NCU-T-73-006 c. 2

LOAN COPY ONLY

UNIVERSITY OF NORTH CAROLINA

SEA GRANT PROGRAM

CIRCULATING COPY
Sea Grant Depository

THE LATIN AMERICAN APPROACH TO THE LAW OF THE SEA

Jan H. Samet

and

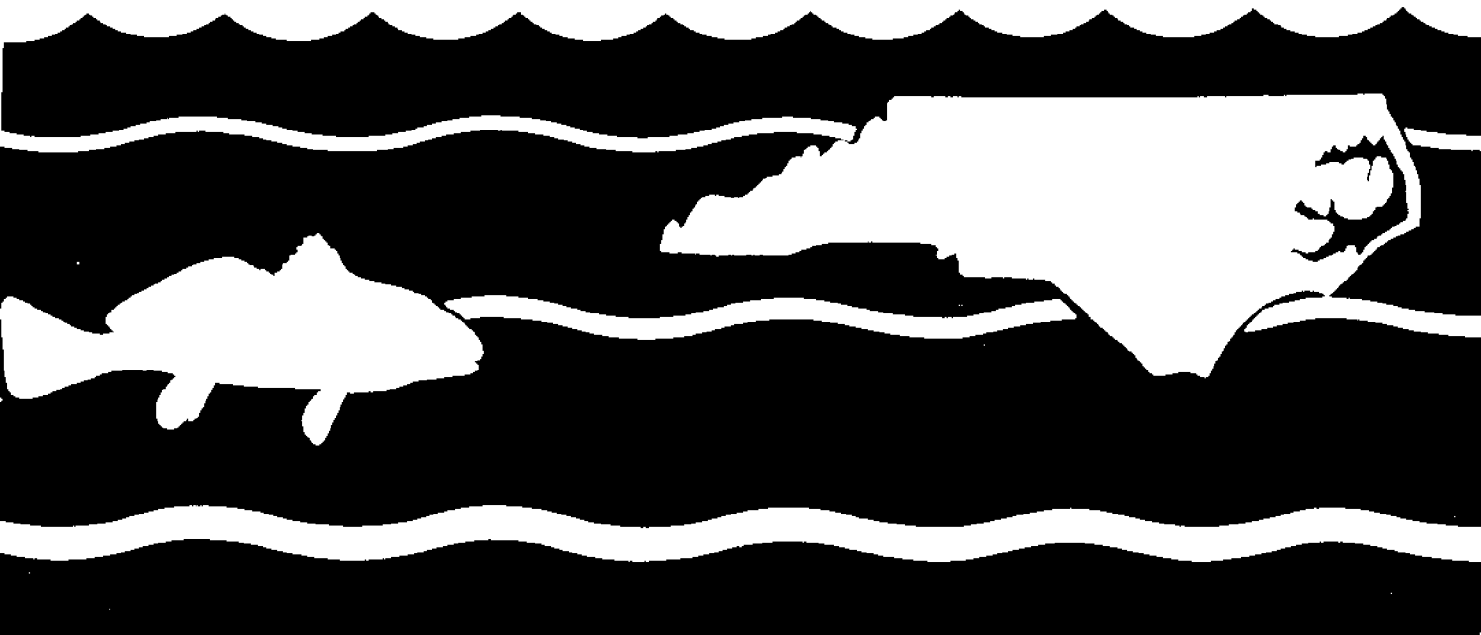
Robert L. Fuerst

NATIONAL SEA GRANT DEPOSITORY
PELL LIBRARY BUILDING
URI, NARRAGANSETT BAY CAMPUS
NARRAGANSETT, RI 02882

SEA GRANT PUBLICATION

UNC-SG-73-08

MARCH, 1973



CIRCULATING COPY
Sea Grant Depository

THE LATIN AMERICAN APPROACH TO THE LAW OF THE SEA

by
Jan H. Samet and Robert L. Fuerst

Law School
University of North Carolina

This work was partially sponsored by Office of Sea Grant, NOAA, U.S. Dept. of Commerce, under Grant No. 2-35178, and the State of North Carolina, Department of Administration. The U.S. Government is authorized to produce and distribute reprints for governmental purposes notwithstanding any copyright that may appear hereon.

SEA GRANT PUBLICATION UNC-SG-73-08 MARCH, 1973

Sea Grant Program, School of Public Health, University of North Carolina
Chapel Hill, North Carolina 27514

Foreward

This piece of legal research collects and analyzes in some detail the positions of the Latin American countries regarding the law of the sea. Much of the material has not previously been readily available. This work presents the philosophy and historical development of Latin American claims to two hundred mile territorial waters; the specific individual views and laws of most of these nations regarding the exercise of jurisdiction in the "patrimonial sea" areas contiguous to their coasts; and a detailed examination of national statutes dealing with the exploration and exploitation of off-shore mineral and living marine resources. It concludes with an evaluation of the impact of Latin American legal thought and action upon the evolving law of the sea and ponders its probable influences upon the 1973 and 1974 United Nations Law of the Sea Conferences.

The joint authors, Jan Samet and Robert Fuerst, are veterans in the ongoing North Carolina Sea Grant Law of the Sea Research Project, in progress since July 1970. Each contributed an article to the University of North Carolina School of Law, 1972 Sea Grant Publication, "Attitudes Regarding A Law Of The Sea Convention To Establish An International Seabed Regime." Each has served as an associate editor of two earlier University of North Carolina Sea Grant Law of the Seas publications. These were "Attitudes," previously mentioned, and a March 1973 publication, "The Surge of Sea Law, 1972." The authors will receive the J.D. degree from the University of North Carolina Law School in 1973 and each plans to pursue post doctoral legal study in international sea law.

Both Dr. John Lyman and Dr. William Rickards, Coordinator and Assistant Coordinator, respectively, of the North Carolina Sea Grant program, have given full and understanding support in making this publication possible.

Seymour W. Wurfel
Professor of Law
University of North Carolina,
Principal Investigator for
Law of the Sea Research

THE LATIN AMERICAN APPROACH

TO THE LAW OF THE SEA

CHAPTER I. A SURVEY OF LATIN AMERICAN MULTILATERAL AGREEMENTS ON THE LAW OF THE SEA

The purpose of the authors is to investigate the jurisdictional claims that various Latin American nations have made concerning the continental shelf, territorial sea, patrimonial seas, and the high sea. A substantial amount of scholarly work has been done in this area. However, most of it has been fragmented and fails to present an overview of existing positions and legislation regarding jurisdictional claims. By focusing on the positions taken by Latin American nations on development of the natural resources of the continental shelf and patrimonial seas, we hope to offer some insight into current Latin American perspectives on the law of the sea. We have chosen to devote the bulk of our research to a survey of legislation concerning development of the natural resources of the continental shelf and patrimonial seas. Implicit in this legislation are the individual positions and the attitudes of each nation toward the newly developing law of the sea.

An appropriate beginning calls for sharing an anecdote contained in the Geneva Report of October 19, 1971. The story concerns a little sparrow lying in the middle of the road with its feet up in the air. A horse traveling along the road stopped and asked the little sparrow what he was doing. The sparrow replied that he had heard the sky was going to fall sometime that afternoon. The horse, somewhat amused, asked "what do you expect to do with those spindly little legs?"

To this inquiry the sparrow replied, "Well, one does what one can."[1] With the remark of the sparrow in mind, let us investigate the jurisdictional claims.

A. What's Rocking the Boat: Some Background Concerning the Question of State Jurisdiction Over Ocean Space

The extent to which one state may extend its jurisdiction to include space not previously considered within its territory has always been a question of paramount concern in the international community. In terms of public international law, jurisdiction may be defined as the "right of a State to regulate or affect by legislative, executive, or judicial measures the rights of persons, property, acts, or events with respect to measures not exclusively of domestic concern."[2] With this definition in mind, it is simple to understand the concern that attempts to extend state jurisdiction create.

The past thirty years have borne witness to numerous extensions of state jurisdiction into previously unclaimed ocean space.[3] These claims of jurisdiction have produced a problem of international proportion. The question of who owns the oceans must, of necessity, be answered to the satisfaction of the members of the international community within the near future. The consequence of nonagreement may be war.[4]

---

[1] Dykstra, The Prospect for Coastal Fisheries, Law of the Sea R. 171 (1971).

[2] I. Csabafi, The Concept of Space Jurisdiction in International Space Law 49 (1971).

[3] Attempts to extend state jurisdiction are not a solely Latin American phenomenon. Maine, Massachusetts, and Rhode Island have already passed legislation attempting to extend their jurisdiction over ocean resources. Though the legality of these legislative attempts is certainly questionable, the growing willingness of individual states within the United States to attempt unilateral extention of their jurisdiction is worthy of notice. Ms. Lucy Sloan, Sea Grant Information Officer of the Massachusetts Institute of Technology, has supplied copies of the Massachusetts and Maine Legislation. The Massachusetts legislation is included in Appendix A; the Maine legislation is included in Appendix B. Francis X. Cameron of the Masters of Maine Affairs Program at the University of Rhode Island sent a copy of the recent Rhode Island legislation which is included in Appendix C.

[4] Burke, Consequence for Territorial Sea Claims of Failure to Agree at the Next Law of the Sea Conference, 6 Law of the Sea R. 44 (1971).

Concern for the limits of state jurisdiction over the ocean is a recent development. From the seventeenth century until the 1940's these limits were considered settled. In fact, the law of the sea was considered a model of stability in the international legal community.[5] This stability was based on the fact that the law of the sea was the legislative product of the major maritime powers. As Ted Stevens has succinctly stated, "The international law of the sea was promulgated and has been perpetuated in order to further the self-interest of those nations powerful enough to shape it."[6]

Until the middle of the twentieth century, most states had adopted the mare liberum theory that Grotius espoused and the colonial nations enforced. The principle underlying the concept of mare liberum may be summarized by quoting the reply Queen Elizabeth of England gave to the Spanish Ambassador Mendoza when he protested the passage of ships through seas reserved for Spain. "The use of the sea and air is common to all. Neither can a title to the ocean belong to any people or private persons forasmuch as neither nature nor public use and custom permitteth any possession thereof."[7] The high seas were regarded as res omnium communis, that is, belonging to all states equally.[8]

Prior to the 1940's the only serious claims to state jurisdiction over the ocean were national claims to relatively small territorial seas. "The justifica-

---

[5] Newton, Seabed Resources: The Problem of Adolescence, 8 San Diego L. Rev. 551 (1971). [hereinafter cited as Newton, Seabed Resources].

[6] Stevens, The Future of Our Continental Shelf and Seabed, 4 Natural Resources Law. 646 (1971).

[7] F. Garcia-Amador, The Exploitation and Conservation of the Resources of the Sea 17 (1959). [hereinafter cited as Garcia-Amador, Exploitation].

[8] Grunawalt, The Acquisition of the Resources of the Bottom of the Sea--A New Frontier of International Law, 34 Military L. Rev. 105 (1969). [hereinafter cited as Grunawalt, Acquisition of Resources].

tion for a marginal sea and sovereignty over it was, first, the necessity of protecting the adjacent land; second, the necessity of exercising some control over ships passing through; and third, the economic needs of the riparian people."[9] The oceans and the continental shelves lying outside these territorial seas were generally agreed to be res omnium communis. This general agreement has ended. A worldwide controversy now exists concerning the ability of nations to claim title to the ocean. The certainty and stability that once characterized the law of the sea is a thing of the past.

With the significant advances made in marine technology there has been a corresponding rise in the number of nations that are making broad jurisdictional claims over the ocean and seabed. Law can be viewed as a technique of organizing human activity.[10] Until recent technological advances presented new possibilities, the activities which sea law sought to organize were fairly simple. Man used the oceans as a supplemental source of foodstuffs and as an avenue for transportation of materials for purposes of commerce and war.[11] "Much of the present law of the sea, such as the concept of the territorial sea and the freedom of the high seas beyond it, stems from these early uses."[12]

It is not difficult to comprehend why a body of law which sought to provide maximum access to the seas for purposes of fishing and transportation would develop in the manner that it did. Certainly the general prohibition against extension of state jurisdiction into ocean space is understandable when examined in

---

[9] Borchard, Resources of the Continental Shelf, 40 Am. J. Int'l. L. 56 (1946). [hereinafter cited as Borchard, Resources of the Continental Shelf].

[10] Johnston, Law, Technology and the Sea 55 Calif. L. Rev. 458 (1967).

[11] Belman, The Role of the State Department in Formulating Federal Policy Regarding Marine Resources, 1 Natural Resources Law 16 (1968).

[12] Clingan, Likely Substantive Outcome of the Next Law of the Sea Conference, 5 Law of the Sea 30 (1970). [hereinafter cited as Clingan, Likely Outcome of Next Sea Conference].

the light of Grotius's belief that "the oceans were immense; that their potential is inexhaustible and that there is unlikely danger of harming them."[13] From this position it is not difficult to see why he should conclude that "the oceans could never be subject to national appropriation and were free to be traversed by all ships without limit."[14]

The past thirty years have brought vast changes in ocean activities. "Advances in scientific knowledge and technological ability have led to an increase in uses as well as in increased numbers of users. As the types and frequency of ocean space use have increased, existing legal guidelines have become inadequate."[15]

If the present law of the sea is to be maintained as a potent force in the international legal community, that law must readdress itself to the activities which it is supposed to organize. Whether there is sufficient flexibility within the present law based on the ideas of Grotius and mare liberum remains an unanswered question at this point in legal history. Some indication as to future developments in sea law may be provided by a survey of the positions various Latin American nations have taken on the subject.

B. The Beginnings of the Controversy: The Declaration of Panama and the Truman Proclamation

The history of extensive Latin American claims of state jurisdiction over parts of the high seas began just shortly after the start of World War II. On October 30, 1939, twenty-one American nations, including the United States, ratified the Declaration of Panama.[16] The purpose of the Declaration was to create a

---

[13] Id. at 30.

[14] Id. at 30.

[15] Newton, Seabed Resources at 551, supra note 5.

[16] Otero-Lora, Views of Other Nations Toward International Organization of the Sea, 3 Law of the Sea R. 366 (1968). [hereinafter cited as Otero-Lora, Views of Other Nations].

neutral maritime belt which would encircle the Americas and protect neutral nations of the Western Hemisphere from harassment by belligerents.[17] The belt included all the "normal maritime routes of communication and trade between the countries of the Americas."[18] "This zone circled the hemisphere from the Canadian border with the United States on Passamaquaddy Bay in 44 46' 36" north latitude, and 66 54' 11" west longitude, around the Pacific terminus of the United States-Canadian boundary in the Straits of Juan De Fuca, in some places extending out 300 miles."[19] Within this vast ocean area, each of the signing nations agreed to patrol the waters adjacent to its coast and to protect the neutrality of the American nations.[20]

The Declaration occasioned a good deal of comment by the international legal community. It represented a departure from what was then recognized as a norm of international law. The European belligerents maintained that this agreement represented an innovation in international law. They felt it was not binding upon them without their express consent.[21] The ratifying nations rejected this contention. Their position, as summarized by the United States Secretary of State Wells, was that the Declaration was "based on the inherent right of self-protection rather than a formal proposal for the modification of international law."[22] They further contended that their consent was not necessary to bind nations to whom the Declaration was addressed.

---

[17] Wolff, Peruvian-U.S. Relations over Maritime Fishing: 1945-1969, 4 Law of the Sea Institute of the University of Rhode Island 2 (1970). [hereinafter cited as Wolff, Peruvian Relations].

[18] International Law in the Twentieth Century 775 (L. Gross ed. 1969).

[19] Otero-Lora, Views of Other Nations at 366, supra note 16.

[20] S. Inman, Inter-American Conferences 1826-1954: History and Problems 197 (1965).

[21] Hackworth, 7 International Law 704-709 (1943).

[22] W. Bishop, International Law Cases and Materials 633 (3rd. ed. 1971).

Shortly after the ratification, a British Admiralty Note was published which "laid emphasis on the fact that the security zone in question must not be construed as intending to extend the three mile limit of the territorial seas."[23] Subsequent actions by the ratifying nations would seem to indicate that, indeed, this was the case. The Declaration of Panama was solely an attempt to create a neutral buffer zone to protect American nations from the war raging in Europe and Asia. There was never any intention to extend state jurisdictional claims over the high seas for any purpose other than self-protection. In retrospect it must be conceded that even though the Declaration of Panama represented an extension of state jurisdictional claims over the ocean for a very limited purpose, it created a precedent in international ocean law that marked the beginning of a new chapter in the law of the sea.

A second phase was not long in coming. On September 28, 1945, two proclamations by the President of the United States were issued dealing with extensions of state jurisdiction over the natural resources of the subsoil and seabed of the continental shelf[24] and over coastal fisheries in certain areas of the high seas.[25] These two proclamations,together generally referred to as the Truman Proclamation, were based on the economic self-interest of the United States.[26] No claims on behalf of the United States were made to sovereignty, title, or ownership of the continental shelf or the fishing areas. State jurisdiction was extended for the purpose of conserving and controlling the development of the natural resources of the oceans in areas contiguous to the United States.[27]

---

[23] C. Colombos, The International Law of the Sea 627 (5th ed. 1962).

[24] 10 Federal Register 12303 (1945).

[25] 10 Federal Register 12304 (1945).

[26] Borchard, Resources of the Continental Shelf at 53, supra note 9.

[27] Young, Recent Developments with Respect to the Continental Shelf, 42 Am. J. Int'l. L. 849 (1948). [hereinafter cited as Young, Recent Developments].

The Truman Proclamation represents a transformation of the theme of the right of self-protection espoused in the Declaration of Panama. The contention that a state may extend jurisdiction over the high seas for the purpose of military self-protection is significantly different from the contention which formed the basis of the claims made by the President of the United States. The Truman Proclamation was based on the rights of a nation in time of peace to protect its economic interests in the natural resources of the sea. This certainly represents a broader construction of the principle of self-interest than was espoused in the Declaration of Panama.

Such claims to jurisdiction by virtue of economic self-interest and self-protection are not new in international law.[28] However, the magnitude of the claims made by the Truman Proclamation certainly removed them from that class of relatively limited extensions of state jurisdiction prior to 1945. Furthermore the fact that these claims were made by a major maritime power also tends to emphasize the difference rather than the similarity between the Truman Proclamation and other such claims asserted as expressing the international law of the sea.

There is little argument that the Truman Proclamation represented a radical departure from past policies of the United States.[29] There is evidence to the effect that a unilateral declaration of this type had been discussed prior to World War II. "As early as 1937 President Franklin D. Roosevelt communicated to the Department of State that he was thinking of an executive proclamation by the President with reference to fisheries in the Pacific--off Alaska--between the three mile limit and the point in the ocean bed where the water reached a depth of one hundred fathoms."[30]

---

[28] Borchard, Resources of the Continental Shelf at 53, supra note 9.

[29] Bingham, The Continental Shelf and the Marginal Belt, 40 Am. J. of Int'l. L. 173 (1946). [hereinafter cited as Bingham, The Continental Shelf].

[30] Whitman, 4 International Law 752 (1965). [hereinafter cited as Whitman, International Law].

It is not difficult to understand why the United States might be interested in making such claims. In the introduction, special consideration was given to the part technology must play in the formulation of sea law. "With its advanced technical competence, the United States was one of the first nations capable of exploiting the resources of the continental shelf."[31] Once it was realized that the United States could in fact begin such exploitation, the temptation to make such claims became irresistable. As Secretary of the Interior Ickes observed, "The fish and mineral resources of these areas are worth billions of dollars. . . The continental shelf costs only the forethought that was required to assert our sovereignty over it."[32]

Initially the President's Proclamation was greeted with a good deal of apprehension by the international community. It was feared that these claims sought to establish a "mining and fishing monopoly in places heretofore regarded as res nullus. They evidence not a growing internationalism but a well-defined nationalism."[33] However, as predicted, the Truman Proclamation gained increasing acceptance in international practice.[34] Since 1945, jurisdictional claims to the natural resources of the seas have proliferated. The extent and validity of such claims have become major issues in the developing law of the sea.

The role which the Truman Proclamation played in the development of Latin American claims of state jurisdiction over marine resources cannot be over emphasized. If the Declaration of Panama did create in the Latin American nations an awareness of the possibility of extension of state jurisdiction into the oceans,

---

[31] Grunawalt, The Acquisition of Resources at 111, supra note 8.

[32] Whitman, 4 International Law at 761, supra note 30.

[33] Borchard, Resources of the Continental Shelf at 55, supra note 9.

[34] Young, Recent Developments at 849, supra note 27.

there is no substantial evidence that prior to 1945 there was any intent to act on this awareness. Certainly there is no precedent in the history of Latin American sea law prior to 1945 for unilateral declarations of state sovereignty over vast areas of the ocean.

The only significant attempt by a Latin American nation to exercise jurisdiction over submarine areas is found in the treaty between Venezuela and the United Kingdom. This treaty, signed February 26, 1942, dealt with a division of submarine areas in the Gulf of Paria. This claim was justified by virtue of a bilateral treaty made between the two concerned parties. As such, it is representative of the traditional approach in international law toward defining state jurisdictional questions. This traditional approach was not abandoned by the Latin American nations until after the Truman Proclamation.

The Truman Proclamation marked a turning point in international legal history. In effect, the Proclamation was a tacit admission that attempts by the United States to achieve conservation of the natural resources of the sea through multilateral and bilateral agreements had failed.[35] Old approaches toward dealing with legal problems of marine resources were changing. The nations of Latin America sensed this change and acted accordingly

C. Early Multilateral Attempts by the Latin American Nations to Deal with the Question of State Jurisdiction Over Ocean Space

The early meetings between the Latin American nations which attempted to deal with questions of ocean jurisidction present a rather confusing history. Prior to the Santiago Declaration of 1952, there were three attempts to produce a consensus on the question of the breadth of the territorial sea.[36] Though no

---

[35] Bingham, The Continental Shelf at 176, supra note 29.

[36] Pan American Union, Inter-American Juridical Committee: Opinion on the Breadth of the Territorial Sea 30-33 (1966). [hereinafter cited as Opinion on the Territorial Sea].

official position was reached in these meetings, the foundations laid are significant.

The Second Meeting of Consultation of Ministers of Foreign Affairs of the American Republics was held on July 21, 1940. The meeting was called to consider, among other items, a Uruguayan proposal that the American nations extend their territorial seas to a distance of twenty-five nautical miles from the coastlines of the individual states.

The First Meeting of Consultation had produced the Panama Declaration discussed earlier. The First Meeting had also produced a feeling of unanimity between the American States and a corresponding optimism concerning future agreements among the nations relating to sea law. This optimism proved to be unfounded.

The Second Meeting of Consultation was not so successful. Agreement on the proposed twenty-five mile territorial sea could not be reached. However, a resolution entitled "Project on Extension of Territorial Waters" was passed. The resolution asked the Inter-American Neutrality Committee to render an opinion on the twenty-five mile limit.[37]

The Inter-American Neutrality Committee, in turn, requested prominent naval advisors from various Latin American countries to submit opinions for their consideration. The Opinion of Naval Experts Consulted by the Inter-American Neutrality Committee, submitted in Rio de Janeiro on April 3, 1941, rejected the twenty-five mile limit suggested by Uruguay. Instead, the naval experts suggested that "a general rule extending territorial waters to twelve miles would be sufficient."[38]

The Inter-American Neutrality Committee met to consider the opinion of the naval experts, and on August 8, 1941, it passed a "Recommendation on the Extension of Territorial Waters." The Recommendation adopted the twelve mile limit suggested

---

[37] Id. at 30.

[38] 36 Am. J. Int'l L. Supp. 22.

by the naval experts. For some inexplicable reason, however, the Recommendation "went only to enrich the archives of the Pan American Union."[39]

In 1950 the Inter-American Council of Jurists met in Rio de Janeiro. A committee was appointed to study the question of state jurisdiction over ocean space. On July 30, 1952, the Inter-American Juridical Committee submitted a "Draft Convention on Territorial Waters and Related Questions"[40] to the Inter-American Council of Jurists. The representatives of the United States, Colombia, and Brazil rejected the draft convention and demanded that it be returned to the Committee for further study.[41] In the 1953 meeting of the Inter-American Council of Jurists held in Buenos Aires, it was agreed to send the draft convention back to the committee.[42] "Representatives of the United States, Colombia, and Brazil dissented from the terms of the draft and questioned the appropriateness of the preparation of a draft convention instead of studying the legal considerations and antecedents bearing on the development of international law in this respect."[43]

The 1952 "Draft Convention on Territorial Waters and Related Questions" reflects a change in attitudes and positions. This change in position is evidenced by this language in the Draft:

> Article 1. The signatory States recognize that present international law grants a littoral nation exclusive sovereignty over the soil, subsoil, and waters of its continental shelf, and the air space and stratosphere above it, and that this exclusive sovereignty is exercised with no requirement of real or virtual occupation.

---

[39] Opinion on the Territorial Sea at 32, supra note 36.

[40] Id. at 33.

[41] Campbell, International Law Developments Concerning National Claims to Resources in Offshore Areas, 33 Tulane L. Rev. 339 at 344 (1958). [hereinafter cited as Campbell, Claims to Resources].

[42] Opinion on the Territorial Sea at 34, supra note 36.

[43] Campbell, Claims to Resources at 344, supra note 41.

> Article 2. The signatory States likewise recognize the right of each of them to establish an area of protection, control, and economic exploitation, to a distance of two hundred nautical miles from the low-water mark along its coasts[44] and those of its island possessions, within which they may individually exercise military, administrative, and fiscal supervision over their respective territorial jurisdictions.
>
> Article 5. Taking into account the fact that the laws and practices of the signatory States show divergences with respect to the demarcation of the continental shelf and the area of protection, and with respect to the definition and scope of their rights thereover as regards the utilization thereof by another State, the Parties agree to study these matters jointly in order to obtain, as far as possible, a uniform system.[45]

The Draft Convention of 1952 was a premature attempt to gain a consensus among the Latin American nations on the question of state jurisdiction over the ocean. At this point in time the majority of the Latin American nations were not prepared to make such extensive claims. In light of the earlier claims made by the United States, their reluctance can not be understood easily.

This Draft was prepared more than six years after the Truman Proclamation. There is no question that the Truman Proclamation played a part in the formulation of this document. The assertion that "present international law grants a littoral nation exclusive sovereignty over the soil, subsoil, and waters of its continental shelf," coupled with the observation that rights of economic exploitation to a distance of two hundred miles are vested in littoral nations, certainly have their foundation in the 1945 Proclamation by the President of the United States. The Truman Proclamation, with certain modifications, was beginning to have its effect on Latin American attitudes toward the law of the sea.

Though the two hundred mile zone suggested in the Draft Convention was not accepted by the majority of the Latin American nations, it was favorably received

---

[44] Emphasis added.

[45] Pan American Union, Inter-American Juridical Committee: Draft Convention on Territorial Waters and Related Questions (November, 1952).

by Chile, Ecuador, and Peru. August 18, 1952, the representatives of these three nations met in Santiago and signed a pact known as the Santiago Declaration.[46] The Declaration caused an uproar in the international community. Characteristically, it purported to extend state jurisdiction in order to ensure access to food supplies and to conserve and protect natural resources. Such motivation was not new. However, the resolutions passed to accomplish these ends were novel.

> For the foregoing reasons the Governments of Chile, Ecuador and Peru, being resolved to preserve for and 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 of 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.
>
> (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 zone 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.[47]

These two hundred mile claims were not based on the existence of a continental shelf. Chile, Ecuador, and Peru have practically no continental shelves.[48] Off

---

[46] Cisneros, The 200 Mile Limit in the South Pacific: A New Position in International Law with a Human and Judicial Context, A.B.A., Sect. of Int'l & Comp. L. 56 (1965). [hereinafter cited as Cisneros, 200 Mile Limit].

[47] Whitman, 4 International Law at 1090, supra note 30. see also H. Lay, R. Churchill and M. Nordquist, 1. New Directions in the Law of the Sea 231-232 (1973). [hereinafter cited as Lay, New Directions].

[48] Campbell, Claims to Resources at 344, supra note 41.

the coastlines of these nations lies one of the richest fishing beds in the Pacific. It was for the protection of these fishing beds that the Santiago Declaration was created. Chile, Ecuador, and Peru felt that "in absence of a continental shelf, they should be permitted to establish a zone in which they could exercise the same rights as other nations do over their continental seas."[49]

The validity of this claim over fishing areas has been recognized by some authorities.[50] One expert has stated:

> The tripartite Pact of Santiago has been the subject of protest and complaints. However, these are without valid foundation. Dr. Jesus Maria Yepez . . . states that from the point of view of international law the pact is irreproachable. It constitutes, he states, one of those regional agreements for the maintenance of peace recommended by the Charter of the United Nations; and that it has no less juridical value than the famous Proclamation of President Truman whose validity has generally been tacitly accepted. Dr. Yepez also points out the difference in approach; while President Truman's Declaration was a unilateral act, Chile, Ecuador, and Peru worked together to reach a regional agreement.[51]

Dr. Yepez's assertion that the Santiago Declaration was valid in terms of international law is not the concern of this paper. The Declaration most certainly does represent the position Chile, Ecuador, and Peru take on this question of sea law.

On December 4, 1954, the three nations made further agreements in support of the Declaration at the Second Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific held in Lima.[52] As late as August 30, 1972, at the close of the eighty-ninth meeting of the United Nations Committee

---

[49] Garaioca, The Continental Shelf and the Extensions of the Territorial Sea, 10 Miami L. Q. 490 at 498 (1956). [hereinafter cited as Garaioca, The Continental Shelf].

[50] Freeman, Law of the Continental Shelf and Ocean Resources--An Overview, 3 Cornell Int'l L. J. 105 at 113 (1970).

[51] Garaioca, The Continental Shelf at 497, supra note 49.

[52] Whitman, 4 International Law at 1098, supra note 30.

on the Peaceful Uses of the Sea Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, Chile, Ecuador, and Peru issued a joint communique which read:

> The Governments of Chile, Ecuador and Peru, on the occasion of the twentieth anniversary of the Declaration of Santiago, by which they proclaimed as a principle of their international maritime policy the exclusive sovereignty and jurisdiction of each of them over the sea adjacent to the coasts of their respective countries up to a limit of 200 miles, including exclusive sovereignty and jurisdiction over the floor and sub-soil of that sea,
>
> 1. REAFFIRM the principles and purposes of that historic decision, which has now become a doctrine whose economic and social bases inspire the new philosophy of the law of the sea, which recognizes to coastal States full disposal of their marine resources for the promotion of the development and well-being of their peoples;
>
> 2. NOTE with legitimate satisfaction that the enthusiastic support on the various continents for the doctrine of the Declaration of Santiago is such that it may be regarded as one of the essential elements for concerting sovereign wills towards a new and more just law of the sea in keeping with the realities and needs of our time;
>
> 3. EXPRESS their appreciation for the important services rendered to the three countries by the Permanent Commission of the South Pacific, whose valuable studies are contributing to a better knowledge of marine species and to the adoption of more appropriate standards and measures for their conservation and rational use;
>
> 4. REITERATE their unbreakable will to maintain the closest cooperation for the defense of their maritime rights and for the attainment of an international order that would ensure the use and exploitation of the various areas of ocean space, as an instrument of greater prosperity and equity among nations.
>
> To that end, the Governments of Chile, Ecuador, and Peru have agreed to issue this communique at Santiago, Quito and Lima on 18 August 1972.[53]

The Santiago Declaration represented a radical departure from the previous practices of the Latin American nations. It was indicative of the divergent positions held by the nations of the Western Hemisphere on questions of sea law.

---

[53] U.N. Doc. A/AC.138/SR.89
GE. 72-18340

The history of Inter-American Conferences on Sea Law during the middle 1950's reflects these divergent approaches. At each conference attempts were made to reconcile the viewpoints on the question of state jurisdiction over the oceans. These attempts at harmonization met with little success.

The Tenth Inter-American Conference held in Caracas in 1954 failed to produce agreements.[54] This attempt to deal with the questions of marine law ended in the adoption of Resolution LXXXIV entitled "Conservation of Natural Resources: The Continental Shelf and Marine Waters." The Conference reaffirmed:

> 1. The interest of the American States in the national declarations or legislative acts that proclaim sovereignty, jurisdiction, control, or rights to exploitation or surveillance to a certain distance from the coast, the submarine shelf and ocean waters and the natural resources which may exist therein.
>
> 2. That the riparian states have a vital interest in the adoption of legal, administrative, and technical measures for the conservation and prudent utilization of the natural resources existing in, or that may be discovered in, the areas mentioned, for their own benefit and that of the Continent and the community of nations;
>
> RESOLVES:
> 1. That the Council of the Organization of American States shall convoke a Special Conference in the year 1955 for the purpose of studying as a whole the different aspects of the juridical economic system governing the submarine shelf, oceanic waters, and their natural resources in the light of present-day scientific knowledge.
>
> 2. That the Council request pertinent interamerican organizations to render necessary cooperation in the preparatory work that the said Specialized Conference requires.[55]

In accordance with Resolution LXXXIV, at its meeting on January 5, 1955, the Council of the Organization of American States decided to include the subject "Systems of Territorial Waters and Related Questions" on the agenda of the

---

[54] Pan-American Union: Background Materials on Activities in the Organization of American States Relating to the Law of the Sea 5 (December 1957). [hereinafter cited as Background Material].

[55] S. Bayitch, Interamerican Law of Fisheries 51-52 (1957). [hereinafter cited as Bayitch, Interamerican Law].

Third Meeting of the Inter-American Council of Jurists.[56]

The Third Meeting, held in Mexico City on January 17, 1956, approved two resolutions.[57] Resolution XIII is of particular interest. It states in part that the Inter-American Council of Jurists:

> RECOGNIZES as the expression of the juridical conscience of the Continent, and as applicable between the American States, the following rules, among others; and
>
> DECLARES that the acceptance of these principles does not imply and shall not have the effect of renouncing or weakening the position maintained by the various countries of America on the question of how far territorial waters should extend.
>
> TERRITORIAL WATERS
>
> 1. The distance of three miles as the limit of territorial waters is insufficient and does not constitute a rule of general international law. Therefore, the enlargement of the zone of the sea traditionally called "territorial waters" is justifiable.
>
> 2. Each State is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its populations, and its security and defense.
>
> CONTINENTAL SHELF
>
> The rights of the coastal State with respect to the seabed and subsoil of the continental shelf extend also to the natural resources found there, such as petroleum, hydrocarbons, mineral substances, and all marine, animal, and vegetable species that live in a constant physical and biological relationship with the shelf, not excluding the benthonic species.
>
> CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS
>
> 1. Coastal States have the right to adopt, in accordance with scientific and technical principles, measures of conservation and supervision necessary for the protection of the living resources of the sea contiguous to their coasts,

---

[56] Opinion on the Territorial Sea at 35, supra note 36.

[57] Background Material at 7, supra note 54.

> beyond territorial waters. Measures taken by a coastal State in such case shall not prejudice rights derived from international agreements to which it is a party, nor shall they discriminate against foreign fishermen.
>
> 2. Coastal States have, in addition, the right of exclusive exploitation of species closely related to the coast, the life of the country, or the needs of the coastal population, as in the case of species that develop in territorial waters and subsequently migrate to the high seas, or when the existence of certain species has an important relation with an industry or activity essential to the coastal country, or when the latter is carrying out important works that will result in the conservation or increase of the species.[58]

Eleven countries made reservations and statements on the resolution.[59] The United States made a particularly strong statement and reservation, maintaining that the resolution was based on too little "necessary preparatory study," that the resolution "contains pronouncements based on economic and scientific assumptions" which were unsupported, and that "much of the resolution is contrary to international law."[60] On this discordant note the conference ended.

On March 15, 1956, the Inter-American Specialized Conference on Conservation of Natural Resources: The Continental Shelf and Marine Waters met in Cuidad Trujillo.[61] The only positive conclusion it reached was an agreement that coastal states have a right to exploit the seabed and subsoil of the continental shelf.[62] As a result, the conference was only able to resolve:

> To submit for consideration by the American States the following conclusions:
>
> 1. The sea-bed and subsoil of the continental shelf, continental and insular terrace, or other submarine areas, adjacent to the coastal state, outside the area of the territorial

---

[58] Bayitch, Interamerican Laws at 52-53, supra note 55.

[59] Background Material at 10, supra note 54.

[60] Bayitch, Interamerican Laws at 54, supra note 55.

[61] Opinion on the Territorial Sea at 37, supra note 36.

[62] Id. at 37.

sea, and to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil, appertain exclusively to that state and are subject to its jurisdiction and control.

2. Agreement does not exist among the states here represented with respect to the juridical regime of waters which cover said submarine areas nor with respect to the problem of whether certain living resources belong to the sea-bed or to the superadjacent waters.

3. Cooperation among states is of the most desirability to achieve the optimum sustainable yield of the living resources of the high seas bearing in mind the continued productivity of all species.

4. Cooperation in the Conservation of the living resources of the high seas may be achieved most effectively through agreements among the states directly interested in such resources.

5. In any event, the coastal state has a special interest in the continued productivity of the living resources of the high seas adjacent to its territorial sea.

6. Agreement does not exist among the states represented at this Conference either with respect to the nature and scope of the special interest of the coastal state or as to how the economic and social factors which such state or other interested states may invoke should be taken into account in evaluating the purpose of conservation programs.

7. There exists a diversity of positions among the states represented at this Conference with respect to the breadth of the territorial sea.

Therefore, this Conference does not express an opinion concerning the position of the various participating states on the matters on which agreement has not been reached and recommends: That the American States continue diligently with the consideration of the matters referred to in paragraphs 2, 6, and 7 of this Resolution with a view to reaching adequate solutions.[63]

At the conclusion of the meeting in Cuidad Trujillo, the various Latin American nations began their preparations for the First United Nations Conference on the Law of the Sea, which was held in Geneva, Switzerland, from February 24 to April 27 of 1958.[64] By virtue of their numerous attempts to deal with the

---

[63] Bayitch, Interamerican Laws at 55-56, supra note 55.

[64] Whitman, Conference of the Law of the Sea: Convention on the Continental Shelf, 52 Am. J. Int'l. L. 699 (1958).

question of sea law, the Latin American representatives came to Geneva well prepared to deal with the relevant issues.[65] They used this expertise to present the position held by the developing nations on questions of sea law.[66]

Although much favorable comment has been made about the Geneva Conference, from the perspective of the Latin American nations the Geneva Conference was disillusioning. Of particular interest to the Latin American nations was the question of the breadth of the territorial seas. The major maritime powers, The United Kingdom, Japan, and the United States, declared themselves in favor of a three-mile limit.[67] This position was not acceptable to the Latin American nations. The Mexican representative expressed an opinion on this position taken by the major maritime powers which was fairly indicative of indignation felt by the Latin American nations at such a proposal:

> The international community today cannot accept the situation which obtained in the past, and which fortunately has been overcome, when a small group of Powers arrogated the right to formulate international rules. There now exists, as one of the few positive results among the many misfortunes of the Second World War, the United Nations Organization, which at present has 81 members. This Organization, of which the present Conference is part and by which it is sponsored, is based on 'the principle of the sovereign equality of all its Members,' as established in the First Chapter of the San Francisco Charter. We are convinced that only through the faithful observance of that principle in our deliberations may the work of this Conference be crowned with success--which the Delegation of Mexico fervently desires.[68]

In further discussion of the question, representatives of Guatemala, Venezuela, Colombia, Argentina, and Peru spoke out against the three-mile limit. These views were summarized in the remarks made by the Chairman of the Peruvian Delega-

---

[65] Oribe, The Geneva Convention Ten Years Later, 3 The Law of the Sea 65 (1968). [hereinafter cited as Oribe, Ten Years Later].

[66] Dean, The Geneva Convention on the Law of the Sea: What Was Accomplished, 52 Am. J. Int'l. L. 609 (1958).

[67] Opinion on the Territorial Sea at 56-58, supra note 36.

[68] Id. at 58-59.

tion when he stated:

> It can easily be shown that the three-mile rule--which is here invoked with such vigor--has been merely a practical expedient for establishing a state's control without dispute. There has never been fundamental agreement on the breadth of the territorial sea; the International Law Commission gives evidence of this. Each State has determined it in terms of its own judgment and the circumstantial need to fix a limit in order to resist actions of various kinds on the part of other States. . .
>
> There has never been general agreement to determine the breadth of the territorial sea, nor has it been embodied in a collective international instrument, but only in bilateral or partial agreements arising from specific causes on given occasions. Each State has tended to determine the breadth of its territorial sea in accordance with its own interests, regardless of whether or not that limit might be three miles . . .
>
> In connection with various aspects of the complex problem of contiguous zones, we must invoke the principle of equality. Equality in the formulation of rules--which is one of the essential features of this principle--means that all States should play their part in initiating rules of international law, and that all should contribute to its formulation . . .
>
> Let us not speak merely in historical terms, discussing only a metaphysical freedom of the seas and an insignificant territorial sea. An attempt is being made here to maintain a system of exploitation, with all the features of domination, which is the very denial of that freedom, under the form of the use of industrial or commercial resources; there is alleged an equality which, for economic and technical reasons does not and cannot exist, at least in our time, with respect to the exploitation of the riches of the sea.[69]

In presenting the position of the developing nations, proposals on limits of the territorial seas were submitted by Colombia, Peru, and Mexico. The Colombian delegation proposed a twelve-mile territorial sea.[70] The Peruvian delegation proposed that territorial seas be allowed with "reasonable limits." The Mexican proposal, which was subsequently co-sponsored by India, proposed:

> 1. That as Gidel stated as long ago as 1934, it is no longer possible to regard the so-called three-mile rule "as a

---

[69] Id. at 63-64.

[70] Id. at 71.

rule of positive and general international law. If such a rule exists, it is only in the sense of a minimum breadth for the territorial sea."

2. That some two-thirds of the maritime states of the world have fixed the breadth of their territorial sea at limits greater than three miles, although in most cases the breadth so established does not exceed twelve miles.

3. That concurring practice on the part of the great majority of States has given rise to what may be called a binding rule of customary international law in the matter in question.

4. That this international juridical standard is a rule of variable application, which, as Mr. Luis Padilla Nervo, the Mexican member of the International Law Commission, states two years ago, "authorizes states to fix the breadth of their territorial sea within a given maximum."

5. That as a result of what was established in February 1956 by the Inter-American Council of Jurists in its resolution entitled "Principles of Mexico Concerning the Law of the Sea," and reaffirmed in October 1957 by the Third Hispano-Luso-American Congress on International Law held at Quito, it may be stated today that "each State has the competence to establish its territorial sea within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its population and its security and defense."

6. That the clear duty of this Conference seems to be to formulate and adopt an article which should, in our view:

First: Reflect faithfully what I have called the binding rule of customary international law in this connection, and

Second: Determine, since this rule is of variable application, the maximum limit that it authorizes; in other words, what is the maximum breadth that in 1958 may be considered as a "reasonable limit" for the territorial sea, to use the language of the resolution "Principles of Mexico."

In the light of the practice followed by the great majority of States, we believe that this reasonable limit, as stated in the draft of Article 3 we have submitted, should now be a limit of twelve miles.[71]

The Mexican-Indian proposal almost passed. The final vote ended in a thirty-five to thirty-five tie with twelve abstentions.[72] With the defeat of

---

[71] Id. at 73-74.

[72] Id. at 78.

this proposal, the First United Nations Conference on the Law of the Sea found itself unable to reach any agreement on the breadth of the territorial sea. A Second Conference was proposed, and on March 17, 1960, it opened in Geneva.

The Second United Nations Conference on the Law of the Sea, from the Latin American point of view, was no more productive than the First Conference. No final determination on the breadth of the territorial sea was made. The Mexican delegation presented a new proposal in the opening days of the conference,[73] but this proposal was rejected by the major maritime powers.[74] Mexican delegates then resubmitted the formula which they had previously submitted in 1958. A new joint proposal, cosponsored by the United States and Canada, advocating six miles of territorial sea and six miles of exclusive fishing rights, was also submitted.[75] Both proposals were defeated.

> The unfortunate failure of the Second Conference--which fully confirmed the fears expressed at the General Assembly by most of the Latin American Representatives when convening the conference was discussed--was chiefly due to the fact that the positions of the large maritime powers, on the one hand, and of the coastal states, on the other hand, continued to be essentially the same as when the First Conference ended.[76]

This confrontation between large maritime powers and coastal states still exists. The Latin American coastal states have proceeded in the interim to act as they think they must in light of these seemingly irreconciliable differences in the international community.

D. Post 1960 Multilateral Attempts to Find a Latin American Consensus on the Limits of State Jurisdiction

---

[73] Id. at 85.

[74] Id. at 88.

[75] Id. at 89.

[76] Id. at 84.

Since 1960 there have been five major Latin American statements on the law of the sea: "The Report of the Inter-American Juridical Committee on the Work Accomplished during its 1965 Meeting;"[77] "The Montevideo Declaration on the Law of the Sea" adopted on May 8, 1970;[78] "The Declaration of the Latin American States," made from Lima on August 8, 1970;[79] "The Declaration of Santo Domingo," approved on June 7, 1971;[80] and the September 10, 1971, "Inter-American Juridical Committee: Resolution on the Law of the Sea."[81] Each of these five new Declarations has attempted in some way to fill the gaps in sea law left by the previous Latin American declarations and the Geneva Conferences.

For the purpose of clarifying later discussion and analysis, the Latin American nations attending these respective conferences, the voting records, and pertinent quotes from the body of the Declarations will first be presented.

1. 1965 Meeting of the Inter-American Juridical Committee

The 1965 meeting of the Inter-American Juridical Committee was attended by representatives of Brazil, Colombia, Chile, Mexico, Venezuela, Peru, and Argentina.[82] These delegates passed a resolution on the territorial sea which reads as follows:

> WHEREAS:
>
> The United Nations International Law Commission, in the report it submitted in 1956, which served as a basis for the

---

[77] Pan American Union, Inter-American Juridical Committee: Report of the Inter-American Juridical Committee on the Work Accomplished During its 1965 Meeting (1966). [hereinafter cited as 1965 Report].

[78] 9 I.L.M. 1081 (1970).

[79] 10 I.L.M. 207 (1971).

[80] 11 I.L.M. 892 (1972).

[81] 11 I.L.M. 894 (1972).

[82] 1965 Report at 1, supra note 77.

work of the First United Nations Conference on the Law of the Sea, stated that "the Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles," which undoubtedly carry implicit in it the opinion that a maximum breadth of twelve miles for the territorial sea should be considered as authorized by international law;

Nevertheless, both the First and the Second United Nations Conferences on the Law of the Sea, both held in Geneva, in 1958 and 1960, respectively, failed in their attempt to fix the breadth of the territorial sea in an international convention of world scope;

The favorable geographic, biological, historical, economic, and political conditions existing in the American hemisphere especially facilitate the contractual adoption of a rule of law of regional application on this subject; and

The official documents, discussion and results of the two United Nations Conferences on the Law of the Sea have pointed up the need to modify the pertinent decisions previously adopted by the Inter-American Neutrality Committee, the Inter-American Juridical Committee, and the Inter-American Council of Jurists, in order to establish principles and rules that faithfully reflect the existing customary rule of international law, which is a rule of varying content, as shown by the Synoptic Table of the laws and regulations in force of the juridical regime of the sea, prepared by the United Nations Secretariat,

The Inter-American Juridical Committee

DECLARES

1. That every American state has the right to fix the breadth of its territorial sea up to a limit of twelve nautical miles measured from the applicable base line.

2. That, when a state establishes a breadth of less than twelve nautical miles, that state shall have a fishing zone contiguous to its territorial sea in which it shall exercise the same rights in respect of fishing and exploitation of the living resources of the sea as it has in its territorial sea, and this zone may extend up to a limit of twelve nautical miles, measured from the applicable base line from which the breadth of the territorial sea is measured.

3. That the foregoing provisions shall not in any way prejudge the breadth that may be fixed in each case for the adjacent zone of the high seas in which the coastal state has a special interest in maintaining the productivity of the living resources of the sea and a preferential right to utilize them, and it shall therefore be empowered to take the necessary measures to ensure the conservation

of such resources; and

RECOMMENDS:

To the American states that they endeavor to conclude, as soon as possible, as inter-American regional convention that will contain the following provisions, among others:

Article 1

Every American state has the right to fix the breadth of its territorial sea up to a limit of twelve nautical miles measured from the applicable base line.

Article 2

When the breadth of the territorial sea of a state is less than twelve nautical miles measured as stipulated in the preceding article, that state shall have a fishing zone contiguous to its territorial sea in which it shall exercise the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea. This fishing zone shall be measured from the applicable base line from which the breadth of the territorial sea is measured and may extend up to a limit of twelve nautical miles.

Article 3

The foregoing provisions, shall in no way prejudge the breadth that may be fixed in each case, for the adjacent zone of the high seas in which the coastal state has a special interest in maintaining the productivity of the living resources of the sea and a preferential right to utilize them, and it shall therefore be empowered to take the necessary measures to ensure the conservation of such resources.

Article 4

Every state shall enact the necessary laws and regulations to prevent its nationals from fishing within the territorial seas and fishing zones of the other states unless authorized to do so by the competent authorities of the coastal state concerned.

Article 5

None of the provisions of this convention shall be construed so as to prevent the conclusions, subject to the established rules of international law, of bilateral or multilateral agreements between states with common interest, to regulate all matters concerning fishing.

Article 6

The preceding provisions shall not in any way affect the juridical status of so-called 'historical waters,' including

historical gulfs and bays.

Article 7

This convention may not be denounced until five years after it has entered into force.[83]

The Colombian delegate issued the following statement:

> I should have liked an additional article to be included in the proposed declarations of the Committee and Inter-American Convention, to read as follows:
>
> It is recognized that it is valid for an American state to fix or to have fixed, for special reasons, a breadth of up to 200 miles over which it exercises sovereignty and jurisdiction, chiefly for purposes of fishing rights and the conservation of the living resources of the sea.
>
> The special reasons may be derived from:
>
> A. The existence of or need for a regional agreement or an agreement between two or more neighboring countries;
>
> B. The importance of fishing as a factor in industrial development;
>
> C. Various kinds of economic needs of the coastal state;
>
> D. The obligation the governments have to assure their peoples the conditions necessary for subsistence;
>
> E. The existence of special geographic and maritime conditions in the coastal state or in the adjacent belt of the sea; and
>
> F. The desirability of providing for the conservation and protection of the natural resources of the sea and of regulating their utilization in order to obtain the best possible benefits for the country in question.
>
> It is true that the final part of Article 3 of the Committee's proposal refers in a highly technical manner to the problem contemplated in the formula I have advocated, but I consider that it was desirable to adopt the most specific provisions possible.[84]

The Argentine delegate, who was not present during the voting, adhered to the opinion by means of the following vote:

---

[83] Id. at 2-4.

[84] Id. at 4.

I approve by my signature the opinion of the Inter-American Juridical Committee on 'The Breadth of the Territorial Sea' and specially support the vote and reasons of Dr. Jose Joaquin Caicedo Castilla, the Colombian Delegate. I should have liked the express inclusion of protection of the right of countries that have extended their sovereignty over their continental shelf, subsoil, and epicontinental sea.[85]

The Peruvian Delegate, Minister Rene Hooper Lopez, abstained from signing the original document.

2. The Montevideo Declaration

The Montevideo Meeting on the Law of the Sea in 1970 was attended by delegates of Argentina, Brazil, Chile, Ecuador, El Salvador, Nicaragua, Panama, Peru, and Uruguay. The Declaration produced at this meeting was unanimously adopted.[86] It reads:

The States represented at the Montevideo Meeting on the Law of the Sea,

RECOGNIZING that there exists a geographic, economic and social link between the sea, the land, and its inhabitants, Man, which confers on the coastal peoples legitimate priority in the utilization of the natural resources provided by their marine environment,

RECOGNIZING likewise that any norms governing the limits of national sovereignty and jurisdiction over the sea, its soil and its subsoil, and the conditions for the exploitation of their resources, must take account of the geographical realities of the coastal States and the special needs and economic and social responsibilities of developing States,

CONSIDERING: that scientific and technological advances in the exploitation of the natural wealth of the sea have brought in their train the danger of plundering its living resources through injudicious or abusive harvesting practices or through the disturbance of ecological conditions, a fact which supports the right of coastal States to take the necessary measures to protect those resources within areas of jurisdictions more extensive than has traditionally been the case and to regulate within such areas any fishing or aquatic hunting, carried out by vessels operating under the national or a foreign flag, subject to national legislation and to agreements concluded with other States.

that a number of declarations, resolutions and treaties, many of them inter-American, and multilateral declarations and agreements

---

[85] Id. at 5.

[86] 9 I.L.M. 1051.

concluded between Latin American States, embody legal principles which justify the right of States to extend their sovereignty and jurisdiction to the extent necessary to conserve, develop and exploit the natural resources of the maritime area adjacent to their coasts, its soil and its subsoil,

that, in accordance with those legal principles the signatory States have, by reason of conditions peculiar to their sovereignty or exclusive rights of jurisdiction over the maritime area adjacent to their coasts, its soil and its subsoil extended to a distance of 200 nautical miles from the baseline of the territorial sea,

that the implementation of measures to conserve the resources of the sea, its soil and its subsoil by coastal States in the areas of maritime jurisdiction adjacent to their coasts ultimately benefits mankind, which possesses in the oceans a major source of means for its subsistence and development,

that the sovereign right of States to their natural resources has been recognized and reaffirmed by many resolutions of the General Assembly and other United Nations bodies,

that it is advisable to embody in a joint declaration the principles emanating from the recent movement towards the progressive development of international law, which is receiving ever-increasing support from the international community,

DECLARE the following to be Basic Principles of the Law of the Sea;

1. the right of coastal States to avail themselves of the natural resources of the sea adjacent to their coasts and of the soil and subsoil thereof in order to promote the maximum development of their economies and to raise the levels of living of their peoples;

2. the right to establish the limits of their maritime sovereignty and jurisdiction in accordance with their geographical and geological characteristics and with the factors governing the existence of marine resources and the need for their rational utilization;

3. the right to explore, to conserve the living resources of the sea adjacent to their territories, and to establish regulations for fishing and aquatic hunting;

4. the right to explore, conserve and exploit the natural resources of their continental shelves to where the depth of the superadjacent waters admits of the exploitation of such resources;

5. the right to explore, conserve and exploit the natural resources of the soil and subsoil of the sea-bed and ocean floor up to the limit within which the State exercises its jurisdiction over the sea;

6. the right to adopt, for the aforementioned purposes, regulatory measures applicable in areas under their maritime sovereignty and jurisdiction, without prejudice to freedom of navigation by ships and overflying by aircraft of any flag.

Furthermore, the signatory States, encouraged by the results of this Meeting, express their intention to co-ordinate their future action with a view to defending effectively the principles embodied in this Declaration.

This Declaration shall be known as the "Montevideo Declaration on the Law of the Sea."[87]

3. The Lima Declaration

The 1970 Lima Declaration of Latin American States on the Law of the Sea was approved fourteen to three with one abstention. Argentina, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, and Uruguay voted for the Declaration; Bolovia, Paraguay, and Venezuela, against; Trinidad and Tobago abstained.[88] The Declaration reads:

WHEREAS:

There is a geographic, economic, and social relationship between the sea, the land, and man who lives on the land, which gives coastal populations a lawful priority with respect to utilization of the natural resources in the sea adjacent to their coasts;

As a result of that pre-eminent relationship, it has been recognized that coastal states have the right to establish the limits of their sovereignty or jurisdiction over the sea on the basis of reasonable criteria, taking into account their geographic, geological, and biological situation and their socioeconomic needs and responsibilities;

The dangers and damage resulting from indiscriminate and abusive practices in the extraction of ocean resources was one of the things that have led a significant group of coastal States to extend the limits of their sovereignty or jurisdiction over the sea, while respecting the freedom of navigation of vessels and overflight by aircraft, regardless of the flag they fly;

Certain kinds of exploitation of the sea have also been causing serious danger of water pollution and disturbance of the ecological balance, which make it necessary for the coastal States

---

[87] 9 I.L.M. at 2-4. See also Lay, 1 New Directions at 237, supra note 47.

[88] 9 I.L.M. at 207.

to adopt measures to protect the health and interests of their peoples;

The development of scientific ocean research requires the fullest cooperation among States so that all may render assistance and share in the benefits, without prejudice to the authorization, supervision, and participation of the coastal State when such research is conducted within the limits of its sovereignty or jurisdiction;

In declarations, resolutions, and treaties, especially inter-American ones, as well as in unilateral declarations and agreements concluded among Latin American States, legal principles justifying the above-mentioned rights are established;

The sovereign right of States to their natural resources has been recognized and reaffirmed by a great many resolutions adopted by the General Assembly and other organs of the United Nations;

In the exercise of these rights, the rights of adjacent States bordering on the same sea should be mutually respected; and

The above concepts should be combined and reaffirmed in a joint declaration, taking into account the variety of legal systems on sovereignty or jurisdiction over the sea in force in the various Latin American States;

The Latin American Meeting on Certain Aspects of the Law of the Sea

Declares the following to be common principles of the Law of the Sea:

1. The inherent right of coastal States to explore, conserve, and exploit the natural resources of the sea adjacent to their coasts, the soil and subsoil thereof, and the continental shelf and its subsoil, in order to promote maximum development of their economies and to raise the standard of living of their peoples;

2. The right of coastal States to establish the limits of their sovereignty of jurisdiction over the sea in conformity with reasonable criteria, taking into account their geographic, geological, and biological situation and the need for rational utilization of their resources;

3. The right of coastal States to adopt regulatory measures for the above-mentioned purposes, to be applicable in the zones of their sovereignty or jurisdiction over the sea, without prejudice to freedom of navigation of vessels and overflight of aircraft, regardless of the flag they fly;

4. The right of coastal States to prevent water pollution and other dangerous or noxious effects that may result from the use, exploration, and exploitation of the sea adjacent to their coasts;

5. The right of coastal States to authorize, supervise, and participate in all scientific research activities in the maritime zones under their sovereignty or jurisdiction, as well as to receive the data obtained and the results of such research.

This Declaration is to be known as the 'Declaration of Latin American States on the Law of the Sea.'[89]

4. Inter-American Juridical Committee Resolution of September 10, 1971

The Inter-American Juridical Committee: Resolution on the Law of the Sea of September 10, 1971, was another exhortation to continue the study of the law of the sea. It simply provided for further study of questions related to territorial sea, zones of jurisdiction, continental shelf, international zone of the seabed and ocean floor, regional agreements, and peaceful uses of the ocean.[90]

5. The Santo Domingo Conference

The Santo Domingo Conference was called at the initiation of Colombia. The final declaration of 1972 was signed by Colombia, Costa Rica, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Dominican Republic, Trinidad, Tobago, and Venezuela. Barbados, El Salvador, Guyana, Jamaica, and Panama did not sign.[91] The text of the Declaration reads:

TERRITORIAL SEA

1. The sovereignty of a State extends, beyond its land territory and its internal waters, to an area of the sea adjacent to its coast, designated as the territorial sea, including the superadjacent air space as well as the subjacent seabed and subsoil.

2. The breadth of the territorial sea and the manner of its delimitation should be the subject of an international agreement, preferably of a worldwide scope. In the meantime, each State has the right to establish the breadth of its territorial sea up to a limit of 12 nautical miles to be measured from the applicable baseline.

3. Ships of all States, whether coastal or not, should enjoy the

---

[89] 9 I.L.M. at 207. See also Lay, 1 New Directions 237, supra note 47.

[90] 11 I.L.M. at 894-896.

[91] 11 I.L.M. at 892.

right of innocent passage through the territorial sea, in accordance with International Law.

PATRIMONIAL SEA

1. The coastal State has sovereign rights over the renewable and non renewable natural resources, which are found in the waters, in the seabed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea.

2. The coastal State has the duty to promote and the right to regulate the conduct of scientific research within the patrimonial sea, as well as the right to adopt the necessary measures to prevent marine pollution and to ensure its sovereignty over the resources of the area.

3. The breadth of this zone should be the subject of an international agreement, preferably of a worldwide scope. The whole of the area of both the territorial sea and the patrimonial sea, taking into account geographic circumstances, should not exceed a maximum of 200 nautical miles.

4. The delimitation of this zone between two or more States, should be carried out in accordance with the peaceful procedures stipulated in the Charter of the United Nations.

5. In this zone ships and aircraft of all States, whether coastal or not, should enjoy the right of freedom of navigation and overflight with no restrictions other than those resulting from the exercise by the Coastal State of its rights within the area. Subject only to these limitations, there will also be freedom for the laying of submarine cables and pipelines.

CONTINENTAL SHELF

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The continental shelf includes the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superadjacent waters admits the exploitation of the natural resources of the said areas.

3. In addition, the States participating in this Conference consider that the Latin American Delegations in the Committee on the Seabed and Ocean Floor of the United Nations should promote a study concerning the advisability and timing for the establishment of precise outer limits of the continental shelf taking into account the outer limits of the continental rise.

4. In that part of the continental shelf covered by the patrimonial sea the legal regime provided for this area shall apply. With respect to the part beyond the patrimonial sea, the regime established for the continental shelf by International Law shall apply.

INTERNATIONAL SEABED

> 1. The seabed and its resources, beyond the patrimonial sea and beyond the continental shelf not covered by the former, are the common heritage of mankind, in accordance with the Declaration adopted by the General Assembly of the United Nations in Resolution 2749 (XXV) of December 17, 1970.
>
> 2. This area shall be subject to the regime to be established by international agreement, which should create an international authority empowered to undertake all activities in the area, particularly the exploration, exploitation, protection of the marine environment and scientific research, either on its own, or through third parties, in the manner and under the conditions that may be established by common agreement.[92]

E. Latin America and the Possibility for Consensus on Questions of Sea Law: Some Observations and Conjectures

These post-1960 multilateral statements of the Latin American position on the law of the sea present a puzzling picture to even the most careful reader. For example, the Montevideo Declaration of May 8, 1970, seems to recognize a state's right to claim 200 mile jurisdiction over the ocean; whereas, the Lima Delaration, passed just three months later, makes no mention of 200 mile jurisdiction. Noted jurist F. V. Garcia-Amador, in an article written prior to the Santo Domingo Declaration, stated that the differences "are more than mere formal ones or ones of shading."[93] The next section, which deals with unilateral claims of jurisdiction by individual Latin American nations, will further reveal the differences referred to by Garcia-Amador.

This is not to say, however, that progress by the Latin American nations toward a consensus position on questions of jurisdiction has not been made. A quick review of the enormous differences that existed prior to 1960 serves to

---

[92] 11 I.L.M. at 892. See also Lay, 1 New Directions 247, supra note 47.

[93] Garcia-Amador, Latin America and the Law of the Sea, 6 Law of the Sea R. 104 (1971).

highlight the strides made in the 1965 Inter-American Juridical Committee Recommendations and in the Montevideo, Lima, and Santo Domingo Declarations.

An analysis of the language of these four documents reveals many similar elements which might serve as the common denominator through which consensus may be finally reached.

1. Agreement of the Exhaustibility of Marine Resources

Grotius believed that the resources of the sea were inexhaustible. As was emphasized in an earlier section, this belief played a major part in the formulation of his theory of mare liberum. Research carried on over the last thirty years has proven this assumption incorrect. The Latin Americans have accepted the fact that marine resources are exhaustible. This agreement is reflected in each of the post-1960 multilateral statements.

In light of modern experience, this agreement by Latin American nations on the exhaustibility of marine resources would seem to be agreement on a truism. Were this agreement not found in the body of various multilateral declarations, its significance would certainly be questionable. That each of the Latin American nations, in some manner, has formally agreed to recognize the fact that the ocean has exhaustible potential is of importance.

This realization is the crux of the jurisdictional question. Earlier in this paper, state jurisdiction was defined as the right of a state to regulate or affect by legislation the rights of persons, property, acts, or events. Conservation and management of marine resources, which is a regulatory activity, is not possible without a jurisdictional claim of the right to regulate.

It may be contended, therefore, that implicit in the Latin American realization concerning the exhaustibility of marine resources is the further realization that activities to conserve and manage these resources are necessary. Such activity may be conducted only under the auspices of jurisdictional claims of a right

to regulate.

This single element of agreement will supply part of the impetus necessary to arrive at a consensus on the jurisdictional question. Once condeeded that some form of jurisdiction is necessary to control ocean resources, the only question remaining is the extent and character of the jurisdictional claims to be made.

2. Agreement on Social and Economic Criteria for Establishing the Limits of State Jurisdiction

Analysis of the particular claims of the four Latin American statements on the question of jurisdiction does not result in consensus. The 1965 Inter-American Juridical Committee Recommendation speaks of a twelve mile limit to territorial seas. The Montevideo Declaration seems to espouse a right to establish maritime jurisdiction in accordance with geographical and geological ends with factors governing the existence of marine resources up to a distance of 200 nautical miles. The Lima Declaration recognizes a right of sovereign jurisdiction over the sea in conformity with reasonable criteria, taking into account individual, geographical, geological, and biological circumstances without mentioning any outer limits. The Santo Domingo Declaration recognizes a right to a 12 mile territorial sea and a patrimonial sea not to exceed 200 nautical miles.

These four documents do not provide any specific, consistent definition of the extent and character of a jurisdictional claim which reflects a unified position of the Latin American nations. However, the documents do suggest the common denominator which may lead to a consensus position.

Each of the documents contains some reference to the obligation of a littoral state to maintain a satisfactory relationship between the peoples of that state and the marine environment. The purpose of this statement of relationships is to support the contention that littoral states have the right and obligation to regulate activities in ocean areas adjacent to their coasts for the economic and

social betterment of their population. It might be observed that this, again, is another group of multilateral agreements on a truism. However, it does constitute an agreement, at least, on a vague criterion concerning the type of jurisdiction over ocean space that is desirable. The common element is agreement that the jurisdictional criterion be based on the economic and social advancement of the population of the coastal state.

A more nebulous standard for measuring the extent of state jurisdiction cannot be imagined. It is arguable that using economic and social advancement criteria, a reasonable case could be made to extend territorial seas 400, 500, or even 600 miles into the ocean.[94] This is certainly possible, but considering the resistance such claims would probably encounter in the international community, it is not likely.

Given what has been represented as the common elements of agreement among the Latin American nations on the question of state jurisdiction over the oceans, a consensus position can be projected. The two major considerations in formulatingsuch a projection would be the desire of the Latin American nations to achieve optimum jurisdiction and control over the exhaustible marine resources in their adjacent waters and the practicality of gaining recognition of these jurisdictional claims in the international community. Both of these considerations are met by the plan proposed in the Santo Domingo Declaration.

3. The Santo Domingo Declaration Considered as a Focal Point for Future Latin American Positions on the Law of the Sea

The Santo Domingo Declaration proposes a 12 mile limit on territorial seas. It further proposes the establishment of a patrimonial sea whose limits, inclusive of the territorial sea, shall not exceed a maximum of 200 nautical miles from the coast. Within the 188 mile zone beyond the territorial sea and the outer boundary

---

[94] Ratiner, The United States Ocean Policy: An Analysis, 2 J. of Maritime L. and Comm. 230 (1970).

of the patrimonial sea, the right of freedom of navigation and overflight is recognized. In essence the patrimonial sea is a conservation zone. It "may be defined as a zone contiguous to the territorial sea, in which coastal states would exercise sovereign rights over the renewable and non-renewable natural resources which are found in the seabed and in the subsoil."[95] The view expresses no opinion as to jurisdiction of the water and its contents.

This plan certainly fulfills the first consideration which must be met in formulating a consensus position for Latin America. The 200 mile maximum breadth of jurisdiction would allow the littoral states sufficient area to carry on even the most ambitious conservation activities. This plan also meets the "realm of possibility" test. A "200 mile territorial sea has steadily gained support among the developing states.... Support for this position has come from such divergent countries as Iceland, Yugoslavia, and North Korea. The states of Ceylon, North Korea, Guinea, India, Pakistan, and Senegal have each recently extended their own territorial sea jurisdiction to distances ranging from eighteen to two hundred miles."[96]

The 200 mile patrimonial sea represents a jurisdictional compromise. The right of freedom of navigation is recognized in the patrimonial sea areas whereas the right of innocent passage is not allowed in the proposed 200 mile territorial sea. The patrimonial sea concept more easily fits into the existing norms of international sea law. As a compromise position it possesses greater possibility of gaining support than does the 200 mile territorial sea proposal.

4. Prospects for the 1974 United Nations Law of the Sea Conference

---

[95] Andress Aguilar, The Patrimonial Sea, Speech given before 7th Annual Summer Conferences of the Law of the Sea Institute (Kingston, Rhode Island, June 29, 1972).

[96] Brickell, National Sovereignty and the Two Hundred Mile Limit: A Case for the Littoral State, 21 Am. U. L. Rev. 597 (1972).

The United Nations has resolved to convene a conference on the law of the sea.[97] It will consist of a two week preparatory session in New York in November and December of 1973. Thereafter an eight week session for the purpose of dealing with the substantive work will convene in Santiago, Chile, in April of 1974. There is a distinct possibility that in the interim the Latin American nations will arrive at a consensus position closely resembling that espoused in the Santiago Declaration.

It is also possible that a proposal resembling the Santo Domingo Declaration could be adopted by the 1974 United Nations Conference on the Law of the Sea. Such a proposal does face major obstacles. The major maritime powers, the United States, Japan, and The United Kingdom, are opposed to the 200 mile jurisdictional zone.[98]

It should be noted, however, that the developing nations comprise a voting majority in the United Nations.[99] In the Twenty-Fourth General Assembly Session, this voting majority united to pass several measures relating to sea law questions. They have the votes and "can push through whatever resolution and declaration. . . (is) approved by their own caucus."[100] "Lacking the economic influence and military might associated with the creators of the previous phase of the Law of the Sea, developing States in this post-colonial period will tend to rely upon numerical strength, and the various forces and devices that tend to maintain that strength is an invincible voting weapon at any conference."[101] If the land-locked

---

[97] (U.N. Doc. A/C.1/L. 634 Rev. L.).

[98] Burke, Consequences for Territorial Sea Claims of Failure to Agree at the Next Law of Sea Conference, 6 Law of Sea 41 (1971).

[99] Haight, Sea-Bed Discussions in the Twenty-Fourth General Assembly 3 Nat. Res. Lawyer 405 (1970).

[100] Id. at 418.

[101] C. W. Pinto, "Problems of Developing States and their Effect on Decisions on the Law of the Sea" 5 (speech delivered at 7th Annual Conference of the Law of the Sea Institute, June 26, 1972) [hereinafter cited as Pinto, "Problems of Developing States".]

developing nations can be convinced to back a resolution resembling the Santo Domingo Declaration, there is little doubt it could be passed at the 1974 United Nations Conference on the Law of the Sea.

However, the land-locked members of the United Nations may oppose granting large jurisdictional area to littoral states. "They have a significant block of U.N. votes, since approximately one-fifth of the nations of the world are land-locked."[102] U.N. Resolution 2750B (XXV) requesting the Secretary General of the United Nations to do a study for the Seabed's Committee on the special problem of landlocked countries relating to the exploration and exploitation of the resources of the deep seabed may be indicative of a growing concern among the landlocked nations not "to be left out in the cold when the ocean resources pie is divided up."[103]

Time is on the side of the Latin American position. Every day that passes allows the 200 mile claims made in the various multilateral and unilateral declarations to ripen a bit more as a customary practice of international law. At the very least, the Latin American nations will go into the 1974 Conference on the Law of the Sea in a strong bargaining position.

---

[102] Childs, The Interest of the Land-Locked States in Law of the Sea, 9 San Diego L. Rev. 701 (1972).

[103] Stang, The Donnybrook Fair of the Oceans, 9 San Diego L. Rev. 578 (1972).

CHAPTER II. A SURVEY OF LATIN AMERICAN UNILATERAL DECLARATIONS ON THE LAW OF THE SEA

Prior to 1945, most of the nations in Latin America claimed jurisdiction over a territorial sea in accord with existing theories of international law. However as a result of the Truman Proclamation of 1945, virtually all have made additional unilateral claims to maritime spaces and submarine areas. These nations are presently divided in their national claims as well as in their suggestions for a universal agreement. This section will state and compare the various jurisdictional claims in regard to the breadth of the territorial sea which each nation presently asserts.

Throughout this section, five basic terms will be used in connection with various jurisdictional claims: maritime zone, territorial sea, epicontinental sea, patrimonial sea, and continental shelf. Unfortunately, it is impossible adequately to define these terms. Each nation gives its own meanings to the term or terms which it chooses to use. Furthermore, each nation uses these terms in Constitutions, Legislative Decrees, and Presidential Proclamations; and, as expected, they imply varying degrees of importance according to the type of legislation in which they are contained. Obviously, the different types of legislation and proclamations vary in importance from country to country, and even from time to time within a specific country.

In order to understand the juridical nature of the term "maritime zone," we must distinguish between claims to sovereignty and exclusive jurisdiction in a "maritime zone," as opposed to claims to sovereignty and exclusive jurisdiction in a "territorial sea." According to the Santiago Declaration, a "maritime zone" is an area in which the coastal nation reserves only the right to regulate and supervise natural resources in the area for the purpose of conserving and protecting them. "Territorial sea," on the other hand, implies that the coastal nation considers the natural resources in this area to be the exclusive property

of the state. Nevertheless, the two terms have been used interchangeably in much domestic legislation in Latin America; and, the definitions given to these terms, more often than not, afford the nations in Latin America an opportunity to exploit exclusively the resources in their territorial seas.

The term "territorial sea" does not imply freedom of navigation in a strictly legal sense. In light of the provisions in the Montevideo, Lima, and Santo Domingo Declarations expressly recognizing freedom of navigation by ships and aircraft of any flag in the "maritime zone," many nations have drafted domestic legislation using the term "territorial sea" to define their 200 mile claims. They either expressly or impliedly recognize freedom of navigation in large areas of this "territorial sea."

"Epicontinental sea" was first used by Argentina in 1946, and since that time only Uruguay appears to have used the term in her domestic legislation. The term refers to the waters which cover the continental shelf and the plant and animal life which can be found in these waters. The term was never used by west coast nations such as Chile, Ecuador, and Peru. Since they have narrow continental shelves, they preferred the "bioma theory" which allows them to claim extensive areas of the sea in their domestic legislation without regard to the extent of their continental shelves.

As used in the Declaration of Santo Domingo in 1972, the term "patrimonial sea" is an area adjacent to the territorial sea in which the coastal state has sovereign rights over the renewable and non-renewable sources found in the waters, the seabed, and the subsoil. Of the eleven countries which signed this declaration recognizing the right of coastal states to claim jurisdiction over a " patrimonial sea," only Costa Rica has enacted domestic legislation to this effect.

The "continental shelf" claims of virtually all Latin American coastal nations were a direct result of the Truman Proclamation. Most of these nations

borrowed the language of this proclamation and claimed sovereignty over the seabed and subsoil of the submarine areas adjacent to their coasts to a depth of 200 meters. In addition, some of the nations chose to claim sovereignty over an area beyond 200 meters to any area where the depth of the superadjacent waters admits the exploitation of the continental shelves.

With these terms in mind, let us discuss the various jurisdictional claims of the Latin American nations.

A. Argentina

Argentina's first claim in regard to her territorial sea and its breadth occurred as early as September 29, 1869. Article 2340 of the Argentine Civil Code states:

> The following are the public property of the general State of the Republic or of the individual states: (1) The seas adjacent to the territory of the Republic, up to a distance of one marine league, measured from the low-water mark: but the right of policing with respect to matters concerning the security of the country and the observance of fiscal laws extends up to the distance of four marine leagues measured in the same manner.[104]

It was not until 1944 that Argentina indicated she was not satisfied with that claim. Article 2 of the Decree 1386 of January 24, 1944, set the tone for future legislation:

> Pending the enactment of special legislation, the zones at the international frontiers of the national territories and the zones on the ocean coasts, as well as the zones of the epicontinental sea of Argentina, shall be deemed to be temporary zones of mineral reserves...[105]

Subsequently, Argentina enacted Decree 14.708 of October 11, 1946, declaring that

---

[104] Laws and Regulations on the Regime of the High Seas, 1 United Nations Legislative Series 51 (1951). [hereinafter cited as 1 United Nations Series].

[105] Alurralde, A Statement of the Laws of Argentina 313 (1963). [hereinafter cited as Alurralde, A Statement].

"the epicontinental sea and continental shelf are subject to the sovereign power of the nation ... and ... for purposes of free navigation, the character of the waters situated in the Argentine epicontinental sea and above the Argentine continental shelf remain unaffected by the present legislation."[106] So, Argentina as of 1946 had exercised dominion over the waters covering her submarine platform (epicontinental sea) as well as her continental shelf.[107] A few writers have suggested that this zone could extend as far as 500 miles due to the fact that Argentina has an extremely broad continental shelf.

Nevertheless, Argentina was by no means ready to join Chile, Ecuador, and Peru in their claims for a 200 mile maritime zone. When the Peron regime was overthrown by General Pedro Eugenio Aramburu, a curious "aboutface" occurred. Aramburu abandoned the theories behind the decree of 1946 and turned to a traditional 3 mile territorial sea.

Apparently, there was little concern over the delimitation of the Argentine territorial waters during the 1950's. However, greater interest was manifested in the 1960's. In view of the fact that Russian fishing vessels had been operating close to the coast of Argentina, the Argentine legislature under the leadership of President Juan Carlos Ongania enacted Decree 17.094 of December 29, 1966. Decree 17.094 reasserts Argentina's earlier claim for jurisdiction over an extensive area of the ocean.

> Article I. The sovereignty of the Argentine nation shall extend over the sea adjacent to the territory for a distance of 200 nautical miles measured from the line of the lowest tide,

---

[106] Grunawalt, Acquisitions of Resources at 11, supra note 8. See also Alurralde, A Statement at 313, supra note 106.

[107] 1 United Nations Series at 4. The term epicontinental seas was defined as "the waters covering the continental platform ... characterized by extraordinary biological activity, owing to the influence of the sunlight which stimulates plant life (algae, mosses, etc.) and the life of innumerable species of animals..."

except in the case of the San Matias, Nuevo and San Jorge Gulfs, where it will be measured from the line joining the promontories which form their mouth.

Article II. The sovereignty of the Argentine nation shall also extend over the seabed and the subsoil of the submarine zones adjacent to this territory up to a depth of 200 meters or, beyond this limit, up to that depth of the overlying waters which allows exploitation of the natural resources of those zones.

Article III. The Provisions of this law shall not affect freedom of navigation or of air traffic.[108]

It appears that the Argentine legislators attempted to cover all possibilities when they enacted Decree 17.094. The language in Article II allowing for control "up to that depth of the overlying waters which allows exploitation of the natural resources of those zones" is not susceptible to any hard and fast definition. However, it is clear that Argentina intends to claim jurisdiction over her continental shelf beyond the depth of 200 meters to any depth that can be exploited.

B. Brazil

As early as 1850 Brazil, following the example set by various European nations, decided that her territorial sea would extend only that distance that a cannon could reach.[109] Subsequently, this distance was fixed at 3 miles for the purpose of neutrality during World War I.[110] This 3 mile territorial

---

[108] National Legislation and Treaties Relating to the Territorial Sea, the Contiguous Zone, the Continental Shelf, the High Seas and to Fishing and Conservation of the Living Resources of the Sea, 15 United Nations Legislative Series 45 (1970). [hereinafter cited as 15 United Nations Series].

[109] Reisenfeld, 5 Protection of Coastal Fisheries Under International Law 241 (1942). [hereinafter cited as Reisenfeld, Protection of Fisheries].

[110] Laws and Regulations on the Regime of the Territorial Sea, 6 United Nations Legislative Series 2 (1957). [hereinafter cited as 6 United Nations Series]. In a circular to the state governors, and the Ministers of the Navy and War, the Minister for Foreign Affairs advised that "the distance of three maritime miles, which has until now been adopted, in principle, by the Brazilian Government, shall remain unaltered for the purposes of neutrality."

sea was effected for all purposes with Decree 5798 of June 11, 1940.[111]

As a result of the Truman Proclamation and various similar proclamations made by Mexico, Chile, Argentina, and Peru, Brazil enacted Decree 28.840 of November 8, 1950:

> Article I. It is formally proclaimed that part of the continental shelf which adjoins the continental and insular territory of Brazil is integrated into that territory, under the exclusive jurisdiction and dominion of the Federal Union...
>
> Article III. The rules governing navigation in the waters covering the aforesaid continental shelf shall continue in force without prejudice to any further rules which may be made, especially as regards fishing in that area.[112]

The Political Division of the Ministry of Foreign Affairs defined the continental shelf as being submerged as far as 180 to 200 meters in depth.[113] Moreover, it appears that Brazil continued to claim a territorial sea of only 3 miles until 1966.

Under the Decree 44 of November 18, 1966, Brazil "increased to six nautical miles the territorial waters ... reserving ... exclusive fishing rights in an additional area of six nautical miles."[114] Later, on April 25, 1969, Decree 533 revoked Decree 44. Under this new decree, President Costa E. Silva ordered that:

> the territorial sea of the Federal Republic of Brazil comprises all waters that bathe the coastline of the Nation, from Cape Orange at the mouth of the Oiapaque River to the Chui Rivulet, in the state of Rio Grande do Sul, extending in a belt twelve nautical miles in

---

111 International Boundary Study, National Claims to Maritime Jurisdictions 8 (1972). [hereinafter cited as International Boundary Study].

112 1 United Nations Series at 300, supra note 105. See also Nabuco and Zanotti, A Statement of the Laws of Brazil in Matters Affecting Business 291 (1961). [hereinafter cited as Nabuco and Zanotti].

113 Garcia-Amador, Latin America and the Law of the Sea 9 (1970). [hereinafter cited as Garcia-Amador, Law of the Sea].

114 Allison, Recent Legal Developments in Latin America, 2 The Int'l Lawyer 262 (1967). See also International Boundary Study at 8 and Garcia-Amador, Law of the Sea at 9, supra note 114.

> breadth measured from the low water mark, adopted with reference to Brazilian nautical charts.[115]

This position was adhered to by Brazil until 1970. While Brazil laid claims to her continental shelf as a result of the Truman Proclamation, she appeared reluctant to follow other Latin American nations in their claims to a 200 mile territorial sea. Her reluctance ended as of March 25, 1970, with the issuance of Decree 1098. In essence, Decree 1098 extended the Brazilian territorial sea to 200 miles, and provided that the straight base line method was to be used in delimiting the actual extent of this zone. It has been suggested that Brazil proclaimed her sovereignty over a 200 mile territorial sea partly because of her nationalistic desire to be the spokesman for the Latin American bloc. In addition, Brazil extended her sovereignty to the air space above the territorial sea, as well as the waters and the continental shelf.[116]

C. Chile

Article 593 of the Chilean Civil Code, promulgated on December 14, 1855, states:

> The adjacent sea, up to a distance of one marine league, measured from the low-water mark, constitutes the territorial sea and belongs to the national domain; but the right of policing, with respect to matters concerning the security of the country and the observance of fiscal laws, extends up to a distance of four marine leagues, measured in the same manner.[117]

---

[115] 8 I.L.M. 989 (1969). [hereinafter cited as 8 I.L.M.].

[116] Garcia-Amador, Law of the Sea at 9, supra note 114. See also Santa-Pinter, Latin American Countries Facing the Problems of Territorial Waters, 8 San. D. L. Rev. 615 (1971). [hereinafter cited as Santa-Pinter, Latin American Countries]. 9 Latin American Nations Affirm Coast Rights, New York Times (New York City), 1970, at 14 col. 4. See also International Boundary Study at 8, supra note 112.

[117] 1 United Nations Series at 61, supra note 105.

Apparently, Chile left this provision of the code unchanged until 1941 at which time she enacted Decree 1340 (b):

> The sea adjacent to our coasts from a distance of fifty kilometres measured from the lowest water mark ... constitutes the territorial sea and belongs to the national domain.[118]

Thus, Chile made a unilateral decree over an extensive area of the sea before the Truman Proclamation.

On June 23, 1947, the President of Chile issued a unilateral declaration in response to the Truman Proclamation and the claims of Argentina and Mexico. The President declared that:

> Article I. The Government of Chile confirms and proclaims 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.
>
> Article II. The Government of Chile confirms and proclaims 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 ...
>
> Article III. The demarcation of the protection zones ... is made ... over all the seas contained within the perimeter formed by the coast and the mathematical parallel projected into the sea at a distance of 200 nautical miles ...
>
> Article IV. The present declaration of sovereignty does not ... affect the rights of free navigation on the high seas.[119]

While the President had made a unilateral proclamation in 1947 concerning under sea areas and fishing zones, the Water Code, annexed to law 8.944 of January 21, 1948, asserted an even different claim. The Water Code provides that the territorial sea constitutes an area "up to a distance of fifty kilometers, measured from the low-water mark ... but the right of policing, with respect to

---

[118] United Nations Legislative Series, 1 & 2 Supp. to Laws and Regulations on the Regime to the High Seas 23 (1959). [hereinafter cited as United Nations Series, Supp.].

[119] 1 United Nations Series at 6-7, supra note 105. See also Reithmuller Vaccaro and Valenzuela Montenegro, A Statement of the Laws of Chile 228 (1962) and Garcia-Amador, Law of the Sea at 12-13, supra note 114.

matters concerning the security of the country and the observance of fiscal laws extends up to a distance of 100 kilometers."[120] In spite of this apparent ambiguity, Chile was one of the original three parties which issued the Declaration of Santiago. The Chilean legislature approved the 200 mile maritime zone described in the Declaration of Santiago when it passed Supreme Resolution 179 of April 11, 1953.[121]

D. Colombia

Colombia's diverse claims in regard to her territorial sea have failed to explain her exact position in light of the 200 mile claims which other Latin American nations are presently espousing. A decree of November 6, 1866, asserted that "the entire sea skirting the Colombian coast from the highest tides up to a distance of one marine league [three nautical miles] from the coast itself is hereby declared to belong to the territory of Colombia and to be under its jurisdiction."[122] No further legislation appeared until December 30, 1919, at which time Decree 120 was enacted. Article 38 of that decree established Colombia's "right to exploit deposits which are situated under the water of the territorial sea, of the lakes and navigable rivers."[123] Obviously, the legislators had little idea of what types of resources lay on and under the continental shelf beyond the three mile territorial sea; so, it is safe to say they did not intend to enlarge their jurisdiction to cover areas beyond three miles from their coasts. However, on January 31, 1923, the legislators enacted Decree 14 which specifically amended Decree 120. Article 17 of Decree 14 states:

---

[120] 1 United Nations Series at 61, supra note 105. See also Garcia-Amador, Law of the Sea at 12, supra note 114.

[121] International Boundary Study at 16, supra note 112.

[122] 15 United Nations Series at 58, supra note 109.

[123] Id. See also Garcia-Amador, Law of the Sea at 14, supra note 114.

> For the purposes of Article 38 of Law 120 of 1919, concerning deposits of hydrocarbons, and Law 96 of 1922, relating to fishing in the seas of the Republic, the term "territorial sea" shall be understood to refer to a zone of twelve marine miles around the coasts of the continental and insular dominions of the Republic.[124]

In addition, Decree 79 of June 19, 1931, provided that, for the purposes of implementing the customs laws, the territorial sea shall extend up to twenty kilometers (approximately twelve miles).[125] There appears to be no reason for the legislature to have defined this limit in terms of kilometers since all other limits were prescribed in miles; furthermore, Decree 3183 of December 20, 1952, added to Colombia's complicated claims of jurisdiction. Decree 3183 dealt with the Colombian Merchant Marine Directorate and its various subsidaries. It provides that:

> For the purposes of the present decree, territorial water shall be deemed ... to extend ... up to a distance of three sea miles measured from the lowest tide mark. For the purposes of maritime vigilance, national security, protection of national interests and exercise of fishing right, the distance of three sea miles referred to in the foregoing paragraph shall be extended in contiguous waters up to nine sea miles from the outer limit of the territorial sea.[126]

Since 1952, Colombia appears to have enacted no significant legislation dealing with the extent of her claims in regard to her territorial sea. However, Colombia was by no means satisfied with her present legislation in this field. In fact, Colombia expressed decisions to cooperate with the signatories of the Declaration of Montevideo and stated she was spiritually allied with these nations. It was not a surprise when Colombia decided to join the growing number of Latin American nations in voicing an opinion regarding a 200 mile maritime zone.

Under the initiation of Colombia, a Latin American conference was called in Santo Domingo in June, 1972. The result of this conference was the Declaration

---

[124] Id. at 59.

[125] Id. See also Garcia-Amador, Law of the Sea at 14, supra note 114.

[126] Id.

of Santo Domingo which affirmed the coastal states' rights to claim jurisdiction over a patrimonial sea of 200 nautical miles as well as a continental shelf, possibly reaching beyond a depth of 200 meters. Colombia chose to sign this declaration; however, it appears that she has not enacted domestic legislation to this effect.[127]

E. Costa Rica

As early as July 27, 1948, Costa Rica made extensive claims for sovereignty over her continental shelf and territorial sea. Decree 116 reads as follows:

> Article I. National sovereignty is confirmed and proclaimed in the whole submarine platform or continental and insular coasts of the national territory at whatever depth it is found ...
>
> Article II. The rights and interests of Costa Rica are proclaimed over the seas adjacent to the continental and insular coasts of the national territory, whatever their depth ...
>
> Article IV. The protection of the state is declared over all the sea included within the perimeter formed by the coasts and by a mathematical parallel, projected out to sea at a distance of 200 marine miles from the continental Costa Rican coasts ...
>
> Article V. The present declaration ... does not affect the rights of free navigation.[128]

Following this decree, Article 6 of the Costa Rican Constitution of November 7, 1949,was revised to define Costa Rica's claims. Article 6 stated that "the state exercises complete and exclusive sovereignty in respect of the air space above its territory and in respect of its territorial waters and continental shelf, in accordance with the principles of international law and the

---

[127] Santa-Pinter, Latin American Countries at 615, supra note 117. See also Wurfel, Foreign Enterprise in Colombia 373 (1965). [hereinafter cited as Wurfel, Colombia]. Legislation to extend the territorial sea of Colombia 200 miles from the shore was at one time introduced into the Colombian Senate; however, this legislation was rejected.

[128] 1 United Nations Series at 10, supra note 105.

treaties in force."[129] Interestingly, there was a decision in 1950 in the Court of Cassation, Jones Boden v. Hans Daniels, which interpreted the provision in Article 6 to require a territorial sea of only three miles in accord with the principles of international law. Of course this decision did not bind the court to continue interpreting Article 6 in this manner.[130]

Seven years after the 1948 Decree, Costa Rica aceded to the Santiago Declaration, adopting the positions that Chile, Ecuador, and Peru advanced in 1952.[131]

In "a letter of May 14, 1968, addressed to the Regional Representative of the United Nations Development Program for Central America, ... the Minister of Foreign Affairs of Costa Rica stated that his country, 'by issuing those decree-laws of 1948 and 1949 did not attempt to proclaim its sovereignty or to exercise exclusive rights to harvest the marine resources in an area greater than that recognized by international law. It only proclaimed its interest in the conservation of the resources of the sea adjacent to its continental and insular coasts ...'."[132] However, since 1968, Costa Rica appears to have decided to proclaim complete sovereignty over her continental shelf and patrimonial sea, for in addition to being one of the eleven countries to sign the Declaration of Santo Domingo, she enacted domestic legislation which extended her territorial sea to 200 miles.[133]

---

[129] Id. at 300.

[130] Garcia-Amador, Law of the Sea at 17, supra note 114. See also 10 I.L.M. 1273 (1971).

[131] Issues Before the Twelfth Gen. Ass.--The Sea, Int'l Conciliation no. 514, 177 (1957).

[132] Garcia-Amador, Law of the Sea at 16, supra note 114.

[133] Letter from Mario Belaunde Guinassi to Jan H. Samet on November 17, 1972, reporting on Costa Rican legislation. Belaunde Guinassi is the Jefe de Relaciones Publicas, Republica del Peru.

F. Dominican Republic

Article 5 of the Constitution of the Dominican Republic of 1947 states:

> The territorial sea and the continental shelf which corresponds to the national territory are also part of the said territory. The extent of the territorial sea and the continental shelf shall be determined by statute.[134]

No statutes were enacted pursuant to Article 5 until July 13, 1952. At that time, the Dominican Republic chose not to follow Chile, Ecuador, and Peru by making extensive claims over her territorial sea. Instead she enacted Decree 3342, which provided as follows:

> Article I. Except as hereinafter otherwise provided, a zone of three nautical miles along their coasts, the said zone extending seaward from the mean low-water mark, is hereby established as the extent of the territorial or jurisdictional waters of the Republic and of its islands or inlets.
>
> Article IV. An additional zone adjacent to the territorial sea is hereby established which will be known as the "contiguous zone" and which shall consist of a belt extending outward from the outer limit of the territorial sea to a distance of twelve nautical miles into the high seas.[135]

The Dominican Republic continued to limit her claims as late as September 6, 1967, when she enacted Decree 186. Article I of this decree declares that the territory of the Dominican Republic shall extend from the low-water mark to a distance of six miles seaward. And, Article III of Decree 186 establishes a contiguous zone which extends six miles further than the territorial sea for the purposes of customs and fisheries protection. In effect, the Dominican Republic exercised jurisdiction over a 15 mile territorial sea under the decree issued in 1967. However, Article 7 of the decree of 1967 substantially increased the Dominican Republic's jurisdiction in regard to her continental shelf.

---

[134] 6 United Nations Series at 11, supra note 111. According to Garcia-Amador, this article was amended by the Constitution of 1966 to include the air space above the territorial sea and continental shelf.

[135] Id. at 11-12.

> The Dominican State shall exercise sovereign rights over the continental shelf ... For the purposes of this article, the term "continental shelf" means (a) the seabed and the subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superadjacent waters admits the exploitation of the natural resources of the said areas.[136]

Since the Dominican Republic had claimed jurisdiction over her continental shelf to a depth of 200 meters or more, it was only a matter of time until she chose to voice an opinion concerning jurisdiction over her patrimonial sea. That time came when she signed the Declaration of Santo Domingo on June 5, 1972. The Dominican Republic has not enacted domestic legislation declaring a 200 mile patrimonial sea; however, it would certainly not be surprising if she chose to do so.

G. Ecuador

Article 582 of the Ecuadorian Civil Code of November 21, 1957, states:

> The adjacent sea, up to a distance of one marine league, measured from the low-water mark, constitutes the territorial sea and belongs to the national domain; but the right of policing, with respect to matters concerning the security of the nation and the observance of fiscal laws, extends up to a distance of four marine leagues, measured in the same manner.[137]

No further legislation was enacted until August 29, 1934, when Decree 607 was passed. This decree declared that for the purposes of fishing, Ecuador was to have a fifteen mile territorial sea measured from the low-water mark. Decree 607 was reinforced by a Presidential Decree of February 2, 1938.[138] And, on October 7, 1939, President Aurelio Mosquera Narvaez, after having approved the Declaration of Panama, issued his own decree establishing Ecuador's limits in relation to the

---

[136] 15 United Nations Series at 77-78, supra note 109.

[137] 1 United Nations Series at 67, supra note 105.

[138] Id. at 68.

maritime zone of security.

> That the aforesaid Declaration fixed the limits of the maritime zone of security adjacent to American territory, limits which comprise approximately a region of two hundred and fifty to three hundred miles, lying to the west of our Archipelago of Columbus.[139]

The next Congressional Decree relating to the territorial sea and continental shelf was passed on February 21, 1951. Article 5 of this decree specifically provides that previous, contrary provisions of the Ecuadorian Civil Code are to be amended to conform to the present decree. This decree appears to have been enacted as a result of the Truman Proclamation. Under it, Ecuador claims:

> Article I. The continental shelf or "zocle" adjacent to the Ecuadorian coasts and all and every natural resource found thereon belong to the state ...
> Article II. The Ecuadorian continental shelf is considered to compromise the submerged land, contiguous to continental territory, which is covered by not more than 200 meters of water.
> Article III. National territorial waters compromise a minimum distance of 12 nautical miles ...[140]

Ecuador continued to claim jurisdiction over a territorial sea of only 12 miles as late as 1961;[141] however, on November 10, 1966, she amended her civil code with Decree 1542. Article 633 of this decree claims that:

> The territorial sea under national jurisdiction shall comprise the adjacent sea to a minimum distance of 200 nautical miles ... The territorial sea shall also comprise the waters within a perimeter of 200 nautical miles measured from the outermost extremities of the outermost islands of the Galapagos (Colon) Archipelago.[142]

Since Ecuador was one of the principle parties advocating the Declaration of Santiago, it is somewhat of a surprise that she did not incorporate the 200 mile

---

[139] Id. at 69.

[140] 6 United Nations Series at 13, supra note 111. This decree amended Article 626 of the Civil Code of 1950, which measured the territorial sea as only one marine league.

[141] 15 United Nations Series at 79, supra note 109.

[142] Id. at 78.

territorial sea into her domestic legislation earlier than 1966. Nevertheless, Ecuador has been one of the most active Latin American nations in regard to the prosecution of trespassers in her territorial sea.[143]

H. El Salvador

Article 574 of the Civil Code of 1860 describes the territorial sea of El Salvador as follows:

> The adjacent sea, up to a distance of one marine league, measured from low-water mark, constitutes the territorial sea and belongs to the national domain; but the right to policing, with respect to matters concerning the security of the country and the observance of fiscal laws, extends up to a distance of four marine leagues measured in the same manner.[144]

No further legislation was enacted until October 23, 1933. At this time, El Salvador reiterated the provisions of Article 574 of the Civil Code of 1860; however, Article I of this decree recognized that the high seas were not susceptible of dominion.[146]

El Salvador's next step in this area came as a direct result of the Truman Proclamation. On September 7, 1950, El Salvador amended Article 7 of her Constitution to read:

> The territory of the Republic within its present boundaries is irreducible. It includes the adjacent seas to a distance of 200 sea miles from low-water line and the corresponding air space, subsoil and continental shelf.
>
> The provisions of the foregoing paragraph shall not affect the freedom of navigation in accordance with the principles recognized under International Law.
>
> The Gulf of Fonseca is a historic bay subject to a special regime.[146]

---

[143] Bayitch, Interamerican Law of Fisheries 28 (1957). [hereinafter cited as Bayitch, Interamerican]. See also Serrano Moscoso, A Statement of the Laws of Ecuador 49 (1961) [hereinafter cited as Serrano Moscoso, Ecuador]. And Garcia-Amador, Law of the Sea at 20.

[144] 1 United Nations Series at 71, supra note 105.

[145] Id.

[146] Id. at 300. Article 8 of the Constitution of 1962 repeats this article.

Having amended her Constitution, El Salvador appeared to be following the claims of Chile, Ecuador, and Peru. However, she has not signed the Declaration of Santo Domingo, which advocated a patrimonial sea up to 200 miles. Nevertheless it appears that she is spiritually allied with the Central American countries which did sign the Declaration.

I. Guatemala

Guatemala's first legislation regulating the breadth of her territorial sea was enacted on June 10, 1934. Article I of the Act for the Administration and Control of the Ports of Guatemala provided that the territorial sea extended 12 miles, without prejudice to the special treaties governing the Bay of Amatique.[147] Subsequent legislation was enacted on June 17, 1940. The purpose of this legislation was to forbid belligerent submarines from entering the territorial waters of the Republic. For this purpose, Decree 2393 provided that "the aforesaid territorial waters shall be deemed to include the expanse of the sea extending for twelve nautical miles from the low-water mark."[148]

Later legislation did not extend Guatemala's jurisdiction over her territorial sea. In Article 1932 of the Civil Code of October 29, 1947, Guatemala declared that "the maritime zone abutting on the coast of the Republic shall be part of the public domain, to the extent and with the effects specified by international law."[149] Article 1932 was subsequently included in the 1956 Constitution of the Republic of Guatemala; and , it was later amended and included in the Constitution of 1965 as Article 3 which states:

---

[147] Garcia-Amador, Law of the Sea at 24, supra note 114.

[148] Id. at 18. A Civil Aviation Law (593) enacted on October 28, 1948 exercised sovereignty over the air space above this territorial sea.

[149] Id.

> Guatemala exercises full sovereignty and dominion over its territory which includes soil, subsoil, continental shelf, territorial waters, and the space above these, and the natural resources and wealth existing herein, without prejudice to free navigation...[150]

Presumably, the territorial sea which Article 3 refers to was still only 12 miles in breadth.

As late as 1972, Guatemala claimed only a 12 mile territorial sea. However, she expressed her decision to cooperate with the parties signing the Declaration of Montevideo in 1970, and claimed that she was spiritually allied with these nations.[151] In addition, Guatemala recognized the right of other states to claim a 200 mile patrimonial sea and an extensive continental shelf when she signed the Declaration of Santo Domingo in June, 1972. Nevertheless, she has not enacted domestic legislation to this effect.

J. Honduras

Honduras' early legislation in regard to her territorial sea was similar to that of other Latin American nations. Article 628 of the 1906 Civil Code states that Honduras claims an adjacent sea of only one marine league, but the right to police with respect to matters relating to the security of the nation for a distance up to 4 marine leagues.[152] No further legislation was enacted until March 28, 1936. At this time, Honduras amended Article 153 of her Constitution to state:

> The State has full dominion, inalienable and imprescriptible, over the waters of the seas to a distance of twelve kilometers measured from the low-water mark.[153]

---

[150] Garcia-Amador, Law of the Sea at 24, supra note 114.

[151] Santa-Pinter, Latin American Countries at 615, supra note 117.

[152] 1 United Nations Series at 80, supra note 105.

[153] Id. Article 3 of Presidential Decree 38 of November 13, 1938 in regard to belligerents reinforced this claim of only 12 kilometers.

Honduras reacted to the Truman Proclamation in much the same way as many other Latin American nations. Her first response came with Decree 102 of March 7, 1950. Article 4 of this decree declares that:

> 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 national territory.[154]

However, Article 153 of Decree 102 continues to claim a territorial sea of only 12 kilometers. It was not until January 17, 1951, that Honduras decided to claim dominion over a territorial sea of 200 miles.[155] Presidential Decree 96 reads:

> Article I. It is hereby declared that the sovereignty of Honduras extends to the continental shelf ... at whatever depth it lies ..., and that the nation has full, inalienable and imprescriptible domain over all wealth which exists or may exist in it, in its lower strata ...
>
> Article III. The protection and supervision of the state in the Atlantic Ocean ... 200 miles ... and with regard to the islands of Honduras in the Atlantic, such delimitation shall enclose the zone of sea contiguous to their coasts and extending for 200 miles from every point thereon.[156]

Six years later, Honduras amended her Constitution to include her claims in regard to her continental shelf; however, she reserved the right to determine the extent of her territorial sea for the future. Evidently, the Honduran legislature did not approve of Presidential Decree 96 of 1951, for as late as 1965, the legislature made a decision to extend the territorial sea of Honduras no more than 12 nautical miles. It did limit the claims to the continental shelf "to a depth of 200 meters or to the point where the depth of the super-adjacent waters, beyond this limit, permits the exploitation of natural resources of the bed and subsoil.[157]

---

[154] Id. at 11.

[155] Id.

[156] 6 United Nations Series at 23, supra note 111. See also Santa-Pinter, Latin American Countries at 608, supra note 117.

[157] International Boundary Study at 46, supra note 112. See also Garcia-Amador, Law of the Sea at 26, supra note 114.

While Honduras appears reluctant to claim a 200 mile patrimonial sea in her domestic legislation, she obviously respects the right of other nations to do so since she signed the Declaration of Santo Domingo in June, 1972.

K. Mexico

In 1902, Mexico enacted a decree providing that the territorial sea of the nation should not extend more than 20 kilometers.[158] Mexico's next action in regard to the extent of her territorial sea was taken when the Constitution of 1917 was promulgated. Article 27 and 42 of that Constitution deal specifically with Mexico's claims in this area:

> Article 27. The waters of the territorial sea, within the limits and the terms fixed by international law, the inland marine waters and the waters of lagoons ... are national property.
>
> Article 42. The national territory comprises ... V. The waters of the territorial sea to the extent and under terms fixed by international law and domestic maritime law ... and ... VI. The continental shelf and the submarine shelf of the islands, kelp and reefs.[159]

In 1935, the breadth of Mexico's territorial sea was fixed at nine miles; and, in Decree 49 of January 30, 1940, Mexico reiterated her claim to a 9 mile territorial sea.[160] As a result, Mexico amended the National Property Act on December 31, 1941, to read:

> The territorial sea comprises coastal waters to a distance of nine nautical miles (16,668 metres), measured from low-water mark on the coast of the mainland, on the

---

[158] 1 United Nations Series at 84, supra note 105. This was later reaffirmed in a Fisheries Regulation passed on March 15, 1927.

[159] 15 United Nations Series at 100 and 380, supra note 109. See also Garcia-Amador, Law of the Sea at 28. Article 42 was amended to read as it appears above in 1934 and later in 1960. Mexico feels that a general rule of international law defining the breadth of territorial waters does not exist; therefore, each nation is bound only by the conventions and treaties which it has satisfied.

[160] 1 United Nations Series at 84, supra note 105. See also Garcia-Amador, Law of the Sea at 28, supra note 114.

shores of islands forming part of the national territory ...[161]

No further action was taken until October 29, 1945, when President Avila Camacho stated:

> The continental plateau ... rests on a submarine platform known as the continental shelf which is bounded by ... the line joining points at the same depth (200 metres) ...: this shelf clearly forms an integral part of the continental countries and it is not wise, prudent or possible for Mexico to renounce jurisdiction ...[162]

President Camacho also stated that "each country has the right to consider as national territory all extensions of the subcontinental ocean and the adjacent continental shelf."[163] While Mexico claimed jurisdiction over an extensive continental shelf, she only adhered to a 12 mile territorial sea as late as 1969. A decree of December 12, 1969, modified the National Property Act to read:

> The territorial sea extends to a distance of twelve miles (22,224 meters), in accordance with the Political Constitution of the United Mexican States, the laws emanating from it, and international law.[164]

Mexico decided to join many of her fellow Latin American nations by recognizing claims to a 200 mile patrimonial sea as well as an extensive continental shelf. This action was taken in June, 1972, at the Conference of Caribbean Countries Concerning the Problems of the Sea, held in Santo Domingo.

I. Nicaragua

The Nicaraguan Constitution of 1948 specifies that the territorial sea of Nicaragua shall extend up to a limit of 3 nautical miles, and the continental

---

[161] 15 United Nations Series at 101, supra note 109. See also Garcia-Amador, Law of the Sea at 28, supra note 114.

[162] 1 United Nations Series at 13, supra note 105.

[163] Santa-Pinter, Latin American Countries at 608, supra note 117.

[164] Garcia-Amador, Law of the Sea at 29, supra note 114. See also International Boundary Study at 76, supra note 112.

shelf shall extend to a depth of 200 metres.[165] However, the Constitution of November 1, 1950, does not directly specify any limits. Article 4 and 5 of this Constitution provide that:

> Article IV. The basis of the national territory is the "uti possidetis juris" of 1821.
>
> Article V. The national territory extends from the Atlantic to the Pacific Ocean and from the Republic of Honduras to the Republic of Costa Rica. It includes, in addition: the adjacent islands, the subsoil, the territorial waters, the continental shelf, the submerged lands, the air space and the stratosphere.[166]

Presumably, the term continental shelf referred to the shelf to a depth of 200 meters. In addition, Decree 372 of December 2, 1958, which provided for the exploration and exploitation of petroleum, and Decree 1067 of March 20, 1965, which provided for the exploration and exploitation of mines and quarries neglected to place any limits on the extent of the continental Shelf.[167] However, in a decree of April 5, 1965, Nicaragua did set limits for her territorial sea:

> Article I. In conformity with Article 5 of the Constitution, in order to promote better conservation and national exploitation of Nicaragua's fishing and other resources, the waters lying between the coast and a line drawn parallel to it at a distance of 200 nautical miles seaward, both in the Atlantic and in the Pacific Oceans, shall be designated a "national fishing zone."[168]

Apparently, no further claims to a 200 mile territorial sea and an extensive continental shelf were made in Nicaragua's domestic legislation. However, Nicaragua's latest expression of her interests in this regard came when she

---

[165] International Boundary Study at 83, supra note 112.

[166] 6 United Nations Series at 35, supra note 111. At International Conventions, Nicaragua maintained that her territorial waters extend to a distance of 12 miles; however, her domestic legislation only revealed a claim to 3 miles.

[167] 15 United Nations Series at 392-393, supra note 109.

[168] Id. at 656.

signed the Declaration of Santo Domingo in June, 1972.

M. Panama

The Panamanian Constitution of March 1, 1946, includes the territorial sea and "the aerial space and submarine continental shelf which appertain to the national territory: as property belonging to the Republic of Panama."[169] Previous to this Article in the Constitution, Decree 449 of December 17, 1946, provided that:

> For the purpose 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.[170]

The territorial sea, however, was fixed at only 12 miles by Decree 58 of December 18, 1958.[171]

No further legislation of any significance was passed until Decree 31 of February 2, 1967. At that time the National Assembly of Panama declared that it "endorses the principles and purposes of the Declaration on the Maritime Zone, signed at Santiago, Chile on 18 August 1952 ..."[172] As a result, the Assembly decreed that:

> Article I. The sovereignty of the Republic of Panama is extended beyond its continental and insular territory and its inland waters to a zone of territorial sea two hundred (200) nautical miles in breadth, the bed and subsoil of the said zone and the superadjacent air space.[173]

---

[169] 1 United Nations Series at 15, supra note 105.

[170] Id. at 16.

[171] International Boundary Study at 89, supra note 112. See also Garcia-Amador, Law of the Sea at 33, supra note 114.

[172] 15 United Nations Series at 105, supra note 109.

[173] Id.

Panama had claimed jurisdiction over a 200 mile territorial sea as early as 1967; yet, she did not agree to sign the final draft of the Declaration of Santo Domingo in June, 1972.

N. Peru

While the continental shelf off the coast of Peru is extremely narrow, the waters adjacent to Peru are rich in fisheries resources. For this reason, the majority of Peru's claims in regard to her maritime zones have dealt with her territorial seas as opposed to her continental shelf. As of 1934, Peru laid claim to a territorial sea of only 3 miles in accord with international law.[174] By 1947, Peru was dissatisfied with her narrow territorial sea in view of the extensive claims made by the United States, Mexico, Argentina, and Chile; so, she set about to delimit the claims made under Article 37 of her Constitution.[175]

As a result of the Truman Proclamation, Peru enacted Presidential Decree 781 of 1947 which provides:

> I. To declare that national sovereignty and jurisdiction can be extended to the submerged continental or insular shelf adjacent to the continental or insular shores of national territory, whatever the depth and extension of this shelf may be.
>
> II. National sovereignty and jurisdiction are to be extended over these adjoining the shores of the national territory whatever its depth and in the extension necessary to reserve, protect, maintain and utilize natural resources ... below these waters.
>
> III. As a result of previous declarations the state reserves the right to establish the limits of the zones of control and protection ... and to modify such limits in accordance with future changes which may originate as a result of further discoveries ... and at the same time declares that it will exercise the same control and protection on the seas adjacent to the Peruvian coast over the area covered between the coast and

---

[174] International Boundary Study at 90, supra note 112. See also Wolff, Peruvian Relations at 2, supra note 17.

[175] 1 United Nations Series at 16, supra note 105. Article 37 of the Constitution "establishes that all mines, lands, forests, waters and in general all sources of natural wealth pertain to the State ..."

> an imaginary parallel line to it at a distance of 200 nautical miles measured following the line of the geographical parallels.
>
> IV. The present declaration does not affect the right to free navigation of ships of all nations according to international law.[176]

Decree 781 has remained substantially intact since it was enacted in 1947; but, Decree 15.720 of November 11, 1965, has slightly extended Peru's claims. Article II of Decree 15.720 states that "the Republic of Peru exercises exclusive sovereignty over the air space that covers its territory and jurisdictional waters within 200 miles."[177] In addition, Peru has enacted an extremely large body of regulations dealing with fishing and mining in her territorial sea. Many of these reinforce Peru's claims to jurisdiction over a 200 mile territorial sea.[178]

O. Uruguay

In a Presidential Decree of August 7, 1914, concerning neutrality to be observed in Uruguayan territorial waters, Uruguay claimed the following:

> Article II. In accordance with the principle established by the treaty of Montevideo in 1889 (Penal Law, Article 12), and with the principles generally accepted in these matters, the waters will be considered as territorial waters to a distance of five miles from the coast of the mainland and islands, ...[179]

No further legislation was enacted until an executive decree of February 21, 1963. In essence, this decree established a six mile territorial sea and a six mile contiguous zone extending beyond the territorial sea.[180] This position

---

[176] Id. at 17.

[177] Garcia-Amador, Law of the Sea at 36, supra note 114.

[178] These regulations will be discussed in the chapter dealing with fishing and mining regulations.

[179] 1 United Nations Series at 130, supra note 105.

[180] Casinelli Muñoz, A Statement of the Laws of Uruguay 237 (1963). See also Uruguay: Decree Extending Territorial Waters, 8 I.L.M. 1071 (1969).

was quite similar to that taken by Argentina in 1963. Yet, while Argentina opted for a 200 mile territorial sea as early as 1966, it was not until 1969 that Uruguay made the same decision.[181]

Under Decree 604/969 of December 3, 1969, Uruguay chose to pursue a course similar to that of her more ambitious neighbors. Decree 604-969 provides:

> Article I. The exploitation, preservation, and study of the riches of the sea are declared to be of national interest.
>
> Article II. The sovereignty of the Eastern Republic of Uruguay extends beyond its continental and insular territory and internal waters to a zone of territorial sea 200 nautical miles wide measured from the base line.
>
> The sovereignty of the Republic also extends to the air space situated above the territorial sea, as well as to the seabed and the subsoil beneath that sea.
>
> National sovereignty extends to the continental shelf for purposes of exploration and exploitation of natural resources ... up to a depth of 200 meters or beyond that limit up to a point where the depth of the superjacent waters permits exploitation ...
>
> Article III. Without prejudice to the foregoing, the vessels of any state enjoy the right of innocent passage through the territorial sea of Uruguay in a zone 12 miles wide, ... [182]

This decree was not amended or revoked through 1972.

P. Venezuela

On September 4, 1939, President Eleazar Lopez Contreras issued Decree 19.981 limiting the extent of Venuzuelan territorial waters for the purposes of neutrality. Article I of this decree declared that "the phrase 'territorial waters of the Republic' is understood as referring to those waters which extend from low-water mark, for a distance of 5 kilometres and 556 metres (3 nautical miles) toward the sea, along the coast of the continental and insular territory of Venezuela."[183] Two years later a decree of July 22, 1941, extended the

---

[181] Id. See also Garcia-Amador, Law of the Sea at 38, supra note 114. Decree 235/969 of May 16, 1969 affirmed the 12 mile limit, but it was later revoked by Decree 604/969 of December 3, 1969.

[182] Id. at 39.

[183] 1 United Nations Series at 131, supra note 105.

territorial sea of the Republic of Venezuela:

> Article I. The territorial sea of the Republic of Venezuela shall extend over the entire length of its continental and insular coasts to a width of 200 kilometres and 224 metres (12 nautical miles), measured from the baselines ... National sovereignty over the territorial sea shall extend to the waters, bed, subsoil and resources thereof ...
>
> Article III. For the purposes of maritime control and vigilance, to guard the security of the nation and to protect its interests, a contiguous zone of 5 kilometres and 556 metres (3 nautical miles) shall be established ...
>
> Article IX. The air space over the territory of the Republic of Venezuela up to the outer limit of its territorial sea comes within its sovereignty.[184]

A later decree of August 9, 1944, reaffirmed the 1941 Decree.[185]

It was not until July 27, 1956, that Venezuela claimed sovereignty over her continental shelf "to a depth of 200 metres or, beyond that limit, to where the depth of the waters admits of the exploitation of the resources of the seabed and subsoil in accordance with technical progress in exploration and exploitation."[186] However, Venezuela did not choose to extend her claims to a 200 mile territorial sea at that time.

No further action was taken until January 23, 1961. Venezuela then amended Article 7 of her Constitution to read:

> The sovereignty, authority and vigilance over the territorial sea, the contiguous maritime zone, the continental shelf, and the air space, as well as the ownership and exploitation of property and resources contained within them, shall be exercised to the extent and conditions determined by law.[187]

Apparently, Venezuela has not enacted any domestic legislation extending her territorial sea up to a distance of 200 miles. However, she did sign the Declaration of Santo Domingo which recognized claims to a 200 mile patrimonial sea.

---

[184] 15 United Nations Series at 132, supra note 109.

[185] 1 United Nations Series at 131, supra note 105.

[186] 15 United Nations Series at 472, supra note 109.

[187] Id. at 133.

CHAPTER III. REASONS ADVANCED BY LATIN AMERICA TO SUPPORT CLAIMS FOR AN EXTENSIVE TERRITORIAL SEA

Obviously, the reasons which prompted Latin American nations to claim a 200 mile territorial sea are numerous, and vary with each individual country. Nevertheless, there are certain reasons which practically all these nations advance in support of their claim.

In the Latin American position, it is relatively easy to notice the influence of the famous Fisheries Case (United Kingdom v. Norway) which was decided by the International Court of Justice in 1951. The International Court mentions principles such as:

> (1) only the coastal state is competent to undertake the delimitation of its sea areas;
> (2) it is the land which confers upon the coastal state a right to the waters off its coasts;
> (3) geographical configuration;
> (4) Certain economic interests peculiar to the region; and
> (5) traditional rights reserved to the inhabitants of a country, founded on the vital needs of the population ... may legitimately be taken into account in drawing a line.[188]

Unfortunately, the Fisheries Case contains as many arguments against the Latin American position as it does in favor of it.

> Obviously, Latin American countries seem to forget to quote from this fishery case some other principles which are vitally important to the fulfillment of international law, such as the following:
> (1) "The delimitation of sea areas has always an international aspect;"
> (2) "It [the delimitation] cannot be dependent merely upon the will of the coastal State as expressed in its municipal laws;"
> (3) "Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law;"
> (4) Speaking of drawing the line, the court also mentions the "bounds of what is moderate and reasonable;"

---

[188] United Kingdom v. Norway 1951 I.C.J. Rep. 116. See also Santa-Pinter, Latin American Countries at 612, supra note 117.

> (5) The court also speaks of a "long ... ancient and peaceful usage" which must "clearly" evidence "the reality and importance" of the mentioned "certain economic interests."[189]

Possibly the Latin American nations are attempting to press their own claims as hard as possible in the international community in the hope that if the claim is pressed long enough, a good case for international custom will be formulated.

The west coast Latin American nations advance unique reasons in support of a 200-mile territorial sea which are based on a scientific theory which they call the "bioma theory." This theory was initially proposed by Peru in 1947, but many Latin American nations have accepted it since that time and it is relatively unchanged at this point.[190] The bioma theory is based on an argument that there is a special relationship between a country and its territorial sea. Since Peru was the first country to propose this argument it may be helpful to examine the stands which it has taken in support of it. Carlos Gibson L., Financial Minister of the Peruvian Embassy in Washington has written:

> Our position is that for ecological reasons it is in the vital interest that the fisheries rights of Peru be protected for at least 200 miles; among other reasons for this viewpoint is that as a result of the studies that we have made, we are fearful that any overfishing could profoundly affect the natural cycle of the fish in the seas destroying their existence, which cannot be permitted, as they are vital for feeding our people.[191]

Peru, like all west coast Latin American nations, has a very narrow continental shelf, yet the icthyological wealth which lies off Peru's shore is massive. Therefore, Peru argues that through configuration and hydro-biological factors, its territorial sea is well defined.[192] In addition, Peru feels that the country has a "special situation with respect to the movement of marine currents and

---

[189] Id.

[190] Wolff, Peruvian Relations at 492, supra note 17.

[191] Id.

[192] Otero-Lora, Views of Other Nations at 367, supra note 16.

counter-currents ... and that the Peruvian current modifies the coastal climate, thus influencing man's activities in the country."[193] Another characteristic of Peru is that its rivers discharge rich minerals into the ocean, and thereby furnish food for the sea plankton which "constitute the initial source of marine biological resources which represent one of the greatest biomasses in the world."[194] As strained as this point appears to be, it nevertheless is one of the prime arguments which west coast Latin American nations make to advance their 200-mile territorial sea argument.

Yet, one cannot argue with the fact that in just a short period of time, Peru has moved from a harvester of fish for domestic consumption only to a country that fishes the largest volume of tonnage in the entire world.[195] This is an extremely good reason for the measures which Peru has taken to protect its growing industry. In fact, Peru argues that if it had not extended its jurisdiction it would never have achieved the position which it now holds in respect to the world market.

Another point to remember is that Peru has one of the highest birth rates in the world, yet a large percentage of the nation is composed of either deserts, jungles, or mountains. This leaves only a small percentage of the country composed of arable lands. So, Peru must consider the wealth which lies off its shores, especially the fish, because this represents a ready answer to the problems of adequately feeding its people. Peru is not the only nation with this problem. Chile, Ecuador, Costa Rica, and Argentina especially have proclaimed

---

[193] Id.

[194] Id. at 365.

[195] E. Letts, Case Studies in Regional Management: Latin America, 5 Law of the Sea Institute 34 (1970). [hereinafter cited as Letts, Case Studies]. See also Peruvian Anchovy Fish Meal, Empresa Publica de Comercializacion de Harina y Aceite de Pescado, 1. Over the past 15 years, Peru has processed more than 100 million tons of anchovy alone. The fish meal prepared from this anchovy has been sold to European and Asian nations as well as nations in the Americas.

that the fish in their territorial sea are a food reserve as well as a source of industry, both of which play an important factor in their balance of payments.[196] And while organizing and controlling the living resources of a 200-mile territorial sea is a tremendous task for the Latin American nations, the authors feel that these nations will undoubtedly stand by their original assertion: that the sea and seabed to a distance of 200-miles is an extension of the land itself, regardless of the extent of the continental shelf.

A desire to protect the living resources in the Latin American coastal states' territorial seas goes hand-in-hand with a desire to protect the mineral resources. Important new discoveries of petroleum have been made offshore especially in Venezuela, Mexico, Colombia, and Trinidad. In southern Latin America, both Argentina and Brazil have discovered petroleum off their coasts. So it may be that "the east coast Latin nations' interests in broad shelf claims may be reinforced by actual interest in oil recovery as well as by the value of the jurisdictional claims as a negotiating tactic for the Latin bloc as a whole."[197] Of course the Latin American nations are unable to exploit this resource alone, and must rely on concessionaires. Moreover, since the majority of oil rigs are within twelve miles of the coastline[198] it seems unlikely that the concessionaires would question the authority of the nation which granted the concession.

But, there are many other minerals in the ocean, which will be discussed in a later section. Moreover, the last two decades have seen great progress in

---

[196] Otero-Lora, Views of Other Nations at 367, supra note 16.

[197] Gerstle, The Politics of U.N. Voting: A View of the Seabed from the Glass Palace. Law of the Sea Institute of the University of Rhode Island, Occasional paper no. 7, 9 (1970). [hereinafter cited as Gerstle, Politics].

[198] McClendon, Some Legal Aspects of Offshore Oil Operations in South America, 1 Inter-American Law Review 167 (1956). [hereinafter cited as McClendon, Legal Aspects].

the field of scientific and technological development; and, it seems more plausible than ever that the nations of the world will be able to extract an almost unlimited supply of minerals from the sea. This very rapid advance has enticed Latin American nations to view the sea and the seabed as a "pot of gold" which can be used to alleviate some of their social and economic problems. And there is a view that if the developed nations such as the United States were now allowed to exploit the resources of the sea, there might be little left for the developing nations by the time they are able to develop the proper techniques to exploit the ocean's resources. This reasoning has led the Latin American coastal nations to protect their natural resources from foreign powers, and in turn, has led to a 200-mile territorial sea.

Another important variable exists which concerns Latin American states' claims for a 200-mile territorial sea, that of an emerging nationalism.

> Emerging from years of colonial exploitation and domination, the developing countries are imbued with a common driving force -- brash, unruly, and seemingly inexhaustible: the force of nationalism, national pride, national self-interest. Compelled for centuries to follow where their colonial masters led, they are determined for the future that where the action is: there they are going to be: not to pick up the scraps as before, but to play an active, even decisive role. And the sea, which from the earliest times has been a source of wealth, power and knowledge, and the deep ocean floor, hitherto remote and protected from man's depradations, there offer the latest challenge and the highest prizes of the age. To the developing countries the sea-bed offered an unique opportunity to augment their meagre natural resources from a new area owned in common, with none of the unpleasant implications of economic aid.[199]

The Latin American states view their struggle as one consisting of the developed nations seeking to suppress developing nations. They point to the fact that the great maritime powers such as the United States and the Soviet Union have little to gain by extending their own territorial waters, and consequently, these nations are seeking to limit the extent of the territorial sea

---

[199] Pinto, "Problems of Developing States," supra note 102.

in order to obtain as broad an ocean as possible for their own merchant, naval, and fishing fleets. According to Emilio N. Oribe, Ambassador of Uruguay to the Organization of American States, "the smaller or less powerful nations are not in that position [large naval powers], and I don't think they will ever be great naval powers. Therefore, these smaller nations have the opposite point of view and feel they should extend as far-away as possible the width of their territorial waters."[200] So, in response to a fear that the rich were getting richer, this new nationalism in Latin America was brought to the surface. The nationalism which Latin America is experiencing is not like the classic European nationalism; instead it is unique to Latin America. According to Edmundo Vargas:

> It is the natural reaction made by diverse economic and political problems which Latin America has had to face ... which has resulted in the reaffirmation of the Latin Americans' political sovereignty ... and their right to benefit from their natural resources.[201]

While the 200-mile claim may be seen as a crippling of international law and an affront to developed nations such as the United States, the authors prefer to view it as simply a countermovement by a group of developing nations who have devoted their efforts to blocking any arrangements made by the developed nations, either de jure or de facto, which would exclude them from their fair share of the sea's wealth. A further example of this can be seen in United Nations Resolution 2574 D which states that "pending the establishment of an international regime, states and persons are bound to refrain from all activities of exploitation of the resources of the area of the seabed beyond the limits of national jurisdiction."[202] Most Latin American nations voted for this resolution while the developed nations such as the United States and the Soviet Union voted against it.[203]

---

[200] Oribe, Ten Years Later, supra note 65.

[201] Vargas, Case Studies in Regional Management: Latin America, 5 Law of the Sea Institute 347 (1970).

[202] Gerstle, Politics at 2, supra note 198.

[203] Id. at 4.

CHAPTER IV. LATIN AMERICAN LEGISLATION CONCERNING THE DEVELOPMENT OF THE LIVING RESOURCES OF THE SEA

A. The United States Reaction to the Latin American Claims.

The 200 mile controversy has created a great deal of bitterness between the United States and several Latin American nations. The crux of the problem is very simple. The United States recognizes a 3 mile territorial sea, and claims a 9 mile contiguous zone in which she has exclusive jurisdiction over fisheries. On the other hand, many Latin American countries such as Peru, Ecuador, and Brazil claim sovereignty and exclusive jurisdiction over an area of the sea 200 miles from their coasts. Moreover, several countries in Latin America, especially those on the west coast of South America, have gone beyond mere paper assertions of sovereign rights over their territorial sea and have strictly enforced their domestic legislation.

At the time of the Truman Proclamation, the United States had no major interest in fishing off the coasts of South America. The Southern California tuna fleet was, however, making plans to enlarge its operations off the coasts of Chile, Ecuador, and Peru. Today, the Southern California tuna fleet consists of approximately "178 vessels representing a total investment of between $156 and $200 million."[204] One half of these vessels are equipped to engage long-range operations; and, as expected, they frequently invade the territorial waters of Ecuador and Peru. "Since 1952, when the United States tuna fleet first began its operations in the eastern tropical Pacific region, tuna fishermen have netted approximately 37 per cent of their average annual catch of yellowfin

---

[204] Fishing Rights and United States-Latin American Relations. Hearing Before the Subcomm. on Inter-American Affairs of the Comm. on For. Aff. House of Representatives, 92nd Con. 2nd Sess. 1972. [hereinafter cited as Fishing Rights and the U. S.]

and skipjack tuna from waters of Ecuador and Peru, representing a total value for the period of $270 million."[205]

Both the skipjack and the yellowfin tuna are highly migratory species. "Where they are found depends largely on current water temperatures and other ocean variables."[206] They migrate from as far away as Hawaii and Japan to the central part of Chile. Consequently a tuna fleet, if it is to be economically successful, must be able to pursue the tuna off the west coast of Latin America. When the fleet does this, it runs the risk of having some of its vessels seized by various nations in Latin America.

One of the major "bones of contention" between the United States and various Latin American nations has been the seizure of U.S. fishing boats. There have been such an abundance of seizures that several Latin American nations, especially Ecuador and Peru, have achieved a certain notoriety. In addition to Peru and Ecuador, eight other nations have seized foreign fishing boats: Chile, Mexico, Honduras, Panama, Colombia, Argentina, Nicaragua, and El Salvador.[207]

During the period from January, 1961, through December, 1971, Chile, Ecuador, and Peru have seized and fined 145 United States fishing vessels. As a result of these seizures and detentions, the tuna fleet has lost over 438 fishing days as well as paying fines to Chile, Ecuador, and Peru totaling $3,543,194.12.[208]

---

[205] Id. Testimony of Dr. Robert M. White, Administrator, National Oceanic and Atmospheric Administration, before the Subcomm. on Fisheries and Wildlife Conservation, House Merchant Marine and Fisheries Comm., March 11, 1971.

[206] Captain Edward Silva, quoted in New York Times (New York City), Jan. 30, 1971, at 2.

[207] Fishing Rights and the U.S. at 115, supra note 205. See also Wolff, Peruvian Relations, supra note 17.

[208] See Appendix D. Data on Seizures, excerpted from the records of the American Tunaboat Assoc. Table I. This data does not include harassment actions, that is, where the tuna vessel is shot at by aircraft or warships, or is boarded but not arrested. The data deals only with those situations where the vessel is intercepted, boarded, arrested, detained, and then released.

Unfortunately, the problem is growing. During the period from 1961 through 1969, 92 vessels were seized and fined a total of $939,042.12.

In 1971 alone, 53 vessels were seized and a total of $2,604,109.00 was paid in fines. In other words, the seizures which occurred in 1971 were over five times the yearly average during the period from 1961 to 1969; and, the fines paid in 1971 were almost thirty times the previous yearly average. The figures for 1972 will most likely be substantially higher than those of previous years since a growing number of Latin American coastal nations have extended their jurisdiction and indicated that they will be more willing than ever to enforce their claims.

Of the 145 seizures, 98 have been made by Ecuador, and 37 by Peru.[209] Chile has made no seizures, possibly because the tuna vessels rarely go that far south in pursuit of the tuna. Ecuador has been especially aggressive during 1971, seizing 42 fishing boats. Not surprisingly, a good deal of these seizures occurred after January 18 when the United States announced that it was suspending military sales and credits to Ecuador under the terms of the Foreign Military Sales Act.[210]

Chile, Ecuador, and Peru "do not discriminate with regard to enforcement of their Maritime zone fishing regulations. There have been many instances in which the three nations have seized each other's fishing boats for violating boundaries between them."[211] In fact the first vessel which Peru seized was of

---

[209] Id. In addition, Mexico has seized 4, Panama has seized 3, Colombia 2, and El Salvador 1 vessel.

[210] Fishing Rights and U.S. at 17. Supra note 205.

[211] Fishing Rights and the U. S. at 115, supra note 205.

Panamanian registry, owned by Onassis.[212] Vessels from Japan, Canada, and the Soviet Union have been seized in this 200 mile zone. However, recently the Soviets have made bilateral agreements with Chile and Peru; and, the Japanese simply take out licenses to fish in the waters off the west coast of South America. Both the Soviets and the Japanese continue to advocate a narrow territorial sea and maintain a conservative juridical position with regard to historical fishing rights, sovereignty, and licensing.[213]

U.S. fishermen have understandably been concerned about the seizures which have occurred during the past 20 years, and the U.S. Congress has reacted to this concern. By 1954, Latin American countries had seized twenty tuna ships, and the fines to their owners amounted to thousands of dollars.[214] So, under pressure from the fishing interests, the United States Congress, on August 27, 1954, passed the Fisherman's Protective Act. The Act established a unique precedent, that of compensating ship owners for fines which they paid to foreign nations as a result of allegedly unlawful seizures. The act reads as follows.

> Sec. 2. In any case where--
> (a). a vessel of the United States is seized by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States; and
> (b). there is no dispute of material facts with respect to the location or activity of such vessel at the time of such seizure,
> the Secretary of State shall as soon as practicable take such action as he deems appropriate to attend to the welfare of the vessel and its

---

[212] Letts, Case Studies at 34, supra note 196. See also Loring, The United States --Peruvian Fisheries Dispute, 73 Stanford L. Rev. 403-404 (1970). [hereinafter cited as Loring, Fisheries Dispute]. Onassis sent a whaling fleet from Germany with express purpose to challenge the 200 mile limit of Peru in 1954. An Onassis spokesman claimed that the fleet had accomplished its purpose so Peru was forced to arrest five ships to save face. The fine against Onassis totaled $3,000,000. Soon afterwards, Peru warned the U.S. it would begin seizing tuna vessels, and in 1955 she did so.

[213] The Japanese Government does not support its distant water fishermen by means of a Fisherman's Protective Act.

[214] Wolff, Peruvian Relations at 9, supra note 17.

> crew while it is held by such country and to secure the release of such vessel and crew.
>
> Sec. 3. In any case where a vessel of the United States is seized by a foreign country under the conditions of section 2 and a fine must be paid in order to secure the prompt release of the vessel and crew, the owners of the vessel shall be reimbursed by the Secretary of the Treasury in the amount certified to him to be paid by the Secretary of State as being the amount of the fine actually paid.
>
> Sec. 4. The provisions of this act shall not apply with respect to a seizure made by a country at war with the United States or a seizure made in accordance with the provisions of any fishery convention or treaty to which the United States is a party.
>
> Sec. 5. 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 the provisions of this Act because of the seizure of a United States vessel by such country.
>
> Sec. 6. There are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this Act.[215]

So, the United States, recognizing the problems of the fishing interests, pursued a policy which it felt would protect U.S. fishing interests on the high seas. Moreover, the 90th Congress passed Public Law 90-482 amending the Fisherman's Protective Act of 1954. Public Law 90-482, the Fisherman's Protective Act of 1967, provided for a broader scope of reimbursement to the owners of fishing vessels seized by foreign countries.[216] Section 4 provides that the owners of these vessels which are seized by foreign countries shall be reimbursed for any fines, license fees, registration fees, or any other direct charge actually paid. In addition, the Fisherman's Protective Act of 1967 provides as follows.

> Sec. 5. The Secretary of State shall take such action as he may deem appropriate to make and collect claims against a foreign country for amounts expended by the United States under the provision of this chapter ... If such country fails or refuses to make payment in full within one hundred and twenty days after receiving notice of any such claim of the United States, the Secretary of State shall withhold, pending such payment, an amount equal to such unpaid claim from any funds programmed for the current fiscal year for assistance to the government of such country ...[217]

---

[215] 22 U.S.C. § § 1971-76 (1954).

[216] 22 U.S.C. § § 1971, 1973, 1975, 1977 (1967).

[217] Id. at 1975. Section 5 of the 1967 Act amended Section 5 in the 1954 Act.

Section 5 has not yet been applied. Section 7 of the Act guaranteed payment to the owner of the vessel for:

> (A). 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:
> (2). the owner of such vessel and its crew for the market value of fish caught before seizure of such vessel and confiscated or spoiled during the period of detention; and (3). the owner of such vessel and its crew for not to exceed 50 per centum of the gross income lost as a direct result of such seizure and detention ...[218]

Obviously, the Fisherman's Protective Act is not too different in principle from any investment guarantee program. It was partially intended to deter seizures by Latin American nations; however, in many cases, it simply aroused their nationalistic sentiments. "The legislation probably did more to further the political fortunes of its authors than to resolve the dispute." [219]

The Foreign Assistance Act of 1965 contains the "Freedom of the Seas Amendment," made by former Senator Thomas Kuchel. This amendment provides that:

> Sec. 620. 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 fishing vessel on account of its fishing activities in international waters. The provisions of this subsection shall not be applicable in any case governed by international agreement to which the United States is a party.[220]

The Foreign Assistance Act of 1965 was followed by Public Law 90-224 of 1967, relating to the loan of vessels to foreign countries. In essence, this law provides that the President can immediately terminate specific naval loan agreements if he finds that a specific country "has seized any United States fishing vessel on account of its fishing activities in international waters."[221]

---

[218] Id. at 1977.

[219] Loring, Fisheries Dispute at 440, supra note 213.

[220] Pub. L. No. 89-171, 79 Stat. 660 (1965).

[221] Pub. L. No. 90-224, § 3, 81 Stat. 729 (1967). See also Loring, Fisheries Dispute at 440-441, supra note 213.

The toughest law at this time is the amendment made by Congressman Thomas Pelly to the Foreign Military Sales Act of 1968. Section 3 (b) contains the following provision with respect to U.S. military assistance to nations seizing our fishing vessels:

> No sales, credits, or guarantees shall be made or extended under this chapter to any country during a period of one year after such country seizes, or takes into custody, or fines an American fishing vessel more than twelve miles from the coast of that country ...[222]

The Act does, however, permit a Presidential waiver in those circumstances where the President deems the waiver necessary for security purposes.[223] The law was applied to Ecuador in December, 1968, and to Peru in May, 1969. The ambassador to Ecuador was able to avert a "crisis by pointing out that Ecuador was free to purchase arms and services directly from private United States companies."[224] However, we were not so lucky in Peru. The Peruvian Government "immediately expelled the three United States military missions, cancelled the scheduled visit of Presidential Emissary Nelson Rockefeller, and considered breaking diplomatic relations with the United States."[225] President Nixon, since that time, has resumed arms sales to both Ecuador and Peru; however, Peru has not invited the U.S. military missions back.

The most recent development concerning sanctions against nations seizing U. S. fishing vessels has been House Resolution 7117, signed into law by President Nixon on October 22, 1972.[226] The bill was enacted to expedite the reimbursement of U.S. fishing vessel owners for license fees, registrations, and other charges paid by them when their vessels were seized. Specifically, the bill

---

[222] Pub. L. No. 90-629, 82 Stat. 1320 (1968). See also 22 U.S.C. § 2753 (b).

[223] Id.

[224] Loring, Fisheries Dispute at 441, supra note 213.

[225] Id.

[226] Id.

requires the Secretary of State to obtain reimbursement from nations which seize U.S. vessels, and if these nations refuse, the Secretary is required to deduct this amount from funds earmarked for this nation through the Agency for International Development. However, in reality, the bill is just as weak as its predecessors since it provides that the President shall have complete discretion as to whether or not the deduction will be made.

Apparently, the legislation enacted by Congress over the past twenty years has been able to protect the owners of fishing vessels to a certain extent, but it has not been able to curtail seizures. In fact, it may be said that the legislation has induced the west coast Latin American nations to intensify the conflict by providing for the guaranteed repayment to vessel owners of any expenses occurred as a result of the seizures. In essence, the Latin American nations have been given a monetary incentive to seize these vessels. Moreover, the United States is placed in the embarrassing position whereby it is in reality forced to pay fines which private fishing vessels incur because they refuse to purchase licenses.

B. Argentina

As early as September 18, 1907, an Argentine Presidential Decree contained the following provisions with respect to fisheries protection:

> Article I. For fishing purposes 'territorial sea' shall mean a zone extending ten miles (18,250 metres), to be counted from the line of other waters around all the land territory ...
> Article IV. Fishing shall be free, but its exercise shall be subject to [regulations concerning the use and construction of trawl-nets]...[227]

No further significant legislation concerning fisheries was passed until 1943, two years before the Truman Proclamation. On April 19 of that year, Argentina decided to extend her territorial sea two miles for the purpose of fishing.

---

[227] 1 United Nations Series at 51, supra note 105. Complimentary legislation was passed in 1909 and 1914; however, it mirrored the 1907 Presidential Decree.

Article IV of Decree 148.119 states: "coastal fishing shall be considered fishing conducted within the limits of a line running parallel to the coast at a distance of twelve maritime miles, to be reckoned from the low water mark."[228]

As a result of the Truman Proclamation, Argentina issued Decree 14.708 proclaiming sovereignty over her continental shelf and epicontinental sea; however, the main thrust of Decree 14.708 was directed toward the transitory zones of mineral reserves on the continental shelf.[229] Under Decree 17.094 of December 29, 1966, Argentina defined the breadth of her epicontinental sea by claiming sovereignty "over the sea adjacent to her territory for a distance of 200 nautical miles measured from the line of lowest tide."[230]

One year later on October 25, 1967, Decree 17.500 was passed to complement Decree 17.094. Decree 17.500 was enacted to create the stimuli necessary to build an effective and powerful fishing industry.

> Article I. the resources of the Argentine territorial seas belong to the Nation, which shall concede their exploitation pursuant to the provisions of the present law and its regulation.
>
> Article II. The resources up to the distance of 12 marine miles from the coast may be exploited only by vessels flying the national flag. Annually, the Executive Power shall establish, in addition, other zones of the Argentine territorial seas whose exploitation shall also remain reserved to vessels of the national flag.[231]

No further reference to exploitation by foreign vessels was made in this Decree. Rather, the purpose of the legislation was to build a domestic fishing industry by granting duty free importation of vessels and machinery used in the fishing industry and by granting tax incentives to fishermen.

Following Decree 17.500, Argentina issued provisional regulations governing the issuance of permits to foreign vessels for the exploitation of living resources

---

[228] Id.

[229] Id. at 4.

[230] 15 United Nations Series at 45, supra note 109.

[231] Argentine Fisheries Law, 7 I.L.M. 324-333 (1968). See also 15 United Nations Series at 569, supra note 109. International Boundary Study at 3, supra note 112.

beyond her exclusive fishing zone of twelve miles. Decree 8.802 of November 22, 1967 states:

> Article 1. Foreign vessels may engage in activities involving the exploitation of the living resources of the Argentine territorial sea beyond a distance of twelve nautical miles from the coast only if they have in their possession, before the commencement of their activities, a local registration document (matricula) and a permit. The registration document shall remain in force for one calendar year. The permit shall be valid for 120 days reckoned from the date of issue.[232]

Foreign vessels are required to comply with any provisions which are or may be established by the Fisheries Directorate of the Secretariat of Agriculture in respect to: prohibited zones and periods, characteristics of equipment and gear, methods and techniques, non exploitable species, conservation of species, and any other measures which in the judgment of the Secretariat may help to ensure the rational exploitation of the living resources of the sea. Furthermore, foreign vessels are forbidden to use explosives for fishing or to kill any species which may be caught in fishing devices but which are unsuitable for the particular purpose envisaged. Resources obtained by foreign vessels fishing in the territorial seas of Argentina may not be sold in Argentina without an express authorization from the Secretariat.[233]

Under the authority of Decree 8.802, the Argentine Directorate General of Fisheries and Conservation of Fauna[234] issued law 124 of April 3, 1968, declaring that hereafter:

> 1. the zone within the Argentine territorial sea in which authorized vessels flying a foreign flag shall be entitled to fish during 1968 shall be the area to the south of the parallel of latitude 39° south ...
> 4. the fishing of prawn, shrimp, and sea-bream shall be prohibited.[235]

---

[232] 15 United Nations Series at 569-570, supra note 109.

[233] Id.

[234] The Fisheries Directorate of the Secretary of Agriculture was given the new title, Directorate General of Fisheries and Conservation of Fauna.

[235] Id.

Obviously, Argentina did not hesitate to use the option found in Article II of Decree 17.500 to delimit further her zones of fisheries exploitation.

Nevertheless, Argentina appears to be willing to make advantageous bilateral treaties which allow foreign vessels the right to fish in her territorial sea. As early as December of 1967, Argentina and Brazil concluded an agreement on fisheries which provides that the nationals of one country may fish in the territorial sea of the other country beyond a six mile limit measured from their respective coasts.[236]

C. Brazil

On October 19, 1938, Brazil passed Decree 794 approving and promulgating an extensive fishing code. The Decree provides that:

> Article II. Fishing is divided, according to the waters in which it is practised, ... 2. Coastal fishing is carried on within a distance of twelve miles from the coast, measured perpendicularly to it ...
>
> Article V. Only Brazilians are authorized to carry on and engage professionally in the fishing and related industries ...
>
> Article XXXVIII. Foreign vessels and Brazilian vessels manned by aliens are forbidden to carry on fishing in Brazilian territorial waters. In case of violation of this article the vessel and its fishing gear and cargo shall be seized as contraband and the offense shall be punishable under the laws governing the subject.[237]

In addition, a section of restrictions as to types of fishing practices was set forth in Article XV, along with a provision dealing with the various fines violators were required to pay.

On November 8, 1950, Brazil responded to the Truman Proclamation by issuing Decree 28.840. Under this decree, Brazil recognized that "fishing in territorial

---

[236] 10 I.L.M. 1272 (1971).

[237] 6 United Nations Series at 443-445, supra note 111.

waters and on the high seas is governed by national laws and international conventions, and it may be in the best interests of Brazil to acede to new conventions or to promulgate new laws on the subject."[238] No new laws in regard to fishing were promulgated in this decree; however, Brazil did reiterate her sovereignty over all resources in her national territory.[239]

It was not until Decree 1.098 of March 25, 1970, that Brazil extended her territorial sea to a distance of 200 nautical miles. Article IV of that decree laid a foundation for the subsequent decree regulating fishing in the territorial sea:

> Article IV. The Brazilian Government will regulate fishing, keeping in mind the rational utilization and conservation of the living resources of the territorial sea ... 1. The regulations may establish zones in which fishing shall be reserved exclusively for Brazilian vessels. 2. In the zones of the territorial sea that remain open to fishing by foreign vessels, such vessels may engage in their activities only when they are duly registered and authorized to do so ...[240]

After Decree 1.098, Brazil enacted Decree 68.549 on April 1, 1971. The sole purpose of this decree is to regulate fishing in the Brazilian territorial sea with a view to the rational use and conservation of the living resources in that sea. The President, Emilio Garastazu Medici, declared that the fishing zones and territorial sea were to be as follows:

> I. A zone contained within 100 nautical miles measured from the low water mark at the continental shelf and island coast of Brazil, used as a reference on Brazilian nautical charts.
> II. Beyond this zone under item I up to a limit of 200 nautical miles.

---

[238] 1 United Nations Series at 299, supra note 105.

[239] Decree 44 of November 18, 1966 contains basically the same provisions dealing with fisheries as does Decree 28.840 of 1950. It appears that the Fishing Decree of 1938 was still in effect as of 1966, and that Brazil continued to claim rights to the living resources of her territorial sea up to a distance of 12 miles.

[240] Brazil: Decree Law Extending Territorial Sea to 200 Miles, 10 I.L.M. at 1224-5.

1. In the zone referred to in item I ... fishing activities shall be conducted by Brazilian fishing vessels.
2. In the zone referred to in item II ... fishing may be conducted by Brazilian and foreign vessels.
3. The exploitation of crustacea and other living resources, which are closely dependent on the seabed under the Brazilian territorial sea, is reserved to Brazilian fishing vessels.[241]

Decree 68.459 further explains the procedures which Brazilian and foreign fishermen must follow in order to fish in the Brazilian territorial sea. Brazilian industries may lease foreign vessels to conduct fishing activities within the 100 mile zone as long as Brazilian-born citizens hold most of the capital in the industry holding the lease. In addition, the crews of the vessel must be made up of Brazilians as required in the Brazilian Labor Legislation. Leased vessels, however, can only be authorized when there is evidence that the vessels bring about an actual and indispensable increase in exports.[242]

Foreign vessels which do not receive a lease may conduct operations in the Brazilian territorial sea beyond 100 miles. However, this provision is subject to authorization by the Minister of Agriculture after consultation with the Navy Ministry. After the request for authorization has been granted, foreign vessels not under lease must pay a registration fee of $500 and an operation fee (for fishing) of $20 per net registered ton of the vessel. The vessels must also keep fishing logs and send them to the agency at a time to be indicated. These vessels are not allowed to land their catch at Brazilian ports.[243]

Control of fishing activities in the Brazilian territorial sea is exercised by the Navy Ministry and the Agriculture Ministry. And, if any foreign vessel violates the rules set out in this decree, it is subject to seizure by the Brazilian Government and its captain is subject to criminal prosecution under Chapter III,

---

[241] Diario Oficial of the Federal Republic of Brazil, April 2, 1971. See also Brazil: Decree Law Regulating Fishing in Territorial Sea, 10 I.L.M. at 1226.

[242] Id. at 1228.

[243] Id. at 1230.

Article II, Section 5 of Decree 68.459.[244]

Article XX of Chapter IV provides that this decree may be derogated by international fishing agreements signed pursuant to Section 3, Article 4 of Decree 1.098 of 1970.[245] Under this article, Brazil and the United States entered into an agreement on May 9, 1972, establishing a shrimp regulation and conservation zone.[246] This agreement not only provided for the conservation of shrimp resources, but also was designed to forestallany problems that might arise between the two countries as a result of the extensive claims which Brazil has made over her territorial sea. Therefore, the first section of the agreement explicitly states that nothing which is written in the treaty prejudices the legal position maintained by either government in regard to the matter of the extent of territorial seas and fisheries jurisdiction. The major provisions in the remainder of the agreement are as follows. The United States agrees to license fishing vessels fishing in Brazilian waters, and to limit the number of vessels to 325 each year. Not more than 160 vessels will be allowed to fish in the area at the same time. The shrimp season will be limited to March 1 through November 30 of each year (except in the southernmost part of the area where the season will last from March 1 to July 1). Vessels (Brazilian and U.S.) allowed to shrimp in the area must keep detailed records of their operations. The two parties to the agreement will exchange information regarding depletion of the shrimp so that proper steps may be taken to conserve Brazil's resources. Brazil is extremely interested in preserving this resource, and she has enacted legistation prohibiting shrimping in breeding and spawning areas.

---

[244] Id. at 1231.

[245] Id. at 1233. The agreement between Brazil and Argentina in 1967 providing that the nationals of one country may fish in the territorial seas of the other country appears to have remained in force.

[246] For a copy of the treaty, see Appendix E.

Responsibility for the enforcement of the agreement is assigned to Brazil, and the United States has agreed to pay $200,000 to Brazil each year for her share of the expenses resulting from enforcement functions. In addition, the United States has agreed to pay any special fee which might arise from enforcement of the agreement. Moreover, any United States vessel in violation of the agreement which is apprehended by Brazil is to be turned over to the United States for trial. And, as provided, the agreement will terminate on January 1, 1974, unless both parties agree that it should be extended.[247] According to H. Gary Knight,

> the agreement may be a model for solution of the tuna fishing dispute between Chile-Ecuador-Peru and the United States ... it evidences the emerging United States Government position on coastal states' rights in offshore fisheries. By word, and now by deed, the United States is clearly moving toward acquiescence in extended coastal state jurisdiction (perhaps 200 miles) for purposes of regulation of fishery activities.[248]

D. Chile

Under Article 611 of the Chilean Civil Code of December 14, 1855, "any person may freely engage in fishing on the seas, save that only Chileans and aliens domiciled in Chile may fish in the territorial sea."[249] There is nothing unusual in this provision since Chile claimed a territorial sea of only one marine league. However, Article 611 of the Civil Code was replaced by a Presidential Declaration on June 23, 1947, concerning the continental shelf.

Under this Presidential Declaration, Chile substantially increased the

---

[247] An excellent analysis of the treaty can be found in Shrimp Agreement with Brazil. Hearing Before the Subcomm. on Oceans and Internat'l Environment of the Comm. on For. Rel., U.S. Sen., 92nd Congress, 2nd. Sess., Sept. 28, 1972.

[248] International Laws and Louisiana's Coastal Industries, La. Coastal Law (Report #7) 4(1972).

[249] 6 United Nations Series at 4, supra note 111. Article 611 was reinforced by Decree 4601 of June 18, 1929.

breadth of her territorial sea as well as her sovereignty over its resources.

> Article II. The Government of Chile confirms and proclaims 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, and 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 with the object of preventing the exploitation of natural riches of this kind to the detriment of the inhabitants of Chile ...
>
> Article III. Protection and control is hereby declared immediately over all the seas contained within the perimeter formed by the coast and the mathematical parallel projected into the sea at a distance of 200 nautical miles from the coast of Chilean territory ...[250]

In essence, Chile claimed an exclusive right to extract the living resources in her 200 mile territorial sea. Apparently, Chile did not enact any legislation to regulate the Presidential Declaration until 1959. On February 11 of that year, Chile issued Decree 130 which "regulated the granting of fishing permits to foreign vessels in Chilean territorial waters."[251] Later, on December 10, 1963, Chile enacted Decree 811 which regulated permits for foreign whaling boats employed by national enterprises.[252] Both of these decrees are similar to the Peruvian and Ecuadorian legislation dealing with extraction of the living resources of the territorial sea. Chile has also participated in various agreements between these South Pacific nations dealing with fishery problems, and the organization of a Permanent Commission of the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific.[253]

Like other West Coast nations in Latin America, Chile appears willing to

---

[250] Id. at 4-5.

[251] Garcia-Amador, Law of the Sea at 13, supra note 114. Decree 1078 of December 14, 1961 regulated the issuing of permits to foreign vessels employed by Chilean enterprises or that deliver fish to Chilean markets.

[252] Id.

[253] R. Vaccaro and V. Montenegro, A Statement of the Laws of Chile, 228 (1962 3rd ed.). [hereinafter cited as Vaccaro and Montenegro, Laws of Chile.]

enter into bi-lateral as well as multi-lateral agreements dealing with the advancement of her fishing industry. The latest agreement was concluded on September 7, 1971 between the Union of Soviet Socialist Republics and Chile.[254] The basic provisions of that agreement are as follows. Both of the parties agree to exchange scientific and technical data and information dealing with fisheries and the fishing industry. The U.S.S.R. agrees to teach and train Chilean specialists in educational centers located in the Soviet Union as well as to help the Chileans set up educational centers in Chile to train middle level technicians for the fishing industry. In addition, the U.S.S.R. will charter Soviet fishing vessels, having a gross displacement of no less than 900 tons, to Chile on unspecified commercial terms.

In exchange for this, Chile agrees to provide service to the fishing vessels of the Soviet Union in accord with the present Chilean legislation. The number and location of ports where this service can be obtained as well as the conditions of the services was left to be determined in future meetings between the contracting parties. In regard to these future meetings, the agreement provides for a Chilean-Soviet Fishing Commission which will elaborate and coordinate measures for the implementation of the agreement.[255] Obviously, the Soviets do not appear to be as adamant as the United States in regard to the 200 mile jurisdictional claims since they have not included a nonrecognition provision in this agreement as the United States did in its agreement with Brazil concerning shrimping.

E. Colombia

Decree 58 passed in 1914 vested the power to regulate fishing in the Republic of Colombia. Under Decree 58, "fishing for whales, cachalots, and other

---

[254] See Appendix F.

[255] Id.

other cetaceans, for codfish, coral, concha, sponges, amber, and pearls constitutes a source of revenue for the State. Fishing for these species may be carried out freely but subject to legal regulations."[256] Decree 58 appears to have been reinforced by Decree 96 of December 7, 1922. Article I of that decree states that "the Government is hereby empowered to organize fishing in the waters of the Republic as it may be most beneficial to the national interests."[257] The term waters or territorial sea apparently refers to a zone of twelve miles around the coasts of Colombia according to Decree 14 of January 31, 1923.[258]

Decree 0376 of December 13, 1957, was enacted to regulate fishing in the waters of Colombia. Article V of that decree classifies the different areas where fishing is carried out as follows:

> c. Beach fishing, carried out within a distance of 200 meters from the coast.
> d. Coastal fishing, carried out by vessels which do not go beyond 12 nautical miles from the coast.
> e. Sea fishing, carried out between 12 and 200 miles from the coast.
> f. Deep-sea fishing, carried out over 200 miles from the coast.[259]

Careful attention should be paid to section e. While Colombia still claims only a 12 mile territorial sea, she is apparently unwilling to concede that the area beyond this 12 mile limit constitutes the high seas for the purposes of fishing. Consequently, Article X of this same decree provides that:

> Subject to the provisions of this Decree shall be fishing carried out in inland waters, territorial sea, and those zones adjacent to or contiguous to the territorial sea as may be determined; also, fishing carried out in extraterritorial waters

---

[256] A Statement of the Laws of Colombia 292 (1961). [hereinafter cited as Laws of Colombia.] See also 15 United Nations Series at 615.

[257] 6 United Nations Series at 33, supra note 111.

[258] Id. at 5. A later decree, number 3183 of December 20, 1952, retained the 12 mile territorial sea for the purposes of jurisdiction over fishing.

[259] Garcia-Amador, Law of the Sea at 15, supra note 114.

by vessels flying the Colombian flag, or foreign flags, chartered by residents of Colombia.[260]

Decree 1409 of 1958 establishes the conditions under which foreign vessels may engage in fishing in the territorial waters of Colombia; and Decree 0296 of 1958 fixes a fee schedule for registration licenses and permits. However, both decrees specify that no foreign vessels may engage in fishing for any species of fish other than cetaceans, tuna, and carnada viva.[261]

F. Costa Rica

Decree 116 of July 27, 1948, declared that the protection and control of the state included everything in the sea up to a distance of 200 miles from the coasts of Costa Rica.[262] Pursuant to this decree, the legislature passed Decree 190 of September 28, 1948, to control maritime hunting and fishing. Decree 190 provides:

> Article I. Fishing concerns a natural resource which is part of the nation's wealth and the regulation thereof is therefore within the competence of the Executive Power for which purpose the present decree is issued to prescribe the conditions for the right to work such resources and to lay down rules for the exercise of that right, a rational utilization, a higher economic output and the conservation and protection of the species which live in the water ...
>
> Article VII. Fishing and maritime hunting in the waters under the protection and control of the State shall be carried out solely by vessels, installations or floating factories registered in Costa Rica or by vessels of foreign registry, provided they have obtained the authorization of the Ministry of Agriculture and Industry.[263]

As a result of this decree, Regulation 363 of January 11, 1949, was passed. Regulation 363 contains provisions listing legal fishing decrees, net sizes, and

---

[260] Id.

[261] Laws of Colombia at 293, supra note 257.

[262] 1 United Nations Series at 10, supra note 105. Subsequently, Decree 116 was amended by Decree 803 of November 2, 1949.

[263] 6 United Nations Series at 462, supra note 111.

prohibitions as to area, season, and species which are not contained in Decree 190. Under this regulation, every person or enterprise who proposes to engage in marine fishing, industrialization, transportation, conservation, or marketing of his products must register with the Ministry of Agriculture and Industries. In addition, those persons registered must: 1) keep and exhibit books on their activities, 2) furnish any information that the authorities require, and 3) grant access at any time or place to authorized officials so that they may carry out their supervisory functions.

Export fishing which is carried out by duly authorized vessels of foreign registry is subject to further regulation. Fishing of this type within the territorial boundaries of Costa Rica (200 nautical miles) is regarded as exportation, and is thereby subject to customs duties as well as other charges such as license fees. To assure compliance, every concessionaire is required to post a bond as a symbol of good faith. In addition, Costa Rica charges a registration tax as follows (Regulations 363 as amended by Article 27 of Decree 739): "vessels up to 25 gross tons, $150; vessels from 26 to 50 gross tons, $200; vessels from 51 to 100 gross tons, $300; vessels from 101 to 150 gross tons, $350; and vessels over 150 gross tons, $500."[264] Also, there is a $2 head tax on each fisherman as well as a tax on nets for every meter above 450 meters.[265]

There appears to have been no further legislation since Decrees 363 and 739 until March 25, 1969. At that time, Decree 10 was issued to regulate sardine fishing within the territorial seas of Costa Rica, especially in the Gulf of Nicoya.[266]

---

[264] A Statement of the Laws of Costa Rica 299-301 (1969). See also 6 United Nations Series at 462-463.

[265] Id.

[266] Carcia-Amador, Law of the Sea at 17, supra note 114.

The latest decree issued by the Costa Rican legislature came on February 10, 1972. In this decree, Costa Rica inserted the "Patrimonial Sea" concept into her domestic legislation, expressing special competence and conservation powers over the living resources in that area.[267] However, it does not appear that this latest decree will change any of the previous legislation dealing with maritime hunting and fishing.

G. Dominican Republic

Decree 1518 of June 18, 1938, was the first fishing legislation enacted by the Dominican Republic. Decree 1518 was later amended on October 13, 1946, by Decree 1262. Basically, these two decrees state that:

> Article I. This act shall apply to fishing, which term means any act done in territorial waters with intent to obtain examples of biological species or elements whose natural habitat is water ...
>
> Article VI. A fishing permit, to be issued by the Ministry of Agriculture, Industry, and Labour on application and valid for one year, must be obtained before any act of fishing is done otherwise than for home consumption ...
>
> Article XIV. The Executive Power shall establish -
>
> (a). Seasons for fishing;
> (b). Fishing methods, gear, and equipment, indicating those prohibited as unduly destructive to fish;
> (c). Areas reserved for special breeding and protection;
> (d). Sanctuaries and public fishing areas.[268]

No later legislation concerning fisheries was enacted until May 22, 1962. Decree 5914 of that year was issued with the hope that it would protect and stimmulate fish breeding, and regulate fishing so that a domestic industry could be started in the Dominican Republic. Under Decree 5914, commercial fishing required a license or permit, to be issued by the Secretary of Agriculture. Moreover, this permit or license could only be obtained by a natural or juridical person domiciled in the Dominican Republic.[269]

---

[267] International Boundary Study, (Supp.) at 21, supra note 112.

[268] 6 United Nations Series at 476, supra note 111.

[269] Statement of the Laws of the Dominican Republic 290-291 (1964).

While Decree 5914 appears to be the Dominican Republic's latest fishing regulation, Decree 186 of September 6, 1967, contains several references to the living resources in the territorial seas of the Dominican Republic.

> Article III. [the Dominican Republic established a six mile territorial sea and a six mile contiguous zone beyond that territorial sea]. In the said contiguous zone, the Dominican State shall exercise the powers of jurisdiction and control necessary for ... the protection and conservation of fisheries and other natural resources of the sea ...
>
> Article VI. The Dominican Republic hereby declares that, as a general rule, it has particular interest in maintaining the productivity of the resources of the sea in any part of the high seas adjacent to its territorial sea; for that purpose, it reserves the right to take part, on a basis of equality, in every organization of studies in every system of research or regulation relating to the conservation of the said resources in any zone of the high seas, even though its nationals have not in the past or are not at present engaged in the exploitation thereof.[270]

H. Ecuador

As one might expect, Ecuador has enacted an extremely large body of legislation dealing with maritime hunting and fishing. The first of these decrees, Decree 607, was passed on August 29, 1934. Decree 607, recognizing that fishing in the territorial sea (15 miles at that time) was free only to nationals and aliens domiciled in Ecuador, established the following rules governing sea fishing

> Article I. 1. The limits for the observance of the rules relating to sea fishing, and those relating to river or lake fishing ... 2. The rules for the preservation of species of fish and marine fauna in general, in so far as concerns the places, seasons, methods, and equipment for fishing, the trade in fish and the control of the waters. 3. The distance from the shore over which the fishing regulations, particularly those regarding the preservation of species, shall be applied. 4. The distances and rules applicable to fishing in general, or special types of fishing in estuaries, tunny fishing grounds, hatcheries for fish or other aquatic animals. 5. The provisions and police regulations necessary to guarantee the maintenance of order and the security of persons and property in the exercise of fishing.[271]

Some of the rules applicable to foreign vessels fishing in Ecuadorian territorial

---

[270] 15 United Nations Series at 77, supra note 109.

[271] 6 United Nations Series at 478, supra note 111.

waters are as follows. To begin with, only Ecuadorians can fish in these territorial waters unless there is a concession granted to the foreign undertaking, or some special type of reciprocal contract as in the case of foreign fishermen contracted to instruct Ecuadorian nationals in modern fishing methods.

The entry of any foreign vessel into the territorial waters of Ecuador or the Galapagos will not be permitted unless a proper fishing permit has been granted by the Government. A permit may be obtained in three locations outside of Ecuador: the Consulate-General at the City of Panama, the Consulate-General at San Francisco, and the Consulate-General at San Diego. Moreover, the permit must be paid for in U.S. dollars; and, if a vessel is caught in Ecuadorian waters without a permit, it will be seized and fined a sum four times the fee prescribed for the permit.[272]

As a result of the Truman Proclamation and Ecuador's expanding territorial sea claims, a series of decrees concerning fishing were enacted: Decree 1060 of January 29, 1952, Decree 1376 of July 15, 1952, Decree 995-A of April 29, 1955, and Decree 1085 of May 14, 1955.[273] However, all of these decrees were repealed by Decree 464 (c) of March 4, 1960, Decree 991 of May 23, 1961, and the Maritime Fishing and Hunting Act of August 30, 1961.[274] These decrees include many of the provisions found in the previous acts, as well as several amended provisions. Decree 464 provides that "vessels of foreign registry may engage in fishing for marine species in Ecuadorian continental or insular territorial waters, and for species used in bait fishing, if they first obtain the appropriate permits and licenses (required by the Maritime Fishing and

---

[272] Id. at 478-485. Decree 607 was supplemented by Decree 138 (Tunny Fishing Regulations) of February 21, 1940, Decree 272 of May 3, 1940, and Decree 329 of June 12, 1940.

[273] Id. at 488-490. It does, however, appear that one decree enacted at this time was allowed to stand, Decree 950-D of August 6, 1953. This decree made it unlawful for any foreign vessel to fish for grouper in the territorial seas of Ecuador.

[274] 15 United Nations Series at 630-631, supra note 109.

Hunting Act of 1961) ...[275] In addition, the captain of any foreign vessel fishing in these waters is required to "furnish a detailed report of the catch in which quantities, species and locations are to be specified. This report is to be submitted to the Harbourmaster's Offices for transmission to the Fisheries Department of the Ministry of Development."[276]

The major change in regard to the Ecuadorian territorial sea was introduced by Decree 1542 of November 10, 1966. Article 628 of this decree states that, "the adjacent sea (to Ecuador), to a distance of 200 nautical miles measured from the low water mark, at the most salient points of the continental Ecuadorian coast and the outermost islands of the Colon Archipelago, according to the base line indicated by executive decree, comprises the territorial sea and is of the national domain."[277] While Decree 1542 was a major change in a legislative sense, it was certainly no surprise since Ecuador had publicly claimed a 200 mile territorial sea as early as 1952. Consequently, the previous decrees enacted in the early 1960's are still good law.

Pursuant to Decree 1542 of 1966 Ecuador passed a law on fishing and development, Decree 110-CI of March 6, 1969. This decree established the present fees for registration and licensing which each foreign vessel engaged in commercial fishing is required to meet.[278] Decree 100-CI is similar to the decrees dealing with maritime hunting and fishing passed in the early 1960's.

I. El Salvador

According to Article 592 of the Civil Code of 1860, fishing in the terri-

---

[275] Id. at 630.

[276] Id.

[277] Garcia-Amador, Law of the Sea at 21, supra note 114.

[278] Id. Decree 7733, containing the regulations necessary to implement Decree 110-CI, was passed on October 15, 1969.

torial sea of El Salvador was restricted to nationals and resident aliens.[279] However, the breadth of the Salvadorean territorial sea in 1860 was only one marine league.

Article 7 of the Political Constitution of September 7, 1950, substantially increased the width of the territorial sea. According to the Constitution, "the territory of the Republic within its present boundaries is irreducible; it includes the adjacent sea within a distance of two hundred marine miles, measured from the line of lowest tide ..."[280]

As a result of Article 7 of the Constitution of 1950, the Salvadorean legislature enacted Decree 1961 on October 25, 1955. Decree 1961 regulates fishing and maritime hunting carried on for commercial purposes; and, Decree 1961 is still in force insofar as the new act of 1970 does not provide otherwise. Decree 1961 begins by classifying fishing and maritime hunting into three categories.

> 1. Coastal fishing is carried on by vessels at a distance of not more than twelve miles from the coast.
> 2. Sea fishing is carried on by vessels at a distance of not less than twelve and not more than 200 miles from the coast.
> 3. Deep-sea fishing is carried on by vessels at a distance of more than 200 miles from the coast.[281]

Under this article, coastal fishing is restricted to the nationals or corporate bodies of El Salvador, as long as the corporate bodies are capitalized with at least 50 per cent of their capital coming from Salvadorean nationals.

Fishing and maritime hunting for commercial purposes may not be carried on in the coastal area unless a license has been issued. Licenses are granted only to persons and corporate bodies domiciled in El Salvador. The license, when granted, lasts for five years. The recipient is entitled to certain pri-

---

[279] Garcia-Amador, Law of the Sea at 22, supra note 114.

[280] 6 United Nations Series at 14, supra note 111. Article i of the Constitution of 1962 replaced Article 7 of the Constitution of 1950, but it remains the same as Article 7.

[281] Id. at 491.

vileges and exemptions. El Salvador, intent on establishing a sizeable domestic fishing industry, allows exemptions from customs duties in respect to the importation of vessels, tackle, fishing gear, machinery and equipment, fuel, and any other necessary building materials. In addition, El Salvador grants certain privileges relating to port facilities and installations.

Notwithstanding the provisions in Decree 1961, El Salvador is willing to grant licenses to foreign vessels which fish for anchoveta sardines. But the issuance of licenses for this purpose is governed by a special act.

Article 18 of the decree provides for penalties and fines which are to be imposed on any person or corporate body which violates the provisions of the decree by fishing in Salvadorean territorial waters without a license. According to Article 18 the amount of the fine increases with each offense until the third offense, at which point the vessel and all of its equipment are seized. The catch is seized in all cases.[282]

Decree 97 of September 22, 1970, updates Decree 1961 and sheds more light on El Salvador's fishing zones. Under Decree 97, "sea fishing is that which is carried on in the area of [Salvador's] territorial sea between 60 nautical miles measured from the line of low tide and 200 nautical miles."[283] So, El Salvador has simply extended the area of the sea in which only Salvadorean nationals are allowed to fish. In addition, Decree 97 amends Decree 1961 by providing that "any natural or juridical person, whether or not a resident of the Republic, may apply to have his enterprise, already established in the country or to be established in the country, classified as a sea, deep-sea, or both, fishing enterprise in order to enjoy the benefits established by this law."[284] Moreover, in this decree, Salvadorean vessels must obtain a "sailing permit" for sea fishing

---

[282] Id. at 490-492.

[283] Garcia-Amador, Law of the Sea at 23, supra note 114.

[284] Id.

and foreign vessels must obtain a "special permit" (granted only to qualified enterprises) to operate vessels under a foreign flag in this area. [285]

J. Guatemala

Guatemala first enacted legislation dealing with fishery matters on January 18, 1932. Decree 1235, entitled the Law Regulating Fish Culture and Fishing, divided the waters of the Republic into territorial and littoral waters. The latter term was used to delimit fishing in the salt water areas of Guatemala, the seas, inlets, and bays. The decree further defined littoral waters to include interior fishing (done in bays and inlets) and maritime fishing.[286]

No further significant legislation concerning fishery matters was enacted until the early 1960's. During this period, three laws were issued. Decree 1412 of December 6, 1960, Decree 1470 of June 23, 1961, and a Government Resolution of August 16, 1962. The first decree, 1412, had the objective of "establishing adequate sanctions for those who, failing to comply with the requirements of the laws in force, exploit the maritime resources in the territorial waters of the Republic."[287]

Decree 1470 issued in 1961 supplements both the decree issued in 1932 and the decree issued in 1960. Decree 1470 "concerns the rational exploitation of the country's fishing resources, prescribes the fees to be paid, and supplements the provisions of Decree 1235 governing pisciculture and fishing and also the issuance of licenses for fishing in territorial waters."[288] Article I provides that the Executive is authorized to issue special licenses for large scale maritime fishing in the territorial waters of Guatemala (presently 12 miles). Article V sets a

---

[285] Id.

[286] Id. at 25.

[287] Id.

[288] 15 United Nations Series at 637, supra note 109.

tariff to cover persons or enterprises fishing in territorial waters, as well as the conditions for granting special licenses. Accordingly, there are three types of special licenses, depending on the nationality of the licensee and the percentage of Guatemalan capital engaged in the enterprise. In addition, Article XV prescribes the penalties which may be imposed upon violators: fines, confiscation of products and fishing gear, and revocation of one's fishing license.[289]

Decree 1470 was followed by a Government Resolution in 1962. Decree 1470 contains regulations for applying the resolution. The resolutions state:

> Article VII. If, on expiry of the six months laid down by the Act as the period during which foreign vessels chartered for fishing may remain within the country, such vessels are not given the Guatemalan flag and the person or enterprise in whose service they were does not replace them with Guatemalan-registered vessels, the authorization granted to such person or enterprise shall be cancelled with respect to the number of foreign vessels not replaced by vessels flying the Guatemalan flag.[290]

K. Honduras

Article 665 of the Honduran Civil Code of February 8, 1906, states that "fishing on the high seas may be carried on without restrictions; fishing in the territorial sea is, however, restricted to Honduran nationals and to aliens domiciled in Honduras."[291] Moreover, the Civil Code does not define the limits of the territorial sea so this article is still in effect.

Article 153 of Decree 102 of March 7, 1950, substantially increased the extent of Honduras' claim over the living resources in her territorial sea. According to Article 153, "the following belong to the state: full, inalienable, and imprescriptible dominion of the waters of the territorial seas to the extent of twelve kilometres ... [and also] full, inalienable, and imprescriptible [rights]

---

[289] Id. at 638. See also Garcia-Amador, Law of the sea at 25, supra note 114.

[290] Id.

[291] 6 United Nations Series at 510, supra note 111. The extent of the territorial sea was one marine league in 1906.

over all the resources which exist or may exist in its submarine platform ... and [everything] in the area of the sea included within vertical planes constructed on its [continental shelf] boundaries."[292] Decree 25 of January 17, 1951, followed Decree 102 and extended Honduras' territorial sea to a zone 200 miles from the coast. According to Article 2 of that decree, "the zone of protection of hunting, fishing and exploitation of the mainland and island water falling by virtue of this decree within the state's jurisdiction (200 miles) shall be delimited in accordance with this declaration of sovereignty whenever the Government shall see fit, and such delimitation shall be ratified, extended or amended as the national interest may require."[293]

It was not until May 19, 1959, that a comprehensive fishing law, Decree 154, was enacted. Decree 154 divides fishing into sport fishing (including fishing for scientific purposes or home consumption) and fishing for profit (commercial fishing). Sport fishing is free to anyone in Honduras; however, commercial fishing is restricted to Honduran nationals or Honduran companies in which a majority (51 per cent) of the capital is owned by Honduran nationals. In addition, only native-born Hondurans can be captains of fishing vessels; and, only boats flying the flag of Honduras can fish in the territorial sea of Honduras without a license. Foreign fishing vessels in this area are required to have proper authorization, and if they are caught without it, they are subject to being confiscated and fined $5,000. A foreign vessel can obtain authorization by purchasing a permit which is good for five years, and by leaving a cash deposit with the proper authorities.[294]

---

[292] Id. at 21.

[293] Id. at 23.

[294] J. Zacapa, A Statement of the Laws of Honduras 262 (1965). [hereinafter cited as J. Zacapa, Laws of Honduras]. See also Garcia-Amador, Law of the Sea at 27, supra note 114.

The latest legislation in this regard came on June 15, 1959. Decree 175 "imposed export duties ranging from 0.05 to 0.10 lempiras per kilogram plus a 10 per cent ad valorem on fish and related products."[295]

L. Mexico

Mexico's first law regulating fisheries was passed on March 5, 1927. Article II of this law provides:

> National fish resources shall include all products of aquatic life which have their origin or like in the interior waters of the country, and all those which can be exploited in the maritime waters along the Mexican coasts to the extent provided for in treaties and laws on this subject; in absence of express rules or provisions this extent shall not be smaller than twenty kilometres as provided in article V of the law of 18 December 1902.[296]

No further legislation was enacted until December 31, 1949, at which time the earlier laws concerning fisheries were abolished.[297] The decree of 1949 provides that "the right to exploit the natural resources existing in the waters of the nation which are available by fishing may be granted only to native-born Mexicans or to Mexican companies set up in accordance with Mexican law."[298] Moreover, aliens may fish in this area only if they satisfy certain requirements set up by Article XXVII of the Constitution, and obtain a license. Article XXVII sets forth the necessary steps which one must go through to obtain a concession. Under Article VI, no foreign governments or sovereigns may become partners or stockholders in one of these concession contracts.[299] The right to exploit fishery resources in the territorial sea is first given to organized regional groups of

---

[295] Id. at 27.

[296] 1 United Nations Series at 84, supra note 105.

[297] This decree was also amended by a subsequent decree on December 20, 1954; however, it remained substantially the same.

[298] Garcia-Amador, Law of the Sea at 30, supra note 114.

[299] Id. Article XXVII contains a Calvo Clause.

fishermen, and then to concessionaires who carry on industrial exploitation through fish packing plants.[300]

On December 13, 1966, Mexico enacted a decree delimiting the exclusive fishing zone of the nation. This decree declares that:

> Article I. The United Mexican States establish their exclusive jurisdiction for fishing purposes in a zone twelve nautical miles (22,224 metres) wide, measured from the base line from which the breadth of the territorial sea is measured.
>
> Article II. The legal regime on the exploitation of the living resources of the sea, within the territorial sea, shall be extended to the whole of the exclusive fishing zone of the nation mentioned in the preceding article.
>
> Article III. No provisions of this Act shall in any way modify the legal provisions establishing the breadth of the territorial sea.
>
> Transitional Articles: The Federal Executive shall establish the conditions and terms under which nationals of countries which have traditionally exploited the living resources of the sea in the zone three nautical miles outside the territorial sea may be authorized to continue their activities during a period which shall not exceed five years from 1 January 1960. In 1967, nationals of such countries may continue those activities without being subject to any special conditions.[301]

Pursuant to the warning given by the Transitional Articles in the above decree, the United States made an agreement with Mexico on October 27, 1967. Basically, the agreement provides that each nation shall have reciprocal rights to fish off each other's coasts in the 9 to 12 mile area for five years, beginning on January 1, 1968. In addition, the agreement has provisions dealing with catch limits, species of fish, collaboration and exchange of technical data, and research and conservation.[302] Less than one year after this agreement, Japan negotiated a similar agreement with Mexico which allows Japanese vessels to fish in this 9 to 12 mile limit for certain species of fish.[303]

---

[300] C. Sepulveda, A Statement of the Laws of Mexico 286 (1970). [hereinafter cited C. Sepulveda, Laws of Mexico].

[301] 15 United Nations Series at 649, supra note 109.

[302] Mexico-United States Fisheries Agreement, 7 I.L.M. 312-319 (1968).

[303] 10 I.L.M. at 21.

M. Nicaragua

Decree 577 of January 20, 1961, dealing with the exploitation of fisheries, replaced all of the previous Nicaraguan fisheries acts.[304] Decree 557 provides as follows. Fishing activity is considered to be any action which is carried out to catch fish, molluscs, chelonians, saurians, crustaceans or specimens of any other aquatic flora or fauna. Furthermore, certain fishing periods or seasons are prescribed as well as certain prohibitions, such as fishing by means of toxic substance.

Commercial licenses are granted for a period up to twenty years; however,

> Commercial fishing licenses shall be granted only to persons who or entities which have already established, or undertake to establish, on land in Nicaraguan territory and within a reasonable time to be determined by the Ministry of Economic Affairs, one or more plants having sufficient capacity to preserve, process and pack fish in the form of internationally marketable products. Failure to establish such a plant within the time limit fixed shall be punishable by suspension of the license. Accordingly, the use of floating plants shall not be permitted.[305]

Before applying for a commercial fishing license, the applicant must make a deposit in the Central Bank ranging from $500 to $1,000; and, he must post a bond ranging from $1,000 to $10,000.[306]

Decree 577 also has a provision dealing with licenses for turtle fishing. Firms which wish to engage in this type of fishing must obtain a license and follow certain regulations dealing with seasons, species, sizes, and areas in

---

[304] Previous to this law, a decree of October 7, 1925 regulated mother-of-pearl fishing in the territorial sea, and decrees of January 20, 1903, January 28, 1905, February 1, 1917, and October 7, 1925 regulated fishing and the issuance of fishing licenses to engage in fishing in the territorial sea. This can be found in 6 United Nations Series at 545.

[305] 15 United Nations Series at 654-655, supra note 109.

[306] J. Marenco, A Statement of the Laws of Nicaragua 307 (1965) [hereinafter cited as J. Marenco, Laws of Nicaragua].

which turtles may be fished.[307]

Decree 577 had no provisions dealing with the extent of her territorial sea for fishery purposes; so, on April 5, 1965, Decree II was enacted to delimit the national fishing zones. Decree II states:

> Article I. In conformity with Article V of the Constitution, in order to promote the better conservation and rational exploitation of Nicaragua's fishing and other resources, the waters lying between the coast and a line drawn parallel to it at a distance of 200 nautical miles seaward, both in the Atlantic and in the Pacific Oceans, shall be designated a "national fishing zone."
>
> Article II. Any fishing activity carried on within the "national fishing zone" shall be subject to the provisions of the General Act on the Exploitation of the Natural Wealth, the legislation supplementing it and legislation which may be adopted in the future.[308]

N. Panama

On December 17, 1946, the Panamanian Legislature enacted Decree 449 which provides:

> Article III. For the purposes of fisheries in general, national jurisdiction over the territorial waters of the Republic extends to all the space above the seabed 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.[309]

The territorial waters of the Republic, moreover, were extended to 200 miles by Decree 31 of 1967;[310] however, the fishing legislation passed in the 1950's and 1960's continues in force.

The following decrees and provisions relate to the Panamanian position in regard to the 200 mile territorial sea. Article 5 of Decree 17 (July 9, 1959) provides that "natural and juridical persons of Panamanian nationality and foreign residents of the Republic of Panama may fish freely in the territorial

---

[307] 15 United Nations Series at 655, supra note 109. See also J. Marenco, Laws of Nicaragua at 307.

[308] Id. at 656.

[309] 1 United Nations Series at 16, supra note 105.

[310] 15 United Nations Series at 105, supra note 109.

sea."[311] Decree 33 of January 30, 1961, regulates shrimping in the territorial waters of Panama,[312] while Decree 127 of July 28, 1964, regulates tuna fishing in these waters. Decree 127 required the owners or operators of tuna vessels to purchase a license, a fishing permit, or a sailing permit.[313] Finally, Decree 168 of July 20, 1966, regulates anchovy and herring fishing, and limits the number of vessels which may engage in this type of fishing at one time.[314]

O. Peru

Peru, like Ecuador, has enacted an extremely large body of legislation dealing with fishing matters. Decree 781 of August 1, 1947, set the tone for future fishing legislation by declaring that the territorial sea of Peru extends to a distance of 200 miles from the coast. Article II of that decree states: "national sovereignty and jurisdiction are to be extended over the sea adjoining the shores of the national territory ... to the extent necessary to protect, reserve, maintain, and utilize natural resources and wealth of any kind which may be found in or below those waters."[315]

After Decree 781, Peru enacted a number of decrees regulating fishing in Peruvian territorial waters. Decree 21 of January 1, 1952, which is entitled the National Mercantile Marine Regulations is extremely broad in scope. Title X of that decree sets forth the regulations dealing with hunting and fishing, and provides as follows. It is unlawful for anyone to engage in hunting or fishing

---

[311] Garcia-Amador, Law of the Sea at 33, supra note 114.

[312] This act was amended by Decree 49 of March 12, 1965. Now, all shrimping vessels in the territorial waters of Panama must have been made in Panama.

[313] Garcia-Amador, Law of the Sea at 33, supra note 114. Decrees 17 and 33 were revised by Decree 42 of January 24, 1965, especially with reference to the issuance of fishing licenses. Decree 17 was also amended by Decree 368 of November 26, 1969.

[314] Id. at 34. Decree 168 was modified by Decree 283 of November 17, 1966, Decree 366 of December 4, 1967, and Decree 77 of December 30, 1968.

[315] 1 United Nations Series at 17, supra note 105.

in the territorial waters unless he is a national of Peru or a resident alien. In addition, it is unlawful for foreign vessels to fish in Peruvian waters (200 miles). Any vessel caught violating this article will be arrested and its fishing gear and cargo will be seized as contraband. In addition, penalties and fines may by imposed (Article 731-733).

Under Decree 21, fishing is classified as: 1-fishing on the high seas (beyond the 200 mile limit), 2-coastal fishing (carried on within the 200 mile limit), and 3-inland fishing (carried on in lakes, lagoons, and rivers in Peru). A fisherman is anyone engaged in the taking of aquatic animals for profit. Accordingly, this type of fishing is reserved to Peruvian nationals over 16 years of age. Every Peruvian fisherman is free to carry on his occupation as long as he registers with the proper authorities and obeys the restrictions imposed by law (Articles 735, 744, 745).

Any individual desiring to engage in maritime fishing as an occupation or industry must apply to the Peruvian Government for a permit. The application must include the following: the nationality and place of permanent residence of the applicant, the type of hunting or fishing in which the applicant wishes to engage, the type of vessel which the applicant owns along with the registration number, a list of the crew members, the types of nets and fishing gear, and the home port of the vessel. No person who is not a Peruvian citizen can acquire ownership in a Peruvian fishing vessel (Articles 760, 764).[316]

Decree 16, of September 17, 1965, requires that every foreign vessel operating in Peruvian territorial waters have a special registration and a fishing permit.[317] Decree 16 replaced several similar decrees. Funds which the government obtains from these permits issued to foreign vessels are set aside to finance hydrobiological research programs and to implement international agreements made

---

[316] 6 United Nations Series at 17, supra note 111.

[317] Garcia-Amador, Law of the Sea at 36, supra note 114.

with competent United Nations agencies according to Decree 14.457 of April 4, 1963.[318]

One of the most recent fisheries laws, Decree 18810 of April 4, 1971, provides a general idea of the goals to which Peru aspires as well as the domestic law which Peru has enacted to achieve these goals.

> Article II. The national fishing industry is of public utility and social interest and consists of making the fullest use of the hydrobiological riches; ...
> Article IV. The State sponsors the greatest possible participation by Peruvians in fishing activities, determining the limitations on, and ways in which foreigners may participate in it ...
> Article VIII. The Ministry of Fisheries, as a body responsible for the country's fisheries policy will lay down the rules to direct and control the exploitation of the nation's hydrobiological sources, to ensure an organic and technical sound development that permits conservation of the species to ensure the most efficient and economical exploitation and to achieve the highest social benefits.[319]

Decree 18810 of 1971 has chapters dealing with hydrobiological products, extraction, marketing of the products, research, boat operations, fishing companies, tax incentives for these companies, and registration and licensing procedures.[320] Decree 18810 "was regulated by Supreme Decree 011-71-PE of June 25, 1971 ... which also contemplates fishing activities by foreign vessels 'in Peruvian jurisdictional waters' (Article 29), as well as research carried out 'in our jurisdictional sea' by foreign individuals or institutions (Article 231)."[321]

Peru, like Chile, has recently entered into an agreement with the Union of Soviet Socialist Republics which deals with cooperation for the development of the fishing industry in Peru.[322] Under the agreement, the Soviet Union will aid

---

[318] Id.

[319] Decree Law 18810, General Fisheries Law 6 (1971).

[320] Id. at 6-29.

[321] Garcia-Amador, Law of the Sea at 37, supra note 114.

[322] See Appendix G.

Peru in the planning and construction of a fishing complex with an annual capacity of 180,000 metric tons of fish products, to include port installations, fish processing plants, and other complementary installations. Peru agrees to repay the Soviet Union through the offer of Peruvian goods as well as by providing services to Soviet ships entering Peruvian ports. In addition, the parties agree to exchange scientific data, and the Soviets agree to train and prepare Peruvian specialists, both in the Soviet Union and in Peru. And finally, the agreement establishes a Peruvian-Soviet Mixed Commission which will prepare a statute to govern the functioning of the agreement. The agreement will then enter into force and continue for ten years.[323]

P. Uruguay

According to Article 2 of the General Fishing Regulations of December 26, 1949, "fishing in the jurisdictional waters (of Uruguay) is prohibited to all foreign ships and the vessels or personnel that are stationed on them, without prejudice to international agreements that may be concluded."[324]

The breadth of the territorial sea was set at 12 miles in a decree of February 21, 1963. However, this same decree declared that Uruguay had the exclusive right to fish "within the maritime zone comprised between the outer limits of the territorial sea and the outer limits of the continental shelf ..."[325] Foreign vessels desiring to exploit the living resources in the Uruguayan epi-continental sea must receive an authorization from the Executive Power, pursuant to regulations.[326]

Decree 604/969 of December 3, 1969, expressly revoked the decree of February 21, 1963. In regard to fishery matters, Decree 604/969 provides:

---

[323] Id.

[324] Carcia-Amador, Law of the Sea at 38, supra note 114.

[325] Uruguay: Decree Extending Territorial Waters, 8 I.L.M. 1071 (1969).

[326] Id.

> Article II. The sovereignty of the Eastern Republic of Uruguay extends beyond its continental and insular territory and internal waters to a zone of territorial sea 200 nautical miles wide ...
>
> Article IV. Commercial fishing and maritime hunting carried on in the internal waters or in a 12 mile zone of the territorial sea ... is reserved exclusively for vessels flying the Uruguayan flag ...
>
> Article V. Beyond the 12 mile zone mentioned in the foregoing article, foreign fishing vessels may exploit the living resources found between 12 and 200 nautical miles by authorization of the Executive Branch, granted pursuant to this law and its regulations or in conformity with the provisions of international treaties concluded by the Republic.[327]

The remainder of the articles in Decree 604/969 contain fishing and hunting regulations, and various other regulations applicable to foreign vessels. The first regulation which was issued under Article V of this decree was Decree 711/971 of October 28, 1971.[328] A Presidential Decree of August 26, 1971, establishes detailed regulations for foreign fishermen in the 12-200 nautical mile zone.[329]

Q. Venezuela

On July 22, 1941, Venezuela passed a decree dealing with her territorial sea, her continental shelf, and the protection of her fisheries. Articles VII and VIII of that decree provide that:

> Article VII. The exploration and exploitation of fixed fishing grounds in the continental shelf of Venezuela shall be subject to the prior authorization and control of the National Executive.
>
> Article VIII. Outside the territorial sea or the contiguous zone, the State shall determine those maritime zones over which it shall exercise its authority and vigilance and in which it shall be responsible for the development, conservation and rational exploitation of the living resources of the sea contained therein, whether those resources are developed by persons of Venezuela or foreign nationality.[330]

This decree was supplemented by a decree enacted on July 27, 1956, dealing with the

---

[327] Garcia-Amador, Law of the Sea at 39, supra note 114.

[328] Id.

[329] International Boundary Study at 129, supra note 112.

[330] 15 United Nations Series at 708, supra note 109.

same subjects. The 1956 decree did not repeal the fishing decree of 1941, except where its terms were contrary to the older decree. Under the present fishing decrees, one must get permission from the Ministry of Agriculture in order to fish for sport, scientific, or commercial reasons in the territorial waters of Venezuela (presently 12 miles according to domestic legislation). The Ministry of Agriculture establishes restrictions and prohibitions such as closed seasons and the use of improper fishing gear.[331]

---

[331] Garcia-Amador, Law of the Sea at 41, supra note 114.

CHAPTER V. LATIN AMERICAN LEGISLATION CONCERNING THE DEVELOPMENT OF THE NON-LIVING RESOURCES OF THE CONTINENTAL SHELF

A. Introduction

This section deals with Latin American legislation concerning the development of non-living resources of the continental shelf and seabed. In other studies much emphasis has been placed on the role fishing plays in the formulation of Latin American jurisdictional policies. Such emphasis is well founded. The concern that the Latin American nations have elicited over the possible depletion of the living resources of the seas is indeed one of the most important single factors behind the formulation of their present policies.

However, the role of non-living resources of the continental shelf and seabed in formulation of such policies should not be ignored. At the moment, Latin American attention is focused on the development of the living resources of the sea because these offer a solution to the more immediate problem of an adequate diet. As these countries develop, the focus on ocean jurisdiction for the purposes of supplying food will broaden to include exploitation of the non-living resources of the seas.

Most Latin American nations have not enacted much legislation directly concerned with offshore mining operations. The legislation that has been enacted generally concerns the development of hydrocarbon deposits.[332] The reason for this lies in the fact that vast reserves of petroleum are contained in the continental margins of many of the Latin American nations. This concentration of efforts, both of a legislative and a developmental nature, on the exploitation of offshore petroleum is not unusual, for at this time, "the history of mineral development under the ocean floor is really the history of petroleum develop-

---

[332] Dr. David Dunn of the University of North Carolina and Dr. Halsey Miller of the University of Southern Illinois have referred the authors to an excellent review of recent petroleum development in Latin America contained in Volume 55 of the American Association of Petroleum Geologists Bulletin at page 1418.

ment in the continental shelves."[333]

Petroleum is not, however, the only non-living resource found in the continental shelves of the Latin American nations. Basically, there are three groups of non-living resources. "The first group comprises minerals dissolved or suspended in the sea water itself. The second group of mineral deposits are those beneath the water in the rocks on the continental margin. The third ocean mineral resources group is the metallic minerals found on the ocean floor in potentially useful concentrations brought about either by physical or chemical oceanographic processes."[334]

The submarine coastal areas adjacent to each of the individual Latin American nations contain some non-living resources in each of these groups. The extent to which these resources exist, however, is a subject of conjecture. Much scientific exploration remains to be done before any reliable estimate can be made of the extent to which minerals in each group exist off the coast of Latin America.

Some of this exploration is now in progress. Each year the demand for minerals increases.[335] The vast mineral deposits contained in the continental margin have become the subject of considerable attention. Offshore mining operations are growing by leaps and bounds. In 1966, there were sixty-six offshore mining operations known to exist in the world;[336] in 1967, the number had grown to more than three hundred operations of this sort.[337] As the demand for minerals increases and as the technology which makes underwater mining cheaper advances,

---

[333] Dole, Ocean Minerals and the Law, 2 Natural Resources Law. 354 (1969). [hereinafter cited as Dole, Ocean Minerals].

[334] Id. at 352-355.

[335] Askevold, Ocean Mining in Perspective, 4 Stanford J. of Int'l. Studies 121 (1969) [hereinafter cited as Askevold, Ocean Mining].

[336] Luce, The Development of Ocean Minerals and the Law of the Sea, 1 Natural Resources Law. 29 (1968).

[337] Non-living Resources of the Sea, 2 Natural Resources Law. 412 (1969).

the Latin American nations will further diversify their efforts into areas other than petroleum recovery.

The major obstacle facing these developing nations is the lack of capital to finance exploitation. Undersea mining is expensive. At present, techniques do exist that allow highly profitable recovery of minerals found in the sea.[338] The initial capital outlay for such operation is almost prohibitive.

It is predictable that foreign capital will be necessary before extensive development of Latin American non-living marine resources will be possible. Given the recent expropriations of onshore mining operations in Chile, foreign investors may be wary of this sort of investment. There is no simple solution.

This survey of legislation concerning offshore mining in Latin America is offered as an attempt to put into perspective the existing body of legal materials on the subject. The political considerations which lie behind these legal positions are beyond the scope of this endeavor.

B. An Overview of the Latin American Position on Development of the Non-living Resources of the Continental Shelf and Seabed

Before turning to individual legislation, an overview of the Latin American position concerning the continental shelf and seabed areas is in order. Prior to the twentieth century, there was little concern over jurisdiction of the continental shelf due to the absence of technological ability to develop this area.

"(T)he Truman Proclamation of 1945 on the continental shelf was the first formal declaration by one nation . . . that a nations's sovereignty extended not only to its land mass above the water, but to the extension of that mass as it slid beneath the seas to the point at which the previously gentle slope of the seabed pitched to the Great Deep at a more acute angle."[339] The Latin American

---

[338] Miro, A Discussion of Offshore Mining Exploration Programs, 1 Natural Resources Law. 130 (1968).

[339] Bernfeld, Development of the Resources of the Sea--Security of Investment, 1 Natural Resources Law. 84 (1968).

nations were quick to adopt this policy for their own purposes.[340]

The Truman Proclamation, when first promulgated, envisioned a jurisdictional limit of one hundred fathoms. In the Cuidad Trujillo Conference of 1956, the Latin American members of the Organization of American States persuaded the United States to "take a broader view of national rights" in this area. The Latin American nations also "pressed for the broad definition of national jurisdiction over the seabed resources" that was adopted in the 1958 Geneva Convention on the Continental Shelf.[341] Most of these nations also voted for the adoption of this Convention.

The reason many of the Latin American nations have adopted the jurisdictional position espoused in the Geneva Convention on the Continental Shelf is due to Article I thereof which provides for jurisdiction to extend: "to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superadjacent waters admits of the exploitability of the natural resources of said area."[342]

Those familiar with the necessities of legal terminology will find this phraseology rather perplexing. Technological developments are being made which permit profitable mining operations to be carried on at extreme depths.[343] The exploitability clause in the Geneva Convention would seem to allow a sovereign to assert national jurisdiction over any submerged land areas adjacent to its coast

---

[340] Askevold, Ocean Mining at 121, supra note 336.

[341] Finlay, Rights of the Coastal Nations to the Continental Margin, 4 Natural Resources Law. 670 (1971).

[342] Stone, Some Aspects of Jurisdiction over Natural Resources under the Ocean Floor, 3 Natural Resources Law. 170 (1970). [hereinafter cited as Stone, Aspects of Jurisdiction].

[343] Hughes Set to Mine the Seas, Washington Star 1/20/72.

to almost any depth. The extent to which national jurisdiction will be claimed by virtue of the Geneva Convention is not yet clear. Since "neither occupation nor declaration of sovereign rights in such an area is required"[344] by the Convention, this question of the extent of national jurisdiction allowed is not susceptible to ready classification.

This broad definition of jurisdiction over the continental margins within the scope of the hypothesized Latin American consensus position on jurisdiction discussed earlier. There is nothing in the Geneva Convention on the Continental Shelf which would disallow national claims of jurisdiction to a distance of even 200 miles so long as the submerged shelf area can be exploited at this distance from the shore line. This is the reason for its general acceptance in Latin America.

This broad definition has also been viewed with favor by the International Court of Justice. The decision rendered in the North Sea Case stated that Article I of the Convention was regarded "as enshrining existing customary law on the matter."[345]

Not all members of the international community are as well pleased with Article I as are the Latin American nations and the International Court of Justice. August 3, 1970, the United States delegation submitted a draft convention to the United Nations Seabed Committee.[346] This draft convention is aimed at limiting the jurisdictional rights created in the Geneva Convention. The draft treaty proposes that all nations "renounce these rights, seaward of the 200-meter depth line, to a new International Seabed Resources Authority, and receive back a new status

---

[344] Stone, Aspects of Jurisdiction at 175, supra note 343.

[345] Jennings, Jurisdictional Adventure at Sea--Who has Jurisdiction Over the Natural Resources of the Seabed? 4 Natural Resources Law. 831 (1971).

[346] Friday, The Draft United Nations Convention at the International Seabed Area--American Petroleum Institute Position, 4 Natural Resources Law. 73 (1971).

as a Trustee of this area between the 200 meter isobath and the seaward edge of the continental margin."[347] This draft convention has not received wide support. Even in the United States opposition to the draft convention is growing.[348] It is unlikely that this particular draft will find favor at the 1973-74 United Nations Convention on the Law of the Sea.

The debate as to what constitutes the outer limits of state jurisdiction over the continental margin will probably be continued at the United Nations Law of the Sea Conference. Certainly the full implication of the exploitability clause in Article I will be thoroughly examined. For most nations the limits set by the Geneva Convention will remain "quite precise and wholly adequate."[349] This is certainly the case in Latin America.

We may now turn our attention to the individual legislation of the Latin American nations concerning the development of non-living resources of the continental margin.

C. Individual Legislation Concerning Development of the Non-living Resources of the Continental Shelf and Seabed

1. Argentina

The first Argentine legislation directly concerned with jurisdiction over the non-living resources of the sea is Decree Number 1,286 Concerning Mineral Reserves, passed January 24, 1944. The Article 2 of the Decree states:

> Pending the enactment of special legislation, the zones at the international frontiers of the national territories and the zones on the ocean coasts, as well as the zones of the epicontinental sea of Argentina shall be deemed to be temporary zones of mineral reserves; nevertheless, applications for prospecting rights, evidence of discoveries and other applications in respect of mineral rights may continue to be dealt with according to the ordinary procedures, unless the Department of War and Navy in consultation

---

[347] Ely, The Draft United Nations Convention on the International Seabed Area--American Bar Association Position, 4 Natural Resources Law. 11 (1971).

[348] Id. at 11.

[349] Stevens, The Future of Our Continental Shelf and the Seabeds, 4 Natural Resources Law. 649 (1971).

with the Ministry of Agriculture express a special interest owing to the nature of the question, or under the provisions of Chapter XCII of the Mining Act.[350]

On October 11, 1946, this temporary legislation was supplemented by Decree Number 14,708 Concerning National Sovereignty Over Epicontinental Sea and the Argentine Continental Shelf, declaring these areas subject to national jurisdiction.[351]

In 1966 Argentine legislation concerning jurisdiction over the continental shelf was amended again to conform to the dictates of the Geneva Convention on the Continental Shelf. Law Number 17,094-M 24 declares in Article 2 that: "The sovereignty of the Argentine nation shall also extend over the seabed and the subsoil of the submarine zones adjacent to its territory up to a depth of 200 meters or beyond this limit, up to that depth of the overlying waters which allows exploitation of the natural resources of those zones."[352]

Within these jurisdictional confines Argentina has passed various laws concerning the development of non-living resources. The majority of this legislation is directed toward onshore activities. However, the same procedures and regulations governing onshore activity may be assumed to apply to offshore mining operations. It may be predicted that more legislation specifically concerned with offshore operations will be enacted in the future. It is unlikely, however, that this future legislation will differ either substantively or procedurally from present legislation.

The basic Argentine legislation concerning petroleum development is contained in Law 17,319 of June 1967.[353] It states that all deposits of liquid or

---

[350] 1 United Nations Series at 3, supra note 105.

[351] Id. at 4.

[352] 15 United Nations Series at 45, supra note 109.

[353] Price Waterhouse and Company, Information Guide for Diong Business in Argentina 121 (1968).

gaseous hydrocarbons situated in the territory of the Argentine republic or its continental shelf belong to the state. Exploration, exploitation, industrialization, transportation, and marketing hydrocarbons may be carried out by state, private, or mixed companies. The executive branch determines the location and size of the areas in which activities of the private and state enterprises may be carried out.[354]

Law 17,319 provides that exploration concessions may be granted for areas covering 150 square kilometers on the continental shelf.[355] No one individual may hold more than five exploration permits. These permits are valid for twelve years. The holder of a permit is entitled upon discovery of petroleum deposits to exploit these deposits.

Exploitation concessions are granted by the executive branch for a period of twenty-five years and may be extended for an additional ten years. The 150 square kilometer area in which exploration concessions are granted may be enlarged if petroleum deposits are found. A 250 kilometer exploitation concession may be granted after bidding and review by the executive branch. At the end of the time period for which the exploitation concession was granted the area reverts to the state.[356]

Decree Number 8,546 of December 31, 1968, provides that once offshore concessions for exploitation are granted work must begin within 180 days. Failure to begin promptly may result in nullification of the concession. Also the concessionaire is obligated to submit his plans for development of the deposit to the Autóridad de Aplicación for approval.[357] Controls and sanctions over the concession are also handled by Autóridad de Aplicación.

---

[354] Id. at 121-122.

[355] Id. at 125.

[356] Pan American Union, Mining and Petroleum Legislation in Latin America 1 (1969). [hereinafter cited as Mining and Petroleum Legislation].

[357] Id. at 11-12.

Law Number 17,319 also establishes a tax on the profits of the exploiting company. Fifty-five per cent of the profits made on these concessions is deemed to be the maximum taxes which may be collected by the state. This fifty-five per cent figure includes all royalties, surface tax on exploration and exploitation, municipal and provincial taxes, and special taxes.[358]

As of 1969, no specific legislation existed in Argentina concerning offshore mining of mineral resources other than petroleum. Article 2,518 of the Civil Code vests ownership of all objects found in the ground in the state. This Article closely parallels the provisions in Law Number 17,319. Other provisions in the Civil Code of Argentina concerning surface mining repeat the same procedural techniques for granting exploration and exploitation concessions as contained in Law Number 17,319.[359] It may be assumed, therefore, that companies seeking rights to develop non-living resources other than petroleum would be subject to the same sort of legal guidelines presented in Law Number 17,319.[360]

2. Brazil

The history of Brazil's position on jurisdiction over the continental shelf follows the Latin American pattern. Its first claim to sovereignty over the continental shelf was contained in Decree Number 28,840, published in November of 1950. In this Decree it was proclaimed: "that part of the continental shelf which adjoins the continental and insular territory of Brazil is integrated into that territory, under the exclusive jurisdiction of the Federal Union."[361]

---

[358] Id. at 13.

[359] Id. at 1-10.

[360] For a review of the mining and petroleum legislation prior to the 1967 law see C. Alurralde, A Statement of the Laws of Argentina 173-184 (1963).

[361] Garcia-Amador, Law of the Sea at 9, supra note 114.

In June of 1968, this Decree was modified by Decree Number 62,837 which redefined the limits of jurisdiction over the continental shelf to conform to the dictates of the Geneva Convention on the Law of the Sea. It should be noted, however, that though the 1968 Decree seemed to conform to the formula devised at the Geneva Convention, Brazil did not sign or ratify the Geneva Convention on the Continental Shelf. The final statement issued by the Brazilian government on the subject of jurisdiction over the continental shelf is contained in Article 1 of Decree Number 1,098, published March 25, 1970. Article 1 created a 200 mile territorial sea and declared that the seabed and subsoil under this territorial sea was subject to the sovereign jurisdiction of the Brazilian government.[362]

Within the 200 mile shelf and seabed jurisdiction claimed by Brazil, all petroleum exploration and extraction is controlled by a government monopoly. "National control of the petroleum industry was established by Decree-law 3,236 of May 7, 1941, and Article 162 of the 1967 Constitution provides for the continuation of the government monopoly in exploration and extraction of petroleum."[363] This monopoly is carried on under the auspices of a government owned corporation known as PETROBRAS.

Other non petroleum, mining activities are not subject to this government monopoly. Decree-law 227 of February 29, 1967, sets up separate legislation concerning mining activities whose object is to extract minerals other than hydrocarbons. It should be noted that Article 14 concerning the issuance of exploration licenses and Article 30 concerning the granting of exploitation concessions of Decree-law 227 do not allow such licenses or concessions to be granted to foreign nationals or foreign corporations.[364] Thus foreign capital must be chan-

---

[362] Id. at 9.

[363] Mining and Petroleum Legislation at 58, supra note 357.

[364] Id. at 49, 51.

neled through Brazilian corporations.

All mining activities in Brazil are controlled by the Departamento Nacional da Producão Mineral. This agency has complete authority over the granting of licenses and concessions.[365] No separate body of legislation exists concerning mining operations on the continental shelf, so the same system of laws expressed in Decree-law 227 and administered by the Departamento Nacional da Producão Mineral may be assumed to apply.

3. Chile

Chile's position on jurisdiction over the continental shelf is confusing. Chile signed the Geneva Convention on the Continental Shelf, but she has passed no domestic legislation which reflects this position. Chile also signed the Santiago Declaration. There is some domestic legislation which concerns fishing rights in the 200 mile area claimed in the Santiago Declaration, but again there is no domestic legislation concerning the continental shelf below this 200 mile area. In 1947, there was a Presidential Declaration in which "the Government of Chile confirms and proclaims 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 said shelf, both in and under it, known or to be discovered."[366] This proclamation, too, has not yet been expressed in domestic legislation.

This absence of domestic legislation may perhaps be attributed to the fact that the continental margin of Chile is quite small. The shelf ends abruptly a few miles off the coast. In any event, the fact that Chile has ratified various

---

[365] Id. at 46.

[366] Garcia-Amador, Law of the Sea at 12, supra note 114.

multilateral agreements but failed to implement these agreements with internal legislation is not uncommon. This pattern is repeated in various other Latin American countries.

The absence of domestic legislation concerning development of non-living resources of the continental shelf and seabed area should not be construed as evincing an intent on the part of the Chilean government to open this area to uncontrolled exploitation. The Santiago Declaration is adequate proof that the Chilean government is not predisposed to allow exploitation of resources which she may by international law claim. The recent expropriation of certain copper mines is further proof of the Chilean intent to control, if not eliminate, any foreign exploitation of non-living resources. Chilean mining and petroleum legislation since 1969 is not yet available. At this particular point in time it would be misleading to represent this summary of legislation as it stood in 1969 as indicative of the law existing in Chile in 1973.[367]

4. Colombia

In Colombia, also, there is an absence of domestic legislation concerning jurisdiction over the continental shelf. However, "the Political Constitution of Colombia of 1886, modified by Article 1 of the Legislative Act 1 of 1968, establishes that 'the air space, the territorial sea, and the continental shelf are also part of Colombia in accordance with international treaties or conventions approved by the Congress or, in their absence, in conformity with Colombian Law.'"[368] On January 8, 1962, the Colombian Government ratified the Geneva Convention on the Continental Shelf.[369] This ratification of the Geneva Convention, in accordance

---

[367] For a review of the mining and petroleum legislation prior to 1969 see J. Vaccaro and C. Montenegro, Laws of Chile 114-121, supra note 254.

[368] Garcia-Amador, Law of the Sea at 14, supra note 114.

[369] The Geographer, National Claims to Maritime Jurisdiction 19 (Department of State, Bureau of Intelligence and Research No. 36, January 3, 1972). [hereinafter cited as National Claims].

with the dictates of Article 1 of the Legislative Act 1 of 1968, establishes the jurisdiction of Colombia over the continental shelf to a depth of 200 meters or beyond that to where the continental shelf and seabed admits of exploitability.

Colombia's basic legislation concerning petroleum is contained in a Petroleum Code established by Decree 1056 in 1953. The Code itself has been amended numerous times since 1953. The Code's provisions relating to foreign investment are quite liberal. "Companies which maintain their headquarters in some foreign country and wish to become established in Colombia and enter into petroleum contracts with the government or with private individuals must organize an office or branch with domicile in Bogotá and fulfill the requirements of Article 470 of the Commercial Code. The company is regarded as Colombian for both national and international purposes in regard to its contracts, property, rights and securities."[370] Colombia even allows concessions to be granted to corporations in which foreign governments have a financial interest.[371]

Article 4 of the Code grants the government the right to expropriate if it is for the public benefit. Article 10 of the Code provides that contract disputes over petroleum concessions are to be settled by the Colombian Supreme Court.[372] Article 8 requires ninety per cent of the ordinary workers and eighty per cent of the skilled workers and specialists to be native Colombians. Article 18 requires concession holders to pay one-third cent per barrel of petroleum recovered toward a scholarship fund for training the workers necessary to meet the demands of Article 8.

Exploration and exploitation concessions seem to be freely granted. The

---

[370] Mining and Petroleum Legislation at 97-98, supra note 357.

[371] Wurfel, Colombia at 50, supra note 128.

[372] Mining and Petroleum Legislation at 97-98, supra note 357.

concessionaire must supply the government with proof of financial capacity. Petroleum exploitation concessions are granted for a period of thirty years in the east and forty years in the west.

Exploration and exploitation concessions vary in size. Article 22 of the Code requires that the concession not be less than 3,000 nor more than 25,000 hectares in Western Colombia. In areas east of the Eastern Cordillera, however, the government may make contracts for concessions of 100,000 hectares.[373]

In most of Colombia's legislation, continental shelf areas are not specifically mentioned. It may be assumed that the same procedures apply to both onshore and offshore operations. Article 13 imposes a tax on petroleum production in territorial waters of fourteen and one-half per cent of the gross production.[374] This specific inclusion of a different tax on offshore operations seems to imply that these provisions of the Code apply to exploitation of petroleum on the continental margin in the absence of other special provisions. Colombia does have specific legislation which vests the right to exploit hydrocarbon deposits under the waters of the territorial sea in the state. These deposits may be exploited by private companies if a contract is granted by the congress.[375]

Law 38 of 1887, Decree 805 of March 5, 1947, and Decree 2,419 of November 20, 1958, provide the basis for the Colombian Mining Code.[376] The Code allows companies who are financed by foreign capital to be granted special mining grants by the Instituto de Fomento Industrial on the same basis that grants would be made to wholly national corporations.

---

[373] Wurfel, Colombia at 50-51, supra note 128.

[374] Mining and Petroleum Legislation at 106, supra note 357.

[375] Id. at 105.

[376] Id. at 76.

Colombia has specific regulations regarding mining of precious metals in what is termed "National Reserves." The National Reserves, as defined in this legislation, consist of navigable rivers. Though the territorial seas and the continental shelf are not mentioned in this definition of National Reserves, a reasonable inference may be drawn that the same procedures concerning the exploitation of submarine minerals in navigable rivers also apply to development of the non-living resources of the continental shelf. The regulations concerning the development of these non-living resources are quite liberal. A mining concession contract may be granted by the government upon proof of financial capacity and approval of the sites and plan of operation. A bond must be posted as a guarantee that the concessionaire will not default on his contract obligation to the government. Colombian workers must be hired to help work the concession in a proportion established by the Labor Code. Another provision requires that foreign concessionaires give up the right to diplomatic intervention.[377] Other terms of the contract such as the size and duration of the concession are to be negotiated with the government.

5. Costa Rica

Article 6 of the Costa Rican Constitution of 1949 states: "The state exercise complete and exclusive sovereignty over the air space above its territory and over its territorial waters and continental shelf, in accordance with principles of international law and with treaties in effect."[378] There seems to be no domestic legislation which establishes the limits of jurisdiction over the continental shelf. The government of Costa Rica subscribed to the Protocol of Ad-

---

[377] Mining and Petroleum Legislation at 88-90, supra note 357.

[378] Garcia-Amador, Law of the Sea at 16, supra note 114.

herence to the Declaration of Santiago. It also was a signatory to the Geneva Convention on the Continental Shelf,[379] but never ratified the Geneva Convention and has not passed any direct legislation embodying the jurisdictional formula of either of these treaties for control over the continental shelf.

In Act Number 3,977 of October 20, 1967, dealing with contracts for exploitation of petroleum resources of the continental shelf, Costa Rica has declared that "for the purposes of this contract, the continental shelf shall be defined in accordance with the provisions of the Geneva Convention of 1958."[380] One source has stated that Costa Rica claims jurisdiction over the continental shelf to a distance of 200 nautical miles.[381] However, in light of current domestic legislation dealing with fishing,[382] the 200 mile claim should be construed as a limited jurisdictional claim relating to living rather than non-living resources of the continental shelf. The only present indication concerning Costa Rica's position on jurisdiction over non-living resources of the sea is in Act Number 3,977, which seems to indicate that Costa Rica favors the jurisdictional formula stated in the Geneva Convention on the Continental Shelf.

Costa Rica has no special laws which dictate the conditions under which petroleum concessions will be granted to a concessionaire.[383] Clause 1 of Act Number 3,977 states that the Constitution of Costa Rica vests sole jurisdiction over petroleum deposits in the continental shelf in the State.[384] The same clause allows the State to enter into contracts for the exploration and exploitation of

---

[379] Id. at 16-17.

[380] 15 United Nations Series at 340, supra note 109.

[381] National Claims at 21, supra note 370.

[382] Garcia-Amador, Law of the Sea at 17, supra note 114.

[383] Mining and Petroleum Legislation at 119, supra note 357.

[384] 15 United Nations Series at 339, supra note 109.

these petroleum resources. The terms under which a contract will be granted are not specified. A concessionaire must bargain on an individual basis with the government. Once a contract has been agreed upon, the contractor is granted the right to exploit the designated area. The contract does not imply ownership; it only gives the contracting party the right to exploit petroleum resources.[385]

The General Mining Code of Costa Rica is contained in Law 1,551, passed April 20, 1953. The Code provides that the subsoil belongs to the state but that any person living in Costa Rica, whether native or alien, has the right to explore for mineral deposits. Exploration permits for areas from 10 to 400 hectares are freely granted and last for one year. When a deposit is discovered, the holder of an exclusive exploration permit has one month to apply for an exploitation permit.[386] Once an exploitation permit is granted, the concessionaire has full rights to develop the claim. He is obligated to pay taxes, submit a semi-annual report on the work in progress, furnish to inspectors necessary assistance, comply with the labor laws in force at that time, and compensate for any loss or damage caused by the mining operation.[387]

6. Dominican Republic

Article 5 of the Dominican Republic's Constitution of 1966 states that: "(t)he corresponding territorial sea and the submarine surfaces and subsoil, as well as the air space above them, are also parts of the national territory. The extent of the territorial sea, of the air space, and of the contiguous zone and its defense, as well as of the submarine surface and subsoil and the utilization thereof, shall be fixed and regulated by law."[388] On August 11, 1964, the Domin-

---

[385] Id. at 340.

[386] Mining and Petroleum Legislation at 113-114, supra note 357.

[387] Id. at 116-117.

[388] Garcia-Amador, Law of the Sea at 18, supra note 114.

ican Republic ratified the Geneva Convention on the Continental Shelf.[389] Act 186 of September 6, 1967, is the domestic legislation which applies the jurisdictional formula created in the Geneva Convention to the continental shelf of the Dominican Republic. Article 7 of this Act states:

> The Dominican State shall exercise sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources. No person shall therefore undertake these activities without express consent of the Dominican State.
>
> For the purposes of this article, the term "continental shelf" means (a) the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres, or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands under Dominican sovereignty.[390]

Law 4,532 of August 31, 1956, creates the legislative framework for development of petroleum resources found in the territory and continental shelf of the Dominican Republic. Article 1 of Law 4,532 states that all petroleum reserves are the property of the state and that these reserves may be exploited by private persons under contracts arranged with the government. The length of duration of the exploitation contract and the size of the area over which the contract is granted is subject to individual negotiation. Article 4 of Law 4,532 allows foreign persons (physical or juridical) to obtain contract rights to develop and exploit petroleum resources under the condition that they accept the exclusive jurisdiction of Dominican courts and legislature to interpret these contract rights.[391]

Legislation concerning non-petroleum mining operations on the continental shelf are contained in Law 4,550 of September 23, 1956.[392] Exploration permits

---

[389] National Claims at 27, supra note 370.

[390] 15 United Nations Series at 77-78, supra note 109.

[391] Mining and Petroleum Legislation at 128, supra note 357.

[392] Id. at 121.

are granted under this law for a maximum of two years. Once a deposit is discovered, an exploitation concession may be granted for an unlimited time.[393] The duration of the exploitation concession and the area which the concession convers is again a matter of individual contract. Foreign physical or juridical persons may obtain exploitation contracts if they submit themselves to the jurisdiction of Dominican Courts and legislature. Law 4,550 also contains various reasonable taxes and a graduated schedule of royalties to be imposed on mining operations. The scale goes from five per cent of the net profit for the first five years of a concession to thirty per cent of the net profit after the twenty-fifth year of the concession.[394]

7. Ecuador

Article 625 of the Civil Code of Ecuador, passed in conjunction with the Legislative Decree of March 6, 1951, declares that Ecuador maintains sovereign jurisdiction over all resources of the continental shelf of the Ecuadorian coasts to a depth of 200 meters. This Article has been amended by Article 628 of the Civil Code, enacted November 20, 1970, which states that the Ecuadorian territorial sea extends 200 nautical miles from the low water mark. Article 628 further states that the soil and subsoil of the seabed under the 200 mile territroial sea is part of the public domain of Ecuador.[395]

The basic legislation concerning petroleum development is contained in the petroleum law of August 19, 1961, and in the supplements to this law contained in Decree 1,464 of June 30, 1965, Decree 1,208 of October 7, 1966, and Regulation 1,844 of October 28, 1966.[396] This body of the law allows the Ministro-Juez de Minas

---

[393] Id. at 123.

[394] Id. at 125-126.

[395] Garcia-Amador, Law of the Sea at 20-21, supra note 114.

[396] Mining and Petroleum Legislation at 146, supra note 357.

to grant concession contracts for a maximum period of forty years.

The Ecuadorian petroleum legislation allows foreign persons or companies having the legal domicile in Ecuador to negotiate concession contracts.[397] Branches of foreign corporations are subject to the same regulations as local corporations.[398] Concession contracts are subject to the overall mining code, but most details of the contract are determined by individual negotiation. Concessions by denouncement are handled in the same manner. Royalties on petroleum obtained from the continental shelf and territorial seas are subject to a lower rate schedule than onshore operations. Royalties may not exceed a maximum of nine per cent of net production.[399] No taxes may be imposed specifically on one or more petroleum companies.[400]

Basic legislation on non-petroleum mining in Ecuador is contained in the General Mining Law of February 5, 1937, the General Mining Law of September 19, 1961, Decree 2,671 of December 1, 1965, Supreme Decree 1,208 of October 7, 1966, and Agreement 1,844 of December, 1966. This general mining legislation vests all mineral wealth in the state and indicates that the state shall preferably exploit directly this wealth. However, the state may grant concessions to natural or juridical persons and does retain the privilege of expropriating these grants.[401] Concessions may be granted to foreigners, but very strict controls are maintained over such grants. The Ministro-Juez de Minas grants such concessions.[402]

---

[397] Id. at 146-147.

[398] Price Waterhouse and Company, Information Guide for Doing Business in Ecuador at 9 (1968).

[399] Mining and Petroleum Legislation at 150-151, supra note 357.

[400] For more information on special tax provisions relating to the petroleum industry see Price Waterhouse at 19, supra note 399.

[401] Mining and Petroleum Legislation at 130, supra note 357.

[402] Id. at 135-136.

License fees, taxes, and royalties are regulated by Article 102 through 113 of the Mining Code. License fees of six per cent of the gross value of monthly output plus other standard small fees comprise the majority of taxes imposed on mining. The concessionaire must also pay income taxes and sales taxes imposed by statutes.[403]

8. El Salvador

A Legislative Decree issued February 21, 1951, fixed El Salvador's claim of sovereignty over the continental shelf at a depth of 200 meters.[404] This legislation was altered by Article 8 of the Constitution of 1962 which states: "(t)he territory of the Republic within its present boundaries is irreducible; it includes the adjacent sea within a distance of 200 marine miles measured from the line of lowest tide, and it embraces the space above, the subsoil, and the corresponding continental shelf."[405] It has been surmised that the 200 mile claim is more directed at protecting fishing rights than at claiming jurisdiction over the continental shelf. The abundance of domestic legislation concerning fishing rights in the 200 mile zone would seem to support this conclusion. The fact remains, however, that El Salvador neither signed not adhered to the Geneva Convention[406] She has specific legislation which does plainly claim 200 mile sovereign jurisdiction over the seabed and subsoil. Considering the realities that exist in the international community at the moment, it is unlikely that development of non-living resources of the continental shelf to a distance of 200 miles will be permitted without the express consent of El Salvador. Until further clarification, it would be unwise for foreign investors to attempt to develop non-living resources in this area with-

---

[403] Id. at 138.

[404] National Claims at 28, supra note 370.

[405] Garcia-Amador, Law of the Sea at 22, supra note 114.

[406] Id. at 22-23.

out prior consent.

Petroleum development is covered in separate legislation in the Mining Code of El Salvador. Ownership of petroleum reserves vests in the state. Exploration concessions, the terms of which are subject to contract negotiations, are granted by the executive branch. The holder of an exploration concession also has preference in obtaining an exploitation concession. Those who seek an exploitation concession must agree to give the state at least fifty per cent of distributed profits. Foreign persons or companies seeking exploitation concessions must agree to establish domicile in San Salvador, have legal representatives reside there, and must also expressly agree to submit to the laws of El Salvador.[407]

El Salvador's General Mining Code dates from May, 1922, and was later supplemented in 1953. Legislative Decree 2,326 of January 29, 1957, created a Department of Economic Promotion which supervises mining enterprises and grants concessions.

Article 137 of the Mining Code states that the subsoil belongs to the state and that the state may grant concessions for the exploitation of the resources of the subsoil. Article 17 of the Mining Code provides that mining properties may be expropriated if the act of expropriation complies with provisions in the Mining Code.

Exploration permits are granted by the Department of Economic Promotion. These permits are granted for areas with a maximum radius of 500 meters. Article 32 of the Mining Code provides that once discovery is made, the discoverer may denounce his discovery and apply for a concession.[408] The Department of Economic Promotion may then grant up to ten contiguous claims to the discoverer for exploita-

---

[407] Mining and Petroleum Legislation at 163-164, supra note 357.

[408] Id. at 155-157.

tion. Taxes imposed on the exploitation of non-living resources are determined by the Department of Economic Promotion.

9. Guatemala

Article 3 of the Guatemalan Constitution of 1965 states that "Guatemala exercises full sovereignty and dominion over its territory which includes soil, subsoil, continental shelf, territorial waters, and the space above these, and the natural resources and wealth existing therein, without prejudice to free navigation by sea and air in conformity with law and provisions of international treaties and agreements."[409] Guatemala signed and ratified the Geneva Convention on the Continental Shelf. However, the 200 meters plus exploitability formula of the Geneva Convention has not been enacted in its domestic legislation. The only mention of the outer limits of Guatemalan jurisdiction over the continental shelf is contained in the Petroleum Code enacted by Legislative Decree 345 of July 7, 1955. This Decree provides that all petroleum resources within the outer limits of the continental shelf are subject to sovereign jurisdiction of the state.[410] These claims to sovereignty over the outer limits of the continental shelf are not in conflict with the Geneva Convention. As long as the resources of the outer limits of the continental shelf are not at a depth that disallows exploitability, Guatemala may be classed as one of those nations whose jurisdictional claims in this regard are consistent with the Geneva Convention.

As mentioned above, Decree 345 of July 7, 1955, created a Petroleum Code which regulates the petroleum industry in Guatemala. Article 1 of the Code states that all petroleum reserves are the property of the state. Article 3 provides

---

[409] Garcia-Amador, Law of the Sea at 24, supra note 114.

[410] Id. at 24.

that the government may grant concessions for petroleum exploration and exploitation to all legally qualified persons, either national or foreign. Any foreign persons wishing to obtain grants must establish residence in Guatemala or appoint a qualified attorney to conduct those operations. Exploration permits are granted for not less than 5,000 hectares and not more than 400,000 hectares. No one person or company may obtain exploration permits for more than 400,000 hectares. These exploration permits are granted for six years but may be extended for a maximum of four more years. Exploitation rights are granted only to holders of exploration rights and are limited to areas not greater than 25,000 hectares.[411] No one person may be granted exploitation concessions for areas totaling more than 200,000 hectares. These exploitation concessions are granted for a period of forty years. Foreign concession owners are subject to income tax on income derived from petroleum operation in Guatemala.[412] Royalty payments and additional taxes are provided for in Articles 128-147 of the Code.

The General Mining Code which regulates exploitation of other mineral resources besides petroleum was created by Articles 127 and 214 of the 1956 Constitution and Decree Law 342 of April 22, 1965. Article 214 of the Constitution vests title to all mineral deposits in the state.[413] Exploration concessions are granted by the Ministry of Economy.[414] These concessions are for areas not less than ten square kilometers nor more than 5,000 square kilometers and last for a period of not less than one year nor more than three years.[415] Exploitation con-

---

[411] Mining and Petroleum Legislation at 176-179, supra note 357.

[412] Id. at 179-180.

[413] Id. at 165.

[414] Id. at 166.

[415] Id. at 167.

cessions are also granted by the Ministry of Economy. Both exploration and exploitation concessions are available to any juridical person resident in Guatemala.[416] These exploitation concessions are granted for a period of forty years but may be extended an additional twenty years.[417] No one person or company may hold exploitation concessions for an area larger than 500 square kilometers. Holders of exploration and exploitation concessions under the Mining Code are subject to pay taxes on concession rights, surface taxes, royalties, and income taxes.[418]

10. Honduras

Article 5, paragraph 3 of the Honduran Constitution of 1965 declares that the state has sovereign jurisdiction over "the bed and subsoil of the submarine platform, continental and insular shelf, and other underwater areas adjacent to its territory outside the zone of territorial waters to a depth of two hundred meters or to the point where the depth of the superjacent waters, beyond this limit, permits the exploitation of the natural resources of the bed and subsoil."[419] Oddly enough, though Honduras adheres to the Geneva formula for jurisdiction over the continental shelf, it has not signed or ratified the Convention.

Exploration and exploitation of the petroleum reserves of Honduras is controlled by Legislative Decree 4 of October 25, 1962.[420] Petroleum reserves are declared to be the property of the state. The state, therefore, has the right to grant concessions and to expropriate the concessions in the public interest. Permits for reconnaissance, exploration, and exploitation may be awarded to for-

---

[416] Id. at 168.

[417] Id. at 169.

[418] Id. at 173.

[419] Garcia-Amador, Law of the Sea at 26, supra note 114.

[420] J. Zacapa, Laws of Honduras at 125, supra note 295.

eigners if they prove their financial capacity and their ability to handle technical aspects of petroleum development. An exploration concession is exclusive. It lasts for a period of six years and may cover an area of not less than 5,000 hectares and not more than 400,000 hectares. There is a graduated tax schedule on each hectare included in the exploration concession.

Concessions for exploitation of petroleum in the submarine platform, continental shelf, and insular shelf may be granted to foreign concessionaires. No one natural or juridical person may be given concessions for exploitation of more than 500,000 hectares. These concessions are granted for a period of forty years and may be extended for an additional twenty years.[421]

An exploitation concessionaire is obligated to supply a portion of the petroleumextracted from the reserves to meet the domestic demands of Honduras and to pay a graduated surface tax, a twelve and one-half per cent royalty, and income taxes. The total amount of taxes and royalties may not exceed fifty per cent of the net profit from the petroleum operations conducted in Honduras.[422]

The General Mining Code of Honduras was created by Decree 64 of February 15, 1937, and supplemented by Legislative Decree 3 of December 11, 1939, and Decree 119 of March 13, 1950. Article 1 thereof vests ownership of all mineral deposits in the state. All mineral deposits except uranium, uranium salts, and thorium may be conceeded to foreign developers for exploitation. Any person having the legal capacity to own land in Honduras may explore for mineral deposits. Once an exploitation concession is granted, the concessionaire is obligated to work the mines in accordance with Mining Code technical provisions.[423]

There is also a graduated tax schedule contained in Articles 149-184. Concessions to foreigners are prohibited in mining zones within forty kilometers of

---

[421] Mining and Petroleum Legislation at 201-204, supra note 357.

[422] Id. at 205-211.

[423] Id. at 196-199.

neighboring countries or seacoasts; or in land on islands, keys, reefs, shoals, rocks, ledges, or sandbanks. The meaning of these provisions is obscure and clarification is needed.

11. Mexico

On October 29, 1945, President Avila Camacho declared the continental shelf and subsoil to be within the sovereign jurisdiction of Mexico. Amendments to Articles 27, 42, and 48 of the Constitution, made January 20, 1960, further establish Mexico's claim of control over the area and the resources of the continental shelf.[424]

Though Mexico did not sign the Geneva Convention on the Continental Shelf, it did adhere to it in 1964.[425] This adherence, plus the language of the 1960 Amendments to the Constitution, seems to put Mexico squarely in line with the Geneva formula.

Article 27 of the 1917 Constitution, amended January 10, 1934, vests all ownership of petroleum resources in the state. A decree announced in Diario Oficial on November 9, 1940, disallows the granting of concessions to develop petroleum reserves to anyone except the state.[426] Petroleos Mexicanos is the governing state authority which administers all activities involving exploration and exploitation of petroleum in Mexico.[427] Thus the possibility of foreign investment in petroleum activities is completely foreclosed.

Article 27 of the Mexican Constitution also vests direct ownership of all minerals in the state.[428] In the case of non-petroleum mineral resources, how-

---

[424] C. Sepulveda, Laws of Mexico, supra note 301.

[425] Garcia-Amador, Law of the Sea at 28, supra note 114.

[426] Mining and Petroleum Legislation at 233, supra note 357.

[427] H. Wright, Foreign Enterprise in Mexico at 126 (1971).

[428] Id. at 133.

ever, concessions may be granted to private foreign individuals.[429] Foreign individuals wishing to obtain concessions to develop non-living resources must sign a Calvo clause renouncing their right to seek protection from their respective foreign governments. The state further reserves the right of expropriation for public benefit.[430] For concessions granted in areas denoted as National Mining Reserves at least sixty-six per cent of the capital must be subscribed by Mexican nationals and cannot be transferred to foreigners.[431] Although there is no present indication whether the continental shelves are considered part of the national reserves, this probably is the case. Consequently, the scope of foreign investment in developing the non-living resources of Mexico's continental shelf may be greatly restricted.

Procedure for obtaining concessions for exploration and exploitation in special reserve areas is the same used for obtaining other concessions. The Secretariat of National Properties may grant exploitation concessions for recovery of a maximum of eight different substances in one area.[432] The maximum area a single concession may cover is 500 hectares.[433] The total number of claims and the total area allowable for exploitation varies in accordance with the resource being exploited. For example, in coal mining operations, a maximum of 8,000 hectaresis allowable whereas mining operations for the recovery of gold, silver, lead, copper, zinc, gypsum, barite, fluorite, silica, iron, titanium, kaolin, and bauxite are limited to 3,000 hectares per concessionaire.[434]

---

[429] Id. at 134.

[430] Mining and Petroleum Legislation at 214, supra note 357.

[431] Id. at 225.

[432] Id. at 219.

[433] Id. at 217.

[434] Price Waterhouse and Company, Information Guide for Doing Business in Mexico at 22 (1972).

There are two types of taxes imposed on mining operations by the Law on Taxation and Promotion of Mining of December 30, 1955. These are surface taxes and production taxes.[435] Certain tax reductions may be obtained to assist small and medium sized mining operations.[436]

12. Nicaragua

Nicaragua has declared in Article 2 of its 1948 Constitution and Article 5 of its 1950 Constitution that its national territory includes adjacent islands, subsoil, territorial sea, the continental shelf, the submerged lands, the airspace, and the stratosphere.[437] There is no specific limit to the zone of the continental shelf. Since Nicaragua has not signed or adhered to the Geneva Convention, the exact extent of the jurisdiction claimed over the continental shelf is uncertain. Nicaragua, by Executive Decree 1-L of April 5, 1965, extended jurisdiction over fishing activities off the coast of Nicaragua to a distance of 200 nautical miles.[438] In light of this provision it is unlikely that she will freely permit development of the non-living resources of her continental shelf and seabed within the same area.

All petroleum deposits found in the continental shelf zones of Nicaragua belong to the state.[439] Decree 372 of December 2, 1895, governs the development of these petroleum resources. The General Law on the Exploitation of Natural Resources allows exploration concessions of a maximum of 900,000 hectares in the Pacific Continental Shelf Zone and a maximum of 1,200,000 hectares in the Atlantic

---

[435] Id. at 227-229.

[436] For further information on taxation of mining companies see Price Waterhouse at 22-24, supra note 435.

[437] National Claims at 83, supra note 370.

[438] Garcia-Amador, Law of the Sea at 31, supra note 114.

[439] J. Marenco, Laws of Nicaragua at 187, supra note 307.

Continental Shelf Zone. Exploitation concessions may be granted for a maximum area of one half that of the e ploration--450,000 hectares in the Pacific Continental Shelf and 600,000 hectares in the Atlantic Continental Shelf Zone. The exploitation concessions are granted for a period of forty years and are renewable for an additional twenty years. Any Nicaraguan natural or juridical person may acquire exploitation concessions. Taxes and royalties on concessions in the Continental Shelf Zone are reduced from the normal rates.[440]

Decree 1,067 of March 20, 1965, contains the Nicaraguan law on the Exploration and Exploitation of Mines and Quarries. The state is the owner of all minerals found in the subsoil. Exploration concessions may be granted for a minimum of 100 square kilometers and a maximum of 5,000 square kilometers. Exploitation concessions may be granted for areas covering a rectangle of 5 to 20 square kilometers. Natural or juridical persons can hold exploitation concessions for more than 120 square kilometers. Exploitations may be granted for a minimum period of thirty years and a maximum period of fifty years which may be extended for an additional twenty years. Holders of exploration or exploitation concessions must pay a fixed tax for the grant and surface taxes.[441]

13. Panama

Article 1 of Law 31 of February 2, 1967, states: "(t)he sovereignty of the Republic of Panama extends beyond its continental and insular territory and its inland waters to a zone of territorial sea 200 nautical miles wide, to the seabed and the subsoil of that zone and to the air space above it."[442] Panama has not ratified the Geneva Convention on the Continental Shelf.[443] From the

---

[440] Mining and Petroleum Legislation at 246, 253, supra note 357.

[441] Id. at 236-242.

[442] Garcia-Amador, Law of the Sea at 33, supra note 114.

[443] Id. at 33.

text of Article 1 there seems to be no doubt of Panama's claim to sovereignty over the continental shelf to a distance of 200 nautical miles.

Panama has no separate legislation for petroleum mining.[444] Most Panamanian mining laws are contained in Decree Law 23 of August 22, 1963, and in Articles 208, 210, and 211 of the Constitution.[445] The Mineral Resources Code of Panama states that the minerals found in the islands, territorial seas, and continental shelf and subsoil are the property of the state. Any foreign person, either natural or juridical, may obtain mining concessions if he retains an authorized legal representative in the country and has the financial and technical abilities to carry out his obligations under the concession. The length of time and the area covered in an exploration or exploitation concession is subject to individual negotiation. Article 26 of the Mineral Resources Code states the rights and obligations of concessionaires. The payment of surface taxes on each hectare is covered by Article 210 and 211 of the Constitution. The Concessionaire is also obligated to pay a graduated rate of royalties on each type of mineral he extracts. The royalties vary from two and one-half per cent to sixteen per cent of the negotiable gross production.[446]

14. Peru

By Supreme Decree 781 of August 1, 1947, Peru claimed sovereign jurisdiction of its continental or insular submarine shelf to a distance of 200 nautical miles. Article 14, paragraph 4, of Petroleum Law 11,780 of March 12, 1952, defines the continental shelf as "the zone included between the western boundary of the coastal zone and an imaginary line drawn at a constant distance of 200 miles

---

[444] University of Panama, A Statement of the Laws of Panama at 104 (1966).

[445] Id. at 96.

[446] Mining and Petroleum Legislation at 259-267, supra note 357.

from the line of low tide along the coast."[447] Decree Law 18,880 of June 8, 1971, purports to regulate all exploitation of the minerals of the continental shelf and seabeds to a distance of 200 nautical miles from the coast.[448] These three documents leave little doubt about the Peruvian position on jurisdiction over the continental shelf and seabed.

Law 11,780 of March 12, 1952, Supreme Decree of June 10, 1952, and Law 12,089 of April 1954 comprise the body of Peruvian legislation concerning petroleum development.[449] All petroleum deposits are the property of the state. The state may grant concessions for exploration and exploitation in the continental shelf zone. Specific legislation has not been passed dictating the minimum and maximum areas in the Continental Shelf Zone which may comprise concessions. The Continental Shelf Zone is considered a National Reserve. Priority is given to the state or to domestic persons in the awarding of concessions. Foreign persons or companies may obtain concessions for developing petroleum in the Continental Shelf Zone only if no Peruvian nationals are interested.[450]

Peru's General Mining Law is contained in Decree Law 18,880 of 1971.[451] The introduction to the General Mining Law states that Decree 18,880 and all the mining regulations contained therein apply to the development of mineral substances of the soil and subsoil of the continental shelf and ocean bed to a distance of 200 nautical miles from the coast. The Code provides specifically for permits to be issued for prospecting in the Continental Zone Area. These permits shall not be granted for an area of more than two hundred thousand hectares. The duration

---

[447] Garcia-Amador, Law of the Sea at 35, supra note 114.

[448] Id. at 36.

[449] H. De. Lavalle, A Statement of the Laws of Peru at 97 (1962).

[450] Id. at 97-100.

[451] Ministry of Economy and Finance, General Mining Law at 1 (1971).

of a prospecting permit is three years and it may be extended for another two years upon consent. Exploration and exploitation concessions for areas within the continental shelf and ocean beds are awarded in areas covering 100 to 10,000 hectares. Exploration concessions last for a period of five years. Exploitation concessions are not subject to any specific period of duration.[452] Exploration concessions are subject to fee of two soles and fifty centavos per hectare. There is also a two hundred and twenty sole processing fee. Exploitation concessionairs are required to pay a ground rent per year of seven soles fifty centavos per hectare for gold and carboniferous concessions, ninety soles for other metallic concessions.[453] All other taxes on mining operations are included in a graduated income tax provision applicable to natural or juridicial persons who hold mining concessions.[454]

15. Uruguay

Uruguay's position on the limits of state jurisdiction over the continental shelf and seabed is contained in Article 2 of Law 13,833 of December 29, 1969[455] which states: "National sovereignty extends to the continental shelf for purposes of exploration and exploitation of natural resources. The continental shelf consists of the seabed, and subsoil of the submarine areas adjacent to the coasts of Uruguay, outside the territorial sea up to a depth of 200 meters or beyond that limit up to a point where the depth of the superjacent waters permits exploitation of the natural resources."[456] This jurisdictional formula conforms to the

---

[452] Id. at 5-7.

[453] Id. at 15-16.

[454] For further information on taxation under the Mining Code and Petroleum Law see Price Waterhouse and Company, Information Guide for Doing Business in Peru at 40-44 (1969).

[455] Garcia-Amador, Law of the Sea at 38, supra note 114.

[456] Id. at 38-39.

guidelines contained in the Geneva Convention on the Continental Shelf which Uruguay has signed but not yet ratified. Law 3,758 of May 6, 1911; Law 8,496 of October 22, 1929; Law 8,764 of October 15, 1931; Law 9,829 of May 19, 1939; and Law 9,835 of June 15, 1939, comprise the legislative framework governing petroleum production in Uruguay. The Administración Nacional De Combustibles, Alchol y Porland (or the ANCAP) is the governmental agency which controls all exploitation, importation and refining of petroleum products.[457] There is no authorization in the legislative framework for foreign investment in the petroleum industry.

General mining activities in Uruguay are governed by the Mining Code enacted in Law 10,327 of February 28, 1943, Article 484 of the Civil Code, and other miscellaneous regulations contained in the Commercial Code. Though the Mining Code states that all minerals are the property of the state, any citizen or company domiciled in Uruguay may obtain an exploration permit from the Inspeción General de Minas. These exploration permits cover a maximum area of 2,000 hectares and last for a period of ten months. After minerals have been found, either a provisional or a permanent concession may be granted. Provisional concessions are granted for a period of one year and may be extended for two more years to allow a company to conduct operations to determine whether the deposit may be profitably developed. If the deposit contains commercially significant amounts of ore, then a permanent concession which lasts for seventy-five years and covers a maximum surface area of 200 hectares may be granted. All mining concessions are subject to surface tax, royalties, and income and exise taxes.[458]

16. Venezuela

---

[457] Mining and Petroleum Legislation at 308, supra note 357.

[458] Id. at 303-305.

Venezuela ratified the Geneva Convention on the Continental Shelf.[459] Prior to the 1958 Convention, Venezuela enacted domestic legislation which claimed sovereign jurisdiction over the seabed and subsoil in accordance with the formula later approved in the Geneva Convention. Article 4 of the Act of July 27, 1956, Concerning the Territorial Sea, Continental Shelf, Fishery Protection, and Airspace states: "The Republic of Venezuela shall own and have sovereignty over the seabed and subsoil of the submarine shelf adjacent to the territory of the Republic of Venezuela outside the area of the territorial sea to a depth of 200 meters or, beyond that limit, to where the depth of the waters admits of exploitation of the resources of the sea-bed and subsoil in accordance with technical progress in exploration and exploitation."[460]

The Venezuelan Law on Hydrocarbons was amended on August 7, 1967. Article 3 still allows concessions to be granted for petroleum exploration and exploitation in accordance with Article 126 of the Constitution. The senate authorizes concession agreements.[461] Concession applications are first submitted to the Ministry of Mines and Hydrocarbons. Exploration concessions last for five years[462] and cover areas of 10,000 hectares. Exploitation concessions are awarded in parcels of 500 hectares for a period of forty years.[463] There is a surface tax on exploitation and exploration concessions, a royalty amounting to sixteen and two-thirds per cent of production and also various general taxes, legal fees, and income tax provisions concerning petroleum operations.[464]

---

[459] Garcia-Amador, Law of the Sea at 40, supra note 114.

[460] 15 United Nations Legislative Series at 472, supra note 109.

[461] Mining and Petroleum Legislation at 317, supra note 357.

[462] Id. at 320.

[463] Id. at 322.

[464] For more information concerning taxation on the mining and hydrocarbon industry see Price Waterhouse and Company, Information Guide for Doing Business in Venezuela at 1 (supplement to 1969 edition of May 1972.)

The regulations concerning general mining are contained primarily in the Mining Law of December 28, 1944, and the regulations published on the same date. Foreign persons who are legally competent may be granted concessions. Exploration concessions are granted for 2,000 hectare areas and last for a maximum of two years.[465] Exploitation concessions may be granted for a maximum of 500 hectares for vein or strata deposits and 1,000 hectares for alluvial deposits. No one company or person may own exploitation concessions for areas greater than 10,000 hectares for vein or strata deposits and 20,000 hectares for alluvial deposits. These exploitation concessions last for a maximum period of fifty years in the case of vein or strata deposits and twenty-five years in the case of alluvial deposits. All exploitation concessions are subject to surface taxes, taxes on exploitation and other governmental fees.[466]

---

[465] Mining and Petroleum Legislation at 311, supra note 357.

[466] Id. at 312-313.

APPENDIX A -- Massachusetts

An Act

Relative to the Territorial Waters of the Commonwealth and Extending the Authority of the Director of the Division of Marine Fisheries:

> Whereas, the deferred operation of this act would tend to defeat its purpose, which is, in part, to provide forthwith the extension of additional authority to the director of the division of Marine Fisheries in order to implement on an emergency basis certain rules and regulations relative to the marine resources of the Commonwealth so as to avert an ecological crisis and prevent the possible annihilation of such resources, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health, welfare and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

> Section 1. Section 17 of Chapter 130 of the General Laws as amended by Section 1 of Chapter 438 of the Acts of 1968 is hereby further amended by inserting after paragraph (9) the following new paragraph:- (10) Notwithstanding any contrary provision of law, with the exception of Chapter 130 of the General Laws of the Commonwealth of Massachusetts, adopt, amend, or repeal all rules and regulations, with the approval of the Governor, necessary for the maintenance, preservation and protection of all Marine Fisheries Resources between the mean high water mark of the Commonwealth and a straight line extension of the lateral boundaries of the Commonwealth drawn seaward to a distance of 200 miles or to a point where the water depth reaches 100 fathom, whichever is the greatest. Any person, firm or corporation convicted of violating any rule or regulation authorized under the provisions of this paragraph shall be punished by a fine not to exceed ten thousand dollars ($10,000.). Violations may be prosecuted in any superior court within the Commonwealth of Massachusetts.

APPENDIX B -- Maine

In the Year of Our Lord One Thousand Nine Hundred and Seventy-Two

---

Joint Resoultion Petitioning the Honorable William P. Rogers, Secretary of State, and the Maine Congressional Delegation for United States Custody of Marine Resources on the Continental Shelf.

Whereas, the living resources found in the waters adjacent to the State of Maine and associated with the continental shelf and slope of the United States are essential to the seafood needs of the State of Maine and the nation; and

Whereas, these living marine resources are gravely endangered from unrestrained harvesting and fishing; and

Whereas, the United States, because it lacks adequate jurisdiction over all domestic and foreign fishing in the area in which these resources are found, is unable to provide proper protection and management for the conservation of these living marine resources; and

Whereas, the State of Maine has traditionally depended upon its commercial fishing industry for a major portion of its coastal income; and

Whereas, the State of Maine believes that, because of a further decline in the fish stocks in this area as a result of continued heavy fishing pressures by foreign distant waters fleets, the living marine resources are in danger of critical depletion; and

Whereas, the State of Maine is convinced that the harvesting of these living marine resources on a sustained basis can be continued only if a greater measure of jurisdiction is given to coastal authorities; now, therefore, be it

Resolved: That We, the Members of the 105th Legislature of the State of Maine now assembled in special session, go on record as petitioning the Honorable William P. Rogers, Secretary of State of the United States, and members of the Maine Congressional Delegation to use every effort at their command to establish a legal basis so that the United States shall become the custodian of all living marine resources on the continental shelf and its slope, including all such living resources in the water column above the continental shelf and its slope, so that these resources may be harvested in a manner which would provide proper conservation and wise utilization; and that in addition to such management, the United States would have the rights to the preferential control and use of such living marine resources on the bottom and in the water column above the continental shelf and its slope as is now provided for the nonliving resources of this area; and that such fishery jurisdiction be qualified to permit controlled harvesting inside said United States fishery zone of species not fully utilized by United States vessels; and be it further

Resolved: That a copy of this Resolution, duly authenticated by the Secretary of State of the State of Maine, be transmitted forthwith by him to said Secretary of State of the United States and to each member of the Maine Congressional Delegation with our thanks for their prompt attention to this vitally important matter.

APPENDIX C -- Rhode Island

An act Ammending the General Laws so as to Extend the Jurisdiction of the State of Rhode Island and Providence Plantations Over the Territorial Sea.

Preamble

Whereas, The current provision in section 42-1-1 of the general laws on Rhode Island's jurisdiction over tidal waters and the subsoil beneath them does not extend jurisdiction fully over that area which congress has admitted to be subject to this state's jurisdiction in the submerged lands act of 1953, nor does it extend jurisdiction as fully as is permitted under the Geneva convention on the territorial sea and the contiguous zone of 1958 and applicable precedents of the United States supreme court, and

Whereas, The state of Rhode Island is currently involved in litigation with the federal government before the United States supreme court together with other Atlantic coast states to assert the full historical rights of this state to an even farther jurisdictional limit insofar as those rights accrued under charter grants and acts of administration and dominion by the Rhode Island colonies and the independent country of Rhode Island prior to its entry into the United States, and

Whereas, On March 6, 1643, at the general assembly of the town of Newport, it was ordered that all the sea Banks are free for fishing to the town of Newport; and

Whereas, In the Royal charter of King Charles the Second granted in 1663, occur the following paragraphs:

Provided alsoe, and oure expresse will and pleasure is, and wee doe, by these presents, for us, our heirs and successours, ordaine and apoynt, that these presents shall not in any manner hinder any of oure lovinge subjects, whatsoever, from useing and exercising the trade of fishing upon the sayd coast, of New England in America; but that they, and every one of them shall have full and free power and liberty to continue and use the trade of fishing upon the sayd coast, in any of the seas thereunto adjoining or any arms of the seas, or salt water, rivers and creeks, where they have been accustomed to fish:

And Further, for the encouragement of the inhabitants of our sayd Colony of Providence Plantations to sett upon the business of takeing whales, itt shall be lawful for them, or any of them, having struck whale, dubertus, or other fish, itt or them to pursue unto any part of the coaste, and into any bay, river, cove, creeke, or shoare belonging thereto, and itt or them, upon the same coaste, if in the same bay, river, cove, creeke, or shoare belonging thereto, to kill and order for the best advantage, without molestation, they making noe willful waste or spoyle, any thinge in these presents contained, of any other matter or thing, to the contrary notwithstanding.

And further alsoe wee are gratiously pleased****that if any of the inhabitants of our sayd Colony***be industrious in the discovery of fishing banks, in or about the sayd Colony, wee will, from tyme to tyme, give and allow all due and fitting encouragement therein, as to others in cases of like nature, and

Whereas, Also, in setting forth the bounds of the colony the charter states after describing the lands granted on the continent, "together with Rhode Island, Block

Island, and all the rest of the islands and banks in the Narragansett Bay and bordering upon the coast of the tract aforesaid (Fisheres Island only excepted) ***to have and to hold the same***", and

Whereas, This territory in which always Block Island has been included, has remained in the possession and government of the colony and state of Rhode Island from the charter's granting continuously to the present day.

Whereas Geographic and geologic study have shown that Block Island is an undoubted portion of the great skerry island screen unbroken from Long Island to Nantucket, not a lone "socalled Ocean Island," and

Whereas The decision of the international court of justice in the Norwegian Fisheries Case provided that where history and geography called for the ascription of internal waters within baselines to a coastal state; the court so determined it, and

Whereas The decision in 1966 of the supreme court of the United States incorporated the Norwegian Fisheries Case into the laws of the United States governing the maritime boundaries of the state of the United States;

It is enacted by the General Assembly as follows:

Section 1. Section 42-1-1 of chapter 1 entitled "Sovereignty and jurisdiction of state" in title 42 of the general laws is hereby amended to read as follows:

"42-1-1. EXTENSION OF BOUNDARIES INTO SEA.
Excepting those boundaries agreed on by treaty with the state of New York, the seaward boundaries of this state are the base lines shown on the map hereunto attached.

The territorial waters of this state and the submerged lands thereunder enuring to this state extend seaward from the aforementioned base lines. The boundary of counties bordering on the sea extends to the uttermost limit of the state.

Sec. 2. This act shall take effect upon its passage.

APPENDIX D

T A B L E I

STATISTICAL SUMMARY

BY YEAR	Total Number of Seizures	Total Estimated Fishing Days Lost from Seizures	Total Fines Paid For Release of Vessel	Total Licenses and Matriculas Paid for Release of Vessels	Total Other Costs	GRAND TOTAL
1961	1	4	$ 2,500.00	$ -0-*	$ 714.85	$ 3,214.85
1962	10	75	17,427.90	5,180.00*	240.30*	22,848.20
1963	11	59	20,688.00	8,350.70*	157.00*	29,195.70
1964	2	2	-0-	-0-*	-0-*	-0-
1965	10	51	19,312.00	28,942.20*	1,517.86*	49,772.06
1966	14	54	80,636.00	2,900.00*	5,039.68*	88,575.68
1967	16	63	105,768.00	39,898.20*	8,443.60*	154,109.80
1968	10	35	288,960.00	40,001.00*	6,287.50*	335,248.50
1969	14	25	67,478.00	26,514.00*	1,976.33*	95,968.33
1970	4	6	154,252.00	-0-	5,900.00*	160,152.00
1971	53	64½	2,504,109.00	N/A	100,000.00*	2,604,109.00
RESUME	145	438½	3,261,130.90	151,786.10	130,277.12	3,543,194.12

* Estimated

APPENDIX E -- Agreement Between the Government of the United States of America and the Government of the Federative Republic of Brazil Concerning Shrimp

The Parties to this Agreement,

Note the position of the Government of the Federative Republic of Brazil,

that it considers its territorial sea to extend to a distance of 200 nautical miles from Brazil's coast,

that the exploitation of crustaceans and other living resources, which are closely dependent on the seabed under the Brazilian territorial sea, is reserved to Brazilian fishing vessels, and

that exceptions to this provision can only be granted through international agreements,

Note also the position of the Government of the United States of America that it does not consider itself obligated under international law to recognize territorial sea claims of more than 3 nautical miles nor fisheries jurisdiction of more than 12 nautical miles, beyond which zone of jurisdiction all nations have the right to fish freely, and that it does not consider that all crustacenas are living organisms belonging to sedentary species as defined in the 1958 Geneva Convention on the Continental Shelf, and further

Recognizing that the difference in the respective juridical positions of the Parties has given rise to certain problems relating to the conduct of shrimp fisheries,

Considering the tradition of both Parties for resolving international differences by having recourse to negotiation,

Believing it is desirable to arrive at an interim solution for the conduct of shrimp fisheries without prejudice to either Party's juridical position concerning the extent of territorial seas or fisheries jurisdiction under international law,

Concluding that, while general international solutions to issues of maritime jurisdiction are being sought and until more adequate information regarding the shrimp fisheries is available, it is desirable to conclude an interim agreement which takes into account their mutual interest in the conservation of the shrimp resources of the area of this Agreement,

Have Agreed as Follows:

ARTICLE I

This Agreement shall apply to the fishery for shrimp (Penaeus (M.) duorarum notialis, Penaeus braziliensis and Penaeus (M.) aztecus subtilis) in an area of the broader region in which the shrimp fisheries of the Parties are conducted, hereinafter referred to as the "area of agreement" and defined as follows: the waters off the coast of Brazil having the isobath of thirty (30) meters as the south-west limit and the latitude 1° north as the southern limit and $47^{\circ}30'$ west longitude as the eastern limit.

ARTICLE II

1. Taking into account their common concern with preventing the depletion of the shrimp stocks in the area of agreement and the substantial difference in the stages of development of their respective fishing fleets, which results correspondingly in different kinds of impact on the resources, the two Parties agree that, during the term of this Agreement, the Government of the Federative Republic of Brazil is to apply the measures set forth in Annex I to this Agreement and the Government of the United States of America is to apply the measures set forth in Annex II to this Agreement.

2. The measures set forth in Annexes may be changed by agreement of the Parties through consultation pursuant to Article X.

ARTICLE III

1. Information on catch and effort and biological data relating to shrimp fisheries in the area of agreement shall be collected and exchanged, as appropriate, by the Parties. Unless the Parties decide otherwise, such exchange of information shall be made in accordance with the procedure described in this Article.

2. Each vessel fishing under this Agreement shall maintain a fishing log, according to a commonly agreed model. Such fishing logs shall be delivered quarterly to the appropriate Party which shall use the data therein contained, and other information it obtains about the area of agreement, to prepare reports on the fishing conditions in that area, which shall be transmitted periodically to the other Party as appropriate.

3. Duly appointed organizations from both Parties shall meet in due time to exchange scientific data, publications and knowledge acquired on the shrimp fisheries in the area of agreement.

ARTICLE IV

1. The Party which under Article V has the responsibility for enforcing observance of the terms of the Agreement by vessels of the other Party's flag shall receive from the latter Party the information necessary for identification and other enforcement functions, including name, port of registry, port where operations are usually based, general description with photograph in profile, radio-frequencies by which communications may be established, main engine horsepower and speed, length, and fishing method and gear employed.

2. Such information shall be assembled and organized by the flag Government and communications relating to such information shall be carried out each year between the appropriate authorities of the Parties.

3. The Party which receives such information shall verify whether it is complete and in good order, and shall inform the other Party about the vessels found to comply with the requirements of paragraph 1 of this Article, as well as about those which would, for some reason, require further consultation among the Parties.

4. Each of those vessels found in order shall receive and display an identification sign, agreed between the Parties.

ARTICLE V

1. In view of the fact that Brazilian authorities can carry out an effective enforcement presence in the area of agreement, it shall be incumbent on the Government of Brazil to ensure that the conduct of shrimp fisheries conforms with the provisions of this Agreement.

2. A duly authorized official of Brazil, in exercising the responsibility described in paragraph 1 of this Article may, if he has reasonable cause to believe that any provision of this Agreement has been violated, board and search a shrimp fishing vessel. Such action shall not unduly hinder fishing operations. When, after boarding or boarding and searching a vessel, the official continues to have reasonable cause to believe that any provision of this Agreement has been violated, he may seize and detain such vessel. In the case of a boarding or seizure and detention of a United States vessel, the Government of Brazil shall promptly inform the Government of the United States of its action.

3. After satisfaction of the terms of Article VI as referred to in paragraph

4 of this Article, a United States vessel seized and detained under the terms of this Agreement shall, as soon as practicable, be delivered to an authorized official of the United States at the nearest port to the place of seizure, or any other place which is mutually acceptable to the competent authorities of both Parties. The Government of Brazil shall, after delivering such vessel to an authorized official of the United States, provide a certified copy of the full report of the violation and the circumstances of the seizure and detention.

4. If the reason for seizure and detention falls within the terms of Article II or Article IV, paragraph 4 of this Agreement, a United States vessel seized and detained shall be delivered to an authorized official of the United States, after satisfaction of the terms of Article VI relating to unusual expenses.

5. If the nature of the violation warrants it, and after carrying out the provision of Article X, vessels may also suffer forfeiture of that part of the catch determined to be taken illegally and forfeiture of the fishing gear.

6. In the case of vessels delivered to an authorized official of the United States under paragraphs 3 or 4 of this Article, the Government of Brazil will be informed of the institution and disposition of any case by the United States.

ARTICLE VI

In connection with the enforcement arrangements specified in Article V, including in particular any unusual expenses incurred in carrying out the seizure and detention of a United States vessel under the terms of paragraph 4 of Article V, and taking into account Brazil's regulation of its flag vessels in the area of agreement, the Government of Brazil will be compensated in an amount determined and confirmed in an exchange of notes between the Parties. The amount of compensation shall be related to the level of fishing by United States nationals in the area of agreement and to the total enforcement activities to be undertaken by the Government of Brazil pursuant to the terms of this Agreement.

ARTICLE VII

The implementation of this Agreement may be reviewed at the request of either Party six months after the date on which this Agreement becomes effective, in order to deal with administrative issues arising in connection with this Agreement.

ARTICLE VIII

The Parties shall examine the possibilities of cooperating in the development of their fishing industries; the expansion of the international trade of fishery products, the improvement of storage, transportation and marketing of fishery products; and the encouragement of joint ventures between the fishing industries of the two Parties.

ARTICLE IX

Nothing contained in this Agreement shall be interpreted as prejudicing the position of either Party regarding the matter of territorial seas or fisheries jurisdiction under international law.

ARTICLE X

Problems concerning the interpretation and implementation of this Agreement shall

be resolved through diplomatic channels.

ARTICLE XI

This Agreement shall enter into force on a date to be mutually agreed by exchange of notes, upon completion of the internal procedures of both Parties, and shall remain in force until January 1, 1974, unless the Parties agree to extend it.

In Witness Whereof the undersigned Representatives have signed the present Agreement and affixed thereto their seals.

Done in duplicate, this ninth day of May, 1972, in the English and Portuguese languages, both texts being equally authoritative.

For the United States of America:

WILLIAM M. ROUNTREE

For the Federative Republic of Brazil:

MARIO GIBSON BARBOZA

ANNEX I

(a) Prohibition of shrimp fishing activities, for conservation purposes, in spawning and breeding areas;

(b) Prohibition of the use of chemical, toxic or explosive substances in or near fishing areas;

(c) Registry of all fishing vessels with the Maritime Port Authority (Capitania dos Portos) and with SUDEPE;

(d) Payment of fees and taxes for periodical inspections;

(e) Use of the SUDEPE fishing logs to be returned after each trip or weekly;

(f) Prohibition of the use of fishing gear and of other equipment considered by SUDEPE to have destructive effects on the stocks;

(g) Prohibition of discharging oil and organic waste.

ANNEX II

(a) Not more than 325 vessels flying the United States flag shall fish for shrimp in the area of agreement and the United States Government undertakes to maintain a presence of no more than 160 of those vessels in the area at any one time. Such vessels shall be of the same type and have the same gear as those commonly employed in this fishery in the past, noting that electric equipment for fishing purposes has not been commonly employed by boats in this fishery in the past.

(b) Shrimp fishing in the area of agreement shall be limited to the period from March 1 to November 30.

(c) Shrimp fishing in that part of the area of agreement southeast of a bearing of 240° from Ponta do Ceu radio-beacon shall be limited to the period March 1 to July 1.

(d) Transshipment of catch may be made only between vessels authorized under this Agreement to fish in the area of agreement.

APPENDIX F -- Agreement Between the Government of the Republic of Chile and the Government of the Union of Soviet Socialist Republics on Collaboration in the Development of Fisheries.

The Government of the Republic of Chile and the Government of the Union of Soviet Socialist Republics -- inspired by the friendly relations existing between both countries,

Considering their mutual interest in implementing collaboration in the development of fisheries,

Recognizing the need to carry out fishing operations on scientific bases, and taking into account the preservation of fishing resources, and

Desiring to develop and coordinate fishing investigations, as well as the interchange of scientific fishing data and other information arising from fishing activities of both countries,

Agree on the following:

ARTICLE I

The Government of the Union of Soviet Socialist Republics states its willingness to cooperate fully with the Government of the Republic of Chile in the development of its fishing industry, including the project for the construction or readaptation of one or more fishing ports and their corresponding complementary industrial installations.

Collaboration in the project and construction or readaptation of one or more fishing ports and their corresponding complementary industrial installations will be charged against the credits and under the conditions stipulated in the "Agreement for Technical Assistance and Financing of Specific Projects for the Construction of Industrial Plants and Other Objectives", concluded between the Republic of Chile and the Union of Soviet Socialist Republics on January 13, 1967.

The volume and conditions of the aforementioned collaboration will be determined in the corresponding Protocols of this Agreement and/or the contracts to be signed by the competent organizations of the Contracting Parties.

ARTICLE II

The Contracting Parties will coordinate their efforts in the study of Chile's fishing resources and for this purpose they will carry out joint investigations, in compliance with common programs.

The Contracting Parties agree to interchange scientific and technical data and information on fishing, including meetings and consultations of scientists and specialists for the exchange of experiences in the various branches of the fishing industry.

ARTICLE III

The Government of the Union of Soviet Socialist Republics will assist the Government of Chile in the teaching and training of Chilean specialists in industries and training centers, and in research institutes of the Union of

Soviet Socialist Republics, including practical production training in the corresponding Soviet enterprises and fishing vessels.

ARTICLE IV

The Government of the Union of Soviet Socialist Republics will provide technical assistance to the Government of the Republic of Chile for the creation of an educational center to teach middle level technicians for the fishing industry.

ARTICLE V

The Government of the Union of Soviet Socialists Republics will charter to the Government of the Republic of Chile, Soviet fishing vessels on commercial terms, having a gross displacement of no less than 900 tons, with their corresponding fishing gear.

The number, type and terms of charter of the above mentioned vessels will be determined in the respective contracts to be signed between the competent organizations of the Contrasting Parties.

ARTICLE VI

The Government of the Republic of Chile will provide service to the fishing vessels of the Union of Soviet Socialist Republics in accordance with current Chilean legislation.

The volume, manner, and conditions of the services, as well as the ports where they can be obtained, will be determined in the corresponding Protocols to be signed by the competent organizations of the Contracting Parties.

ARTICLE VII

Amortizations of the credit utilized in the construction of the fishing port will be made in accordance with the conditions set out in article III of the "Agreement for Technical Assistance and Financing of Specific Projects for the Construction of Industrial Plants and Other Objectives" signed on January 13, 1967.

However, the Government of the Republic of Chile, within its capabilities, agrees that the Soviet organizations may use part of the amounts originating from the payment of amortizations of the aforementioned credit, for payment of the services provided by the Chilean party to Soviet fishing vessels in Chilean ports, including service provided in the fishing ports to be constructed in compliance with the terms of this Agreement.

The sum to be allotted to servicing, as well as the procedure for determining the prices to be paid for these services, will be established in the Protocols to be signed every year between the competent organizations of the Contracting Parties.

ARTICLE VIII

The volume and specific conditions of the cooperation referred to in Articles III and IV of this Agreement will be determined in the contracts or other documents which may be concluded between the competent organizations of the Contracting Parties.

ARTICLE IX

The Contracting Parties agree on the creation of a Chilean-Soviet Fishing Commission, henceforth called "the Commission", for the purpose of elaborating and coordinating measures for the implementation of this Agreement.

Each one of the Contracting Parties will designate no more than 3 representatives on this Commission, within a period of two months from the effective date of this Agreement.

The Commission will meet whenever the Contracting Parties consider it advisable, alternately in the territory of each country, at least once every two years.

ARTICLE X

The Commission will perform the following functions:

- Develop and propose plans and programs for collaboration in the various fishing areas and evaluate the results of the implementation of these plans and programs.

- Develop, based on scientific research, recommendations for the preservation of fishing resources and the development of fishing on rational bases.

- Organize an exchange of experiences in the field of administration and exploitation of the fishing industry fleet, the extraction, conservation, development and transportation of fish.

- Organize an exchange of experiences in the training of specialists for the fishing industry.

- Organize an exchange of information on prospection work and investigation of live marine resources carried out by the Contracting Parties.

- Study matters related to the technical assistance provided by the Soviet Party to the Chilean Party as established in this Agreement.

- Study other problems which may be submitted to them by the Contracting Parties, arising from the implementation of this Agreement.

The Commission will make recommendations to the Contracting Parties on the above mentioned problems, which will be implemented, provided neither of the Contracting Parties raises any objections within a period of three months. The aforementioned period may be extended at the request of either of the Contracting Parties.

ARTICLE XI

The present Agreement will come into effect on the date of exchange of communications regarding the fulfillment by the Contracting Parties of the necessary formalities in compliance with their internal legislation.

The present Agreement will remain in force for a period of 12 years, and it is understood that it will be extended for a similar period if neither of the Contracting Parties terminates if by giving a year's notice before the expiry of the aforementioned period.

Signed in the City of Santiago, the seventh of September, 1971, in duplicate, each copy in Russian and Spanish, both texts being equally valid.

HUMBERTO MARTONES
For the Government of the
Republic of Chile

ALEXANDER ISHKOV
For the Government of the Union
of Soviet Socialist Republics

APPENDIX G -- Text of the Peruvian-Soviet Agreement for the Development of the Fishing Industry Signed in Lima

AGREEMENT

between the Governments of the Republic of Peru and the Union of Soviet Socialist Republics for collaboration on a Project for the Development of the Fishing Industry.

The Government of the Republic of Peru and the Government of the Union of Soviet Socialist Republics desiring to further strengthen the friendly relations which exist between their two countries and being mutually interested in cooperation for the development of the fishing industry, have agreed to sign the following Agreement.

Article I. The Government of the Union of Soviet Socialist Republics will lend its collaboration to the Government of the Republic of Peru, beginning in 1971, in the planning and construction on the north coast of Peru of a Fishing Complex with an annual capacity of approximately 180,000 metric tons of fish products destined for human consumption, including port installations, fish processing plants and other complementary installations based on the Peruvian technical-economic studies of the Complex.

Article II. The assistance for the planning and construction of the Fishing Complex with its industrial and complementary installations, including the supplying of machinery and equipment as well as the services of Soviet specialists required for the planning, construction and initiation of the Complex, will be charged against the credit provided and according to the condition stipulated in the Machinery and Equipment Supply Agreement between the Union of Soviet Socialist Republics and the Republic of Peru signed on 25 August 1970.

The sums and conditions of the above mentioned loan will be established in complementary Protocols to this Agreement and/or in Contracts signed between the competent agencies of the Contracting Parties.

Article III. The credit utilized for the construction of the Fishing Complex, granted in accordance with the Machinery and Equipment Supply Agreement of 25 August to the Republic of Peru, will be able to be repaid by Peru through the offer of Peruvian goods to the Union of Soviet Socialist Republics as well as by the provision of services to Soviet ships entering Peruvian ports because of the collaboration between the Parties in carrying out this project for the development of the fishing industry to which this Agreement refers.

The manner and conditions under which such goods are to be conveyed as well as the value of the services referred to will be determined in Protocols and Contracts to be entered into by the competent agencies of the Contracting Parties.

Article IV. The conditions for the ocean transport of the Soviet equipment and machinery for the construction of the Fishing Complex in the Republic of Peru will be agreed upon in contracts which will be signed between the competent agencies of the Contracting Parties.

Article V. The Government of the Union of Soviet Socialist Republics will lend its cooperation to the Government of the Republic of Peru in studies concerning fishing resources, according to the forms and conditions which will be the object of an agreement between the competent agencies of the Contracting Parties.

Article VI. The Contracting Parties are in agreement on the desirability of exchanging scientific data, individuals engaged in the fishing industry and the results of studies of fishing resources, and of achieving consultations and meetings among scientists and specialists about the practical problems of commercial fishing and the processing of fish products as well as the exchange of information regarding experiences in different branches of the fishing industry.

Article VII. The Government of the Union of Soviet Socialist Republics will lend, as well, its cooperation to the Government of the Republic of Peru for the training and preparation of Peruvian specialists in the management and functioning of the Fishing Complex, as well as in the handling of fishing vessels, such training to be conducted in the teaching centers of the Union of Soviet Socialist Republics and which will include practical experience in correpsonding Soviet enterprises and aboard Soviet fishing vessels.

Article VIII. The Government of the Union of Soviet Socialist Republics is disposed to lend scientific and technical assistance to the Government of the Republic of Peru, upon request, for the fulfillment of the General Plan for the development of the fishing industry in Peru.

Article IX. The Government of the Union of Soviet Socialist Republics will lend scientific and technical cooperation to the Government of Peru, upon request, for the functioning of a Teaching Center designed to produce intermediate level Peruvian specialists in the fishing industry.

Article X. The Contracting Parties agree to accomplish other forms of scientific and technical coopèration in the field of the development of the fishing industry which will be the subject of specific agreements between the competent agencies of both Governments.

Article XI. The volume, forms and conditions of the collaboration expressed in Article VII, VIII, and IX will be determined in the additional Protocols or in contracts which will be the subject of signed agreements between the competent agencies of the Contracting Parties.

Article XII. With the object of facilitating the fulfillment of this Agreement, the Government of the Republic of Peru will grant in its ports treatment appropriate for the entry, exit and stationing, loading and unloading of cargo, transferring fish industry products and technical supplies, obtaining provisions of water, fuel and food, and making repairs to the fishing and research vessels of the Union of Soviet Socialist Republics in conformity with the provisions of Peruvian legislation.

Article XIII. At the request of the Peruvian Government, the Government of the Union of Soviet Socialist Republics is disposed to lend assistance for the extraction of marine resources for human consumption in the form and under the conditions agreed upon by both parties.

Article XIV. In order to establish and coordinate measures for the application of this Agreement the Contracting Parties agree to establish a Peruvian-Soviet Mixed Commission composed of not more than three (3) representatives of each country which will be constituted within six (6) months of the signing of this Agreement.

The Commission will prepare during its first meeting a statute which will

govern its functioning which will be submitted to the Contracting Parties for approval.

Article XV. This Agreement will enter into force from the date of its signing and will continue for ten (10) years.

The Agreement will continue in force automatically for additional periods of three (3) years unless one of the Contracting Parties denounces it one (1) year before it is due to expire in any such period.

Done and signed in the city of Lima on the fourth day of Spetember 1971 in two original copies in the Spanish language and in the Russian language, both texts being equally valid.

For the Government of the Republic of Peru

EDGARDO MERCADO JARRIN

For the Government of the Union of Soviet Socialist Republics

ALEXANDER ISHKOV

University of North Carolina Sea Grant Publications*

UNC-SG-72-01. Lyman, J. and W. Rickards. University of North Carolina Sea Grant Program, Annual Report, 1 July 1970 - 30 June 1971.
UNC-SG-72-02. Wurfel, S. W., ed. Attitudes regarding a law of the sea convention to establish an international seabed regime.
UNC-SG-72-03. Upchurch, J. B. Sedimentary phosphorus in the Pamlico estuary of North Carolina.
UNC-SG-72-04. Chleborowicz, A. G. Direct oil fired heat exchanger for a scallop shucking machine.
UNC-SG-72-05. Angel, N. B. Insulation of ice bunkers and fish holds in older fishing vessels.
UNC-SG-72-06. Edzwald, J. K. Coagulation in estuaries.
UNC-SG-72-07. University of North Carolina. Proposal for institutional Sea Grant support.
UNC-SG-72-08. Schwartz, F. J. and J. Tyler. Marine fishes common to North Carolina.
UNC-SG-72-09. Porter, H. J. and J. Tyler. Sea shells common to North Carolina.
UNC-SG-72-10. Woodhouse, W. W., E. D. Seneca, and S. W. Broome. Marsh building with dredge spoil in North Carolina.
UNC-SG-72-11. Copeland, B. J. Nutrients in Neuse River and Albemarle Sound estuaries, North Carolina: survey. (in press).
UNC-SG-72-12. Whitehurst, J. H. The menhaden fishing industry of North Carolina.
UNC-SG-72-13. Schoenbaum, T. J. Public rights and coastal zone management.
UNC-SG-72-14. Tung, C. C. and N. E. Huang. Some statistical properties of wave-current force on objects.
UNC-SG-72-15. Tung, C. C. and N. E. Huang. Wave-current force spectra.
UNC-SG-73-01. Wurfel, S. W. The surge of sea law.
UNC-SG-73-02. Williams, A. B., G. S. Posner, W. J. Woods, and E.E. Deubler, Jr. A hydrographic atlas of larger North Carolina sounds.
UNC-SG-73-03. Gerhardt, R. R., J. C. Dukes, J. M. Falter, and R. C. Axtell. Public opinion on insect pest management in coastal North Carolina.
UNC-SG-73-04. Rickards, W. L. A bibliography of artificial reefs and other man-made fish attractants.
UNC-SG-73-05. Tyler, J., M. McKenzie, and D. King. To catch a million fish.
UNC-SG-73-06. Graetz, K. Seacoast plants of the Carolinas for conservation and beautification.
UNC-SG-73-07. Campbell, P. Studies of brackish water phytoplankton.
UNC-SG-73-08. Samet, J. H. and R. L. Fuerst. The Latin American approach to the law of the sea.
UNC-SG-73-09. Rhyne, C. F. Field and ecological studies of the systematics and ecology of Ulva curvata and Ulva rotundata.
UNC-SG-73-10. Kuenzler, E. J., A. F. Chestnut and C. M. Weiss. The structure and functioning of brackish water ecosystems receiving treated sewage effluent III, 1971-1972.

* Available from: Sea Grant Program, School of Public Health, University of North Carolina, Chapel Hill, N. C. 27514