wilbert M. Chapman, in San Diego, California. For a revised copy of the 1956 Decree, see U.S., Congress, Senate, Hearings Before the Subcommittee on Merchant Marine and Fisheries of the Committee on Commerce, Miscellaneous Fishery Legislation, 90th Congress, 1st Session, 1967, p. 97-99.

[46]New York Times, July 29, 1956, p. 22.

[47]United Nations, Office of Legal Affairs, Laws and Regulations on the Regime of the Territorial Sea, (New York, 1957), P. 730.

[48]Los Angeles Times, December 11, 1967. Typewritten copy of "Modus Vivendi" in possession of August Felando, General Manager of American Tunaboat Association, San Diego, California. Xerox copy presented to author on March 30, 1968.

[49]1967 Hearings, op.cit., p. 61 and 62.

[50]U.S., Statutes at Large, LXXX:1, p. 908.

[51]United Nations, Conference on the Law of the Sea, 1958, Vol. II: "Plenary Meetings" (Geneva, 1968), p. 136. This point was brought to the attention of the author by August Felando, General Manager, Manager of the American Tunaboat Association, on March 30, 1968, in his office in San Diego.

[52]USDSB, LX·1553 (March 31, 1969), 282.

[53]Los Angeles Times, March 15, 1969.

[54]USDSB, LX:1557 (April 28, 1969), 364.

[55]USDSB, LX:1559 (May 12, 1969), 400.

[56]USDSB, LX:1559 (May 12, 1969), 407.

[57]Los Angeles Times, June 15, 1969.

[58]Letter from Dr. John L. Kask, Director of Investigations, Inter-American Tropical Tuna Commission, La Jolla, California, April 18, 1969. For latest activities of the Commission see Inter-American Tropical Tuna Commission, Annual Report, 1967 (La Jolla, 1968).

[59]Ibid., p. 57.

[60]John L. Kask, "Tuna - A World Resource", Occasional Paper No. 2, (Kingston, Rhode Island: The Law of the Sea Institute, May, 1969), p. 24. (Hereafter cited Kask.)

[61]Kask, ibid., p. 26.

[62]Ibid., p. 31.

[63]Ibid., p. i.