

5-1-1974

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### Recommended Citation

Kaldone G. Nweihed, *Venezuela's Contribution to the Contemporary Law of the Sea*, 11 SAN DIEGO L. REV. 603 (1974).

Available at: <https://digital.sandiego.edu/sdlr/vol11/iss3/6>

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# Venezuela's Contribution to the Contemporary Law of the Sea

KALDONE G. NWEIHED\*

## INTRODUCTION

The country that will play host to the Third United Nations Conference on the Law of the Sea can afford to put forth one of the oldest and most respectable claims in Latin America to relationship with the legal order of the oceans. Since it has fallen to Venezuela to assume the task renounced by Chile as a consequence of a sudden change of government in Santiago, an extremely vigorous and deep sense of responsibility has pervaded high official echelons, as well as scientific circles and internationally-minded groups and intellectuals. The news of the change in host countries broke toward the end of 1973, a year officially designated as the "Year of Maritime Reassertion,"<sup>1</sup> since it was exactly 150 years ago—July 24th—when Colombia's young navy dealt a decisive blow to Spain's

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1. Decree No. 1.050 dated July 21, 1972 in *Gaceta Oficial de la República de Venezuela*, No. 29.861, XCIX,X, July 22, 1972.

better-equipped fleet on the waters of Lake Maracaibo.<sup>2</sup> A few weeks after the announcement Venezuela went to the polls and it just happened that the main opposition party, which won, will be in charge when the Conference is scheduled to be opened on June 20, 1974.

These facts and others of local political color will not, by any means, divert the next Government's attention from such an important commitment to the international community. The host country is fully aware of the significance of the event at a time when so much has been said, written and discussed about the sea.

Two discernible instances, separated by a generation and thirty years, affirm Venezuela's major contributions to a long and patient universal legislative process in which custom and convention have alternated with one another to consolidate an emerging public order of the sea: surface, waters, bottom and subsoil. Two main issues, therefore, will be briefly dealt with in this article. The first concerns the earliest treaty ever concluded between two States to delimit, explore and exploit a submerged area, namely, the Anglo-Venezuelan Gulf of Paria Treaty of 1942; the second brings to a focus the Venezuelan concept of the patrimonial sea, a compromise proposal introduced in the United Nations Sea-Bed Committee *de lege ferenda* as an official thesis in 1971. Obviously, a brief survey of the developments in the law of the sea considered relevant to the subject matter, during the thirty-year time gap, could not be comfortably omitted.

#### I. PRECURSORY PRINCIPLES OF THE CONTINENTAL SHELF DOCTRINE

The quest for oil may well be recognized at some future date as the most transcendent single economic fact of the Twentieth Century. When oil was first pumped out of a land well, chances were very slim that the new-born industry would some day plunge into the sea.

Nevertheless, on a July day in 1923, four American oilmen struck oil under the waters of Maracaibo Lake in Venezuela while drilling in what was then known as the "kilometer strip"—a concession just one kilometer wide which followed the shore and was reputed as the worst and least rewarding part of an oil deal. John Tay-

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2. It may be recalled that Venezuela, Colombia and Ecuador used to be known as Colombia, sometimes referred to as Greater Colombia, under the presidency of Simon Bolivar.

lor, a Panama Canal construction old hand, led the group who forced the jet out of the bottom of the lake quite close to the shore.<sup>3</sup>

It appears that back in 1912, there was a visionary—Charles Eckes from British Equatorial Guinea—who had prophetically asserted that the most fabulous oil resources in the whole region lay beneath the waters of the lake. Towards the end of 1923, Lago Petroleum Corporation sought and obtained concessions over deeper lake areas. One of its men, Red Watson, built a rustic platform and got 60,000 barrels a day from a depth of 10 feet. What followed can be easily imagined: better technique, deeper drilling and more oil. By the mid-thirties Maracaibo Lake was yielding at a depth of 100 feet, 15 miles off the coast.<sup>4</sup> It may be recalled that it was not before October 6, 1931, that Pure Oil Company and Superior Oil started their joint drilling operation a little more than a mile off the coast of Louisiana at a depth of 14 feet.<sup>5</sup>

Maracaibo's experience was followed by a strong repercussion in the oil industry, but it did not bear on the law of the sea because of the obvious reason that the whole Maracaibo Lake falls within a State's national sovereignty. But it did confer on Venezuela the fame of an extraordinarily oil-gifted country, both on land and under the sea.

On the other end of the country, no offshore drilling had been undertaken when World War II broke out in 1939. Yet it was suspected that the shallow Gulf of Paria, between Venezuela and Trinidad, might reveal another miracle, especially if it be kept in mind that Eastern Venezuela, too, had maintained a high level production of its own.

Paria, besides being the name of the finger-shaped peninsula jutting from Venezuela's northeast into the sea, is a trapezium-like inlet of the Atlantic Ocean, about 70 miles long by 30 wide, which, though called a gulf, is the sum of two opposite and joining inlets, one facing Trinidad and the other facing Venezuela, open on the north towards the Caribbean Sea and on the southeast to-

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3. Baptista, "En el Lago de Maracaibo, la industria petrolera aprendio a nadar", *El Farol*, Creole Petroleum Corporation, No. 239, XXXIII, Caracas: Oct./Nov.Dec. 1971, 57-69.

4. *Id.*

5. "After 25 years drillers are still learning how to cope with the Gulf," Ball, *Offshore*, February 1972.

wards the Atlantic, off the alluvial delta of the Orinoco river; the northern strait being Boco del Dragon and the southeastern, Boca de la Serpiente. While there are four navigable channels along the former, the latter contains five channels between islands and submerged banks.<sup>6</sup> It was in Paria, between Trinidad and Venezuela, where Christopher Columbus first beheld the South American mainland on his third voyage.<sup>7</sup> In 1797, a British expedition under Abercromby forced the Spaniards to abandon Trinidad, thus establishing a colony off Venezuela's east coast, just thirteen years before the proclamation of independence.

Oil shortage during the early stages of World War II might have been the primary reason behind Great Britain's drive to explore the closer submarine areas of the Gulf. At a time when both Venezuela and Great Britain claimed only three miles of territorial sea,<sup>8</sup> it would not have been consistent with either country's stand to convert a maritime area open to free navigation into an inland sea, though they probably could have worked out a joint claim. Since a means to explore the submarine areas had to be legally justified, Great Britain approached Venezuela whose attitude, at the outset, was cautiously receptive. After a pause that permitted the Venezuelan government to take a second look at the geological reality of the area in terms of the country's economy and under the prevailing war circumstances, negotiations proceeded between Dr. Caracciolo Parra Perez, Venezuelan Foreign Minister and Mr. Donald St. Claim Gainer, British Minister-Resident in Caracas.

A particularly significant issue is raised by the account given a year later by the Venezuelan Foreign Minister before Congress and published in the Yellow Book of the Ministry. According to that report negotiations with Great Britain on the recognition of Venezuela's sovereignty over Isla de Patos and on the "division" of the submarine areas of Paria had begun in 1936.

Venezuela insisted on recovering the tiny Island of Patos in the northern strait. Under British control, the islet—originally Venezuelan—would have bolstered Great Britain's negotiating position and probably her share, at the expense of Venezuela. This issue

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6. See Kennedy, United Nations Conference on the Law of the Sea, *Official Records*, Vol. 1 (A/CONF. 13/37 at 116-118).

7. W. D. & A. L. MARSLAND, *VENEZUELA THROUGH ITS HISTORY* 23 (1954).

8. The Venezuelan government issued a decree dated September 15, 1939 (*Gaceta Oficial del los Estados Unidos de Venezuela*, No. 19,981 del 16 de setiembre de 1939) in which it ratified this measure while providing that all bays, gulfs and inlets under exclusive national jurisdiction be closed by drawing a straight line from headland to headland (Art. 2).

settled, the first treaty to deal with the delimitation of submarine areas in international law was signed in Caracas, on February 26, 1942.

In his book on the Continental Shelf, awarded the Grotius Prize of the Institute of International Law in 1952, Dr. M.W. Mouton from the Netherlands refers to the Paria Treaty in the second paragraph of his Introduction:

The first instrument concerning this recent development was the Treaty between the United Kingdom and Venezuela relating to the submarine areas of the Gulf of Paria, of February 26, 1942, but a real impetus to the development of a continental shelf theory was only given by the Proclamation of President Truman with respect to the natural resources of the subsoil and the sea-bed of the continental shelf of September 28, 1945. This Proclamation was followed in a short time by declarations and decrees of other countries.<sup>9</sup>

It may be necessary, at this stage, to raise and attempt to answer two fundamental questions. What legal principles and future usages were basically involved in the Gulf of Paria Treaty? On what issue does it resemble or differ from the Truman Proclamation?

*A. Principles and usages involved*

The sea-bed of the Gulf of Paria being a single shallow basin whose average depth ranges from 10 to 20 fathoms (with an unusual 150 fathom canal in the northern entrance) raised no question whatsoever about its natural outer limit, which, otherwise, would have been the continental slope. In other words, all that they had to do was to divide the whole submarine area between one another, the same way the United Kingdom and Norway, for example, proceeded with respect to the continental shelf of the North Sea—a submarine area with similar characteristics—twenty-three years later.

Both parties were careful to assert that the submarine areas fell thoroughly outside their respective three-mile territorial limit, evidently because a State's right over the submarine areas within its territorial limits could not be questioned, even in the absence of a positive rule on the matter as is presently expressed in Article 2 of the 1958 Geneva Convention on the Territorial Sea and the

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9. M. W. MOUTON, *THE CONTINENTAL SHELF* at 1 (1952).

Contiguous Zone.<sup>10</sup> As early as 1922 Sir Cecil Hurst had reiterated a decision of the Judicial Committee of the Privy Council "which definitely lays down the rule that the Crown is the owner of the bed of the sea (within the territorial limit)." Summing up he added,

. . . so far as Great Britain at any rate is concerned, the ownership of the bed of the sea within the three-mile limit is the survival of more extensive claims to the ownership of and sovereignty over the bed of the sea. The claims have become restricted by the silent abandonment of the more extended claims. Consequently, where effective occupation has been long maintained of portions of the bed of the sea outside the three-mile limit, those claims are valid and subsisting claims, entitled to recognition by other States.<sup>11</sup>

Most probably Sir Cecil had in mind both sedentary fisheries outside the three-mile limit, as his own subtitle announces, and tunneling for mining or communications in the subsoil, as he interprets Oppenheim's views.<sup>12</sup>

Guided by this principle, Parra Perez and St. Clair Gainer agreed to exclude submarine areas under territorial waters expressly from the areas to be delimited, as they stated in Article 1 that the term "submarine areas of the Gulf of Paria" denoted the sea-bed and subsoil outside of the territorial waters of the High Contracting Parties.

Article 2 contains a mutual declaration in two separate paragraphs whereby the King of Great Britain and Northern Ireland, and the President of the United States of Venezuela,<sup>13</sup> recognize each country's exclusive rights and pledge not to assert any claim on one or the other side of three consecutive artificial lines A-B, B-Y and Y-X drawn on an annexed map as stated in Article 3. Briefly described, Line A-B runs diagonally across the Gulf beginning well within its natural limits south of Boca Dragon (northern strait) in a northeasterly-southwesterly direction; Line B-Y extends for a short distance along Venezuela's territorial limit,

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10. "The sovereignty of a Coastal State extends to the air space above the territorial sea as well as its bed and subsoil." Convention on the Territorial Sea and the Contiguous Zone, done at Geneva, April 29, 1958 (1964), 15 U. S. T. 1606, T. I. A. S. No. 5639, 516 U. N. T. S. 205.

11. Hurst, *Whose is the Bed of the Sea?*, 4 BRIT. Y.B. INT'L L. 34, (1923-1924).

12. *Id.* It may be added that the Geneva Convention on the Continental Shelf covers this aspect in Art. 7, which was approved at the Conference at the request of the British delegation, despite the fact that it had not been submitted by the International Law Commission. 6 United Nations Conference on the Law of the Sea, U.N. Doc. A/CONF. 13/C.4/L.44 (1958).

13. The official name since 1953 is *Republica de Venezuela*.

while Line X-Y was drawn in an exact west-east direction across the southern entrance.

Article 4 provides for the manner of demarcating the aforesaid lines. Articles 5 and 6, on the other hand, while affirming that the Treaty only refers to the submarine areas of the Gulf of Paria, establish that nothing should be held to affect the status of islands, islets or rocks, neither the status of the waters of the Gulf of Paria or any rights of passage or navigation on the surface of the seas outside the respective territorial waters. The second half of Article 6 insists that passage or navigation shall not be closed or impeded by any works or installations which may be subsequently erected.

Article 7 affirms that each party shall take all measures to prevent the exploitation of any submarine areas claimed or occupied from causing the pollution of the territorial waters of the other by oil, mud or any other fluid or substance liable to contaminate the navigable waters or the foreshore, while Article 8 states that each party shall cause stipulations for securing the effective observance of the two proceeding articles in any concession which may be granted for the exploitation of submarine areas in the Gulf of Paria.

While Article 9 stipulates resorting to peaceful means as recognized by international law for the settlement of disputes, the following and last Article 10 takes care of the legal formalities. The Treaty came into force on September 22, 1942.<sup>14</sup>

With reference to the Geneva Convention on the Continental Shelf as the positive law in force among nations, *de lege lata*, we may be able to trace back to the Gulf of Paria Treaty many of the principles and rules embodied in the Convention. Admitting the validity of two arguments which Lauterpacht levels at the Treaty when he stresses that it does not refer to the continental shelf *eo nomine*, neither does it "delimit the outer frontiers of the annexed area by reference to a conventional depth of the continental shelf (for the reason, apparently, that the Gulf as a whole does not

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14. Both Spanish and English texts are legally valid. For the Spanish text see 6 *Tratados y Acuerdos Publicos de Venezuela* 719. The English text is in [1940-1942] *British and Foreign State Papers* 1067. Also in U.S. Dep't of State, *International Boundry Study, Limits in the Sea*, THE GEOGRAPHER (Mr. 6, 1970).



reach that depth),”<sup>15</sup> we may recall, however, that during the early stages of the development of the doctrine the term “submarine areas” was tantamount to continental shelf in its legal acceptance.<sup>16</sup>

On the following principles and/or issues the Gulf of Paria Treaty was pioneer and forerunner:

a. The establishment of the rule that the submarine areas (continental shelf) of a coastal State would legally start (inner limit) precisely outside of the territorial sea, and by no means at the law waterline along the coast where the territorial sea itself is considered to start. It may be worthy to insist, perhaps, that the Treaty says nothing about the outer limit.

b. The assertion of a certain legal relationship between the coastal State and the corresponding submarine areas (continental shelf) in such a way as to be construed as outright annexation. In fact, the subsequent Submarine Areas of the Gulf of Paria (Annexation) Order in Council of 6 August, 1942, declared Great Britain’s (later Trinidad and Tobago’s) part of the Gulf’s submarine areas “to be annexed and form part of His Majesty’s dominions attached to the Colony of Trinidad and Tobago.”<sup>17</sup>

c. The implicit restriction of the resources object of any future exploitation of the submarine areas (continental shelf) to oil and associated products, as distinct from and opposed to natural, organic and renewable resources, such as demersal swimming fish or crustacea. Nevertheless, neither the word “resources” was ex-

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15. Lauterpacht, *Sovereignty Over Submarine Areas*, 27 BRIT. Y.B. INT’L L. 376 (1950). At that time there was a controversy regarding the nature of submarine areas, especially if they constituted an *inner* or an *outer* shelf, according to Umbgrove’s classification cited by MOUTON, *supra* note 9, at 7. The former would be shallow submarine basins whose sub-aerial origin could be traced to rivers in Pleistocene times, like the North Sea, the Gulf of Paria or the Sunda Sea. The latter would be submarine areas that protrude on a slope beneath the open sea at a depth conventionally held to be 200 meters, the figure 133 meters being an estimate much closer to geological facts. According to this classification, an inner shelf would be always locked by an opposite one.

16. Great Britain and the Netherlands, besides Sweden in a separate text, preferred the term “submarine areas” to “continental shelf” as evidenced in two proposals submitted to the Geneva Conference. 6 United Nations Conference on the Law of the Sea, U.N. Doc. A./CONF. 13/C.4/L.32 & L.33 (1958). If the Conference did not adopt their view, the fact that it was submitted and considered is sufficient proof that both terms could be held interchangeable from a legal point of view.

17. [1942] 1 Stat. Instr. 919. Also in British and Foreign State Papers 971 (1940-1942). The aforesaid Order in Council in its preambular part affirms that “whereas the Government of Venezuela has annexed to Venezuela certain parts of the submarine areas of the Gulf of Paria.” There was no specific act or declaration of annexation on Venezuela’s behalf.

pressly employed, nor was fishing particularly mentioned, aside from being implied as a surface activity that requires passage and navigation.

d. The explicit separation between the newly-acquired rights of the Contracting Powers to their respective submarine areas (continental shelf) and the freedom of passage and navigation inherent to the status of the superjacent waters. This principle was bound to go along the whole process of the juridical continental shelf by announcing the beginning of a new legal order of the submarine space based on the respect of the traditional freedoms of the corresponding maritime space above.

e. The admittance, in the interests of the other party, of certain limitations on the exercise by the coastal State of its newly-acquired rights with view to:

1. preventing pollution of the marine environment, not only by the coastal State itself, but also by concessionaires acting on its behalf. Although protection from pollution was aimed at the territorial waters of the opposite party due to the absence of third parties in that particular area, the subsequent mention of "navigable waters" implies the first general reserve of its kind against marine pollution resulting from the exploitation of the sea-bed.
2. safeguarding navigation from being closed or impeded by works or installations which may be erected and "which shall be of such a nature and shall be constructed, placed, marked, buoyed and lighted, as not to constitute a danger or obstruction to shipping."

f. The omission of any reference to the method applied by Venezuela and Great Britain in the delimitation of the Gulf of Paria. The Treaty itself stands as an example that the agreement obtained and the division prescribed therein were only possible through negotiation. This is an extremely important point since many an interested party in subsequent controversies has implied that the equidistance method had been employed. Such an assertion is absolutely incorrect and misleading.<sup>18</sup>

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18. THE GEOGRAPHER, *supra* note 14, at 4. Cf. North Sea Continental Shelf Cases [1969] I.C.J., opinion of Judge Fouad Ammoun, para. 26. Netherlands and Denmark were not able to convince the Court that the

Before going any further, it should be kept in mind that the Anglo-Venezuelan Treaty of 1942, was not solely the outcome of one party's interest in the continental shelf. To suggest that Great Britain was the more anxious partner in clearing the matter may, perhaps, depict a more objective and authentic picture of the world's realities more than thirty years ago. When the Treaty is brought to a focus in the light of Venezuela's contribution to the contemporary law of the sea, Great Britain's role should not be underestimated or misunderstood, stressing the fact that the United Kingdom subsequently followed the same policy of extending the boundaries of almost all her potentially oil-rich colonies, one by one, from Brunei in Southeast Asia to the Falkland Islands, off the southern end of Argentina.<sup>19</sup> Her Arab allies along the Arab-Persian Gulf issued a series of statements in 1949, annexing the seabed and the subsoil beneath the high seas contiguous to their territorial waters, undoubtedly inspired by the Paria Treaty model transmitted by Great Britain through her vast imperial system.

Yet there is one basic difference between the attitudes of Great Britain and Venezuela towards the same agreement. While Great Britain adopted the principle for her Asian and American overseas colonies (Trinidad and Tobago acceded to the provisions of the Treaty on Independence in 1962), she had resisted the adoption of any special measures to proclaim sovereignty or jurisdiction over her own insular and proper submarine domains until 1964, when, almost simultaneously, she became a party to the Geneva Convention.<sup>20</sup> Venezuela, on the other hand, promulgated her own law on the continental shelf (and other maritime provinces) in 1956, at a time when there had been enough international consensus as to justify a quasi universal appreciation of the doctrine.

The International Court of Justice process on the North Sea Continental Shelf Cases, 1967-69, as well as the individual opinion of the judges, redeemed the Paria Treaty from relative oblivion and linked it permanently to the history of the genesis of the new doctrine. To Great Britain, it was an instrument of colonial policy to be later bequeathed to the rightful successor; to Venezuela it was an instrument of national policy to be cherished and built upon.<sup>21</sup>

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equidistance method had been employed in the Paria Treaty, not even by imposing such lines on a map of the Gulf they produced. North Sea Continental Shelf Cases [1968] I.C.J., 1 Pleadings and Oral Documents 437, 498.

19. The Argentine Government lays a historic claim to sovereignty over the archipelago which receives the name of *Islas Malvinas* in Spanish.

20. See note 10, *supra*.

21. For an analysis of the Gulf of Paria Treaty see Vallat, *The Continental Shelf*, 23 BRIT. Y.B. INT'L L. 333 (1946). Cf. Hounshell & Kemp,

B. *The Paria Treaty and the Truman Proclamation: Similarities and Differences.*

There can be no doubt that the Truman twin Proclamations on the continental shelf and coastal fisheries given on September 28, 1945, constituted a turning point in the modern history of the law of the sea. Quoting from Lauterpacht, "it was not, however, until 1945 that the terminology and the attempt to provide a philosophy of the doctrine of the continental shelf made their appearance in official instruments."<sup>22</sup> McDougal and Burke, after due reference to the Paria Treaty as the first development of international prescriptions about the continental shelf, affirm that

. . . the major impetus for the large number of unilateral claims to the resources of the continental shelf came, as we have noted, in President Truman's pronouncements in 1945, declaring that the United States regarded the natural resources of the subsoil and sea bed of the continental shelf contiguous to the United States as "appertaining to the United States, subject to its jurisdiction and control."<sup>23</sup>

To begin with, the Truman Proclamation was a unilateral federal act of the United States government, apparently more a restriction than it was an agreement between members of the international community. In practice, however, it was bound to produce a much more widely-felt reaction, because of the elementary fact that an individual declaration could be imitated *mutatis mutandis*, by so many individual declarations as their State authors might have desired, while a bilateral treaty cannot be invoked by a third party according to the rule *res inter alios acta*. Obviously, it is easier to reproduce a unilateral declaration than to have two States agree on reproducing a bilateral agreement, especially if it is too particular and exclusive as was the Gulf of Paria Treaty.

Aside from this initial and basic difference, and despite the fact that it belongs more to form than to substance, it may be interesting to compare the same principles and/or issues in both historic documents:

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*The Continental Shelf: A Study in National Interest and International Law*, 5 J. PUB. L. 343 (1956). Also in 2 O. DE FERRON, LE DROIT INTERNATIONAL DE LA MER 136-38.

22. Lauterpacht, *supra* note 15.

23. M. McDUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS 636-37 (1962).

a. On the inner limit of the juridical continental shelf, Truman's Proclamation implies a ratification of the principle set in the Paria Treaty which establishes that the submarine areas (continental shelf) are considered to lie outside of the territorial waters of both parties, though Truman defines it in different terms as "the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States."<sup>24</sup> The President's caution not to set the interior limit of the continental shelf at the outer limit of the territorial sea was probably meant to keep silence over the States' rights to the shelf beneath the territorial limits in view of the question of to whom did those resources belong: the Union or the individual States. The Submerged Lands Act and the Outer Continental Shelf Lands Act settled the issue in 1953. At any rate and irrespective of the wording, Truman's Proclamation boils down to the same principle born in Caracas three years earlier: the inner limit of the juridical continental shelf begins at the outset of the high sea.

Neither the Proclamation nor the annexed Executive Order No. 9633 mentioned anything about the outer limit of the continental shelf, but a press note released on the same day stated that

generally, submerged land which is contiguous to the continent and which is covered by no more than 100 fathoms (600 feet) of water is considered as the continental shelf.<sup>25</sup>

It fell to President Avila Camacho of Mexico, a month later, to define the shelf as "bounded by the 200-meters isobath," in the first of the declarations that ensued.<sup>26</sup>

b. On the qualification of the legal relationship between the coastal State and the continental shelf, the majority of authors usually agree with Mouton when he asserted that the Paria Treaty and the Truman Proclamation have generated two distinct tendencies manifest in the chain of unilateral acts and declarations registered between 1942 and 1952: one, the offspring of the Treaty, emphasized the principle of the annexation of the continental shelf by the coastal State; the other, following the Proclamation's model, declared the principle of control and jurisdiction over the natural resources of the shelf and their appurtenance to the coastal State. Mouton added a third tendency: acts and declarations

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24. Text of the Proclamation in 10 Fed. Reg. 12303 (1945). Also in *Laws and Regulations on the Regime of the High Seas*, 1 U.N.L.S. 112 (1951).

25. Cited by DE FERRON, *supra* note 21, at 155. Cf. *The Outer Limit of the Continental Shelf*, 13 JURID. REV. 111 (1968).

26. Text in F. DURANTE, *LA PIATTAFORMA LITORALE NEL DIRITTO INTERNAZIONALE* 289 (1955). Also in MOUTON, *supra* note 9, at 253.

based on a mixture of both, with or without foreign elements added.<sup>27</sup>

As it was partially anticipated, the first group included all British-inspired Orders in Council (Bahamas, Jamaica, British Honduras, Brunei, etc.), the similarly-patterned declarations of the Arab-Persian Gulf Emirates, the proclamations of Saudi Arabia and Pakistan, besides Nicaragua's 1948 constitution and Brasil's decree of 1950.

As fostering the control and jurisdiction principle of the Proclamation, Mouton was able to trace only two pure acts: the Philippine's Petroleum Act and Guatemala's Petroleum Law, both enacted in 1949.

The Proclamation did, however, build its claim to exclusive jurisdiction and control over the resources on a moral base of reason and justice which rested on four pillars: 1) the dependence of the utilization of the resources on the cooperation of the coastal State, 2) the natural appurtenance of the continental shelf to the land mass, 3) the frequent seaward extension of resources within a State's territory, and 4) security interests of a State in activities off its shores.<sup>28</sup>

As it may be recalled, the Geneva Convention indulged in a long and abstract debate on the qualification of the State's rights, with delegations split between those who favored the word "sovereignty" and those who preferred "exclusive rights" instead of "sovereign rights over the resources," originally proposed by the International Law Commission, more in support of the Proclamation's trend. To many a jurist and publicist, no real distinction could be made between "annexation" and "appurtenance and exclusive control," as suggested by Lord Radcliffe, sitting as arbiter of the Qatar dispute.

c. On the qualification of the natural resources of the continental shelf, the Presidential Proclamation did not give any specifications either, though in the preambular paragraphs it did mention the mineral resources alone. However, it may be inferred from the fact that the American President issued another

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27. M. Mouton, *The Continental Shelf*, in 85 RECUEIL DES COURS 342 (1954).

28. JURID. REV., *supra* note 25, at 131.

Proclamation (No. 2668) on the same day on coastal fisheries that he did not harbor the intention of intermixing two issues that could be otherwise split on the basis of the qualification of the resources into mineral and biological.<sup>29</sup> The Submerged Lands Act of May 22, 1953, includes within the term natural resources: "oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life." But it should not be forgotten that the terms of this Act shall not be applied outside of three miles into the Atlantic and Pacific Oceans, or of three marine leagues into the Gulf of Mexico, which renders it, by all means, an instrument of United States federal domestic legislation and not valid against other nations.<sup>30</sup>

d. On the status of the suprajacent waters as regards the freedoms on the high seas, there is complete coincidence on the principle that recognizes this status. The Paria Treaty had only mentioned navigation and passage; the 1945 Proclamation referred to free and unimpeded navigation; but the Outer Continental Shelf Lands Act of August 7, 1953, stressed the right to navigation and fishing.

e. The Proclamation does not contain any specific reference to the prevention of pollution or to the adoption of measures directed at safeguarding navigation from perils that may ensue from the erection of works and installations. The right of unimpeded navigation stressed in the Proclamation appears as a corollary to the general principle of freedom on the high seas. The Treaty goes much further than the proclamation in regulating the principle.

f. On the delimitation of the continental shelf among neighboring states, whether opposite or adjacent, the Proclamation calls upon the United States and other parties concerned to determine their boundaries in accordance with equitable principles. Again, no specific method is advocated, suggested, or implied.

In the light of the aforesaid, it would be quite correct to affirm that the prominent principles and characteristics of the early continental shelf doctrine were embodied in the precursory Treaty of the Gulf of Paria. Its most conspicuous shortcoming was the lack of a fundamental philosophy that could have led to a universal conception of the doctrine, a task which the Truman Proclamation outspokenly undertook.

Then, as already mentioned, the Paria Treaty was only a bilateral agreement applicable to a specific area and binding upon two pow-

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29. McDougal & Burke, *supra* note 23, at 637.

30. Text in *Official Documents*, 48 *AM. J. INT'L L.* 104 (1954).

ers, one of which had to be replaced, twenty years later, by its rightful successor, the sovereign nation of Trinidad and Tobago. In 1958 it looked as if the Geneva Convention on the Continental Shelf had absorbed the process which had preceded the United Nations Conference from which three other conventions emerged. Probably it was thought that positive legislation through the United Nations would overwhelm custom and States' usages as the prevailing and most important source of the international law of the sea.<sup>31</sup> This hope was apparently ill founded, for neither did the Geneva Conventions win the approval of an uncontested majority of maritime nations—especially if we bear in mind the growth into independence of more than fifty developing nations mainly in Africa, the Caribbean area and Australasia—nor did they offer a panacea for all the ills of the public order of the oceans. The loophole left by the Second Geneva Conference held in 1960, as it was not able either to fix the outer limit of the territorial sea or to agree on an exclusive fishing zone, was further widened when the 200-mile thesis, dormant for fifteen years, surged again to engulf the Atlantic coasts of South America and threaten to reach other and distant shores. Adding the action taken by Malta at the United Nations with respect to the peaceful utilization of the sea-bed and ocean floor beyond national jurisdiction to the looming perils of widespread marine contamination, the whole process stood for revision by an international community quite distinct from its predecessor when Great Britain and Venezuela proceeded to divide the submarine basin of the Gulf of Paria and President Harry S. Truman, with the prestige of the United States behind him, recovered the continental shelf.

## II. THE CONTEMPORARY NOTION OF THE PATRIMONIAL SEA

If Venezuela's contribution to the development of the continental shelf doctrine was registered at the start of a long, universal process, her espousal of the modern patrimonial sea notion, on the other hand, appears towards the end of the cycle as a logical bridge over an abyss that separates two irreconcilable poles. Consequently, it may become necessary to provide a short account of what has been called a "long, universal process," so that the notion of the patri-

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31. On the weight of custom and usages see C. COLOMBOS, *INTERNATIONAL LAW OF THE SEA* 7 (6th ed. 1967).



monial sea might be appraised in its true dimensions as an eclectic compromise based on sound legal grounds.

An extremely convenient point to take up this so-called "long, universal process" would be Professor Mouton's statement on the three kinds of acts and declarations that succeeded President Truman's Proclamations. The distinguished Dutch jurist and naval expert classified these acts, from the viewpoint of their stand on the nature of States' rights, into descendants of the Paria Treaty, descendants of the Truman Proclamation and a third group described rather curiously as acts and declarations based on a mixture of both, with or without foreign elements added.

What Mouton meant by "foreign elements" can be detected in the drive of several Latin American coastal countries, later spreading to Korea, Viet Nam, Iceland, Morocco, Senegal and other fishing nations, toward the elaboration of new rules of the contemporary law of the sea. These rules have been based on the exclusive jurisdiction of the coastal State over all kinds of fish and renewable marine resources in the adjacent sea areas, needed to feed the population or to bolster the national economy, in the face of rigid, classic Grotius-inspired norms which, for more than three hundred years, have pretended to confine such jurisdiction to the limited breadth of the territorial waters and sanction over-all fishing on the high seas.

This drive can be reviewed in two stages: the early and the contemporary. The former goes back to the reaction set in motion by the Truman Proclamations, when other nations—Mouton's third group—saw in the continental shelf emerging practice and doctrine an unexpected lever to help them lay their own claims over the renewable resources of the adjacent sea in which their true and legitimate interests undoubtedly lodged. It is a trend that came to a halt at the American States Specialized Conference of Ciudad Trujillo (now Santo Domingo) held in 1956 when, in the words of Richard Young, "the hard core of the continental shelf doctrine which has won wide recognition in all parts of the world"<sup>32</sup> was definitely separated from the issue of offshore claims advanced in terms of fisheries and living resources. Officially, it came to a dead end at the Second Geneva Conference in 1960.

The latter stage belongs to the sixties and early seventies; it being the case that very respectable maritime and fishing nations from the Grotius side of the field began adopting a 12-mile exclu-

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32. Young, *Pan American Discussions on Offshore Claims*, in *Editorial Comment*, 50 *AM. J. INT'L L.* 909 (1956).

sive fishing zone. The Malta proposal reopened the whole debate in 1967, and within a short time the conservation and fishing issues were again at the top of the agenda, now as autonomous issues on their own, freed for good from any tutelage to the continental shelf doctrine.

#### A. *The Early Stage: Shelf and Fisheries*

Any attempt to suggest that the continental shelf is a submarine extension of the land territory which may only be used by the riparian State to obtain minerals, oil and gas, is doomed to an utter rebuttal by the fact that sedentary fisheries had been the first economic venture undertaken by societies and States on the shallow bottom of the adjacent sea. Long before man ever dreamt of turning oil into energy, thousands of fishermen along the shores of Ceylon, Bahrein, Eritrea, Tunis and Cubagua (off Venezuela) had learned to make a living diving for pearls, oysters, and sponges in shallow waters. Vattel's exclamation on the legitimacy of the ownership of such fisheries is too well known to be fully cited. Nevertheless, neither these special fishing rights nor the ones established by tunneling could be turned into a basis for claims over the continental shelf at large, for three reasons summed by Sir Cecil Hurst: sedentary fisheries occupy relatively small areas out of a vast total; there is a great variety of natural resources in the shelf which demand different methods of exploitation; such exploitation may require installations that may interfere with the freedom of navigation and fishing.<sup>33</sup>

A group of States with interests in sedentary fisheries pressed the Geneva Conference to admit sedentary living organisms as part of the recognized natural resources of the continental shelf. According to a proposal submitted by Australia, Ceylon, Malaya, India, Norway and the United Kingdom, the shelf resources would

consist of mineral and other non-living resources of the seabed and the subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.<sup>34</sup>

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33. *The Collected Papers of Sir Cecil Hurst (1950), Law of the Shallow Sea*, THE ROUND TABLE, No. 179, June, 1955, at 235-63.

34. 6 United Nations Conference on the Law of the Sea, U.N. Doc. A/CONF. 13/C.4/L.36 (1958). Distinction should be made between the

That was all the Conference seemed ready to digest. Burma and Yugoslavia failed to include bottom swimming fish in the inventory, meeting with opposition from a State like India whose delegate admitted that his country would be favored, but the measure would not be consistent with scientific precepts.<sup>35</sup>

It should not be forgotten, however, that a pioneer biological approach to the continental shelf doctrine had been undertaken at the turn of the century by Portugal, Spain and Argentina who favored the extension of State jurisdiction over the epicontinental waters. Senator Copeland's abortive bills aimed at reserving Alaska's fisheries to American nationals also conceived of the shelf as a biological eco-system and not for oil supply.<sup>36</sup> Nothing was done to change the existing rule and the freedom of fishing continued to be regarded as one of the four cardinal pillars of the regime of the high seas.

Again, it was President Truman's administration and particularly Secretary of the Interior Harold Ickes who set the next example.<sup>37</sup> Truman's "other" Proclamation (No. 2668) also released on September 28th, 1945, after expressing concern over adequate protection for fisheries contiguous to the coasts of the United States (with Alaska's salmon fisheries on his mind), established conservation zones in those fishing grounds on the high seas in such a way that the United States would take that responsibility by itself in areas where nationals alone had been or would be fishing, and would establish them under agreement with any other States whose nationals had been regularly or would be fishing in the future. The Proclamation, on conceding the same rights to other States with respect to their own coastal fisheries, confirmed the character of high seas of the maritime areas concerned.<sup>38</sup>

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terms sedentary species and sedentary fisheries, in view of the fact that the latter is sometimes wrongly used to qualify the former due to an old tradition. It would be more consistent with logic to confine the term sedentary fisheries to those fisheries conducted by means of an equipment embedded in the floor of the sea in shallow waters beyond the territorial sea, as in India and Burma. Article 13 of the Convention on Fisheries and Conservation of the Living Resources of the High Seas defines them, stipulating the exceptional cases in which the coastal State could exclusively control them. In such fisheries the sedentary is the gear; in pearl and sponge fisheries defined under the Convention on the Continental Shelf the sedentary is the fish.

35. *Id.*, A/CONF. 13/C.4/L.3 and L.13.

36. For an account on this early "biological" stage, see MOUTON, *supra* note 9, at 46-63, 216. Cf. DE FERRON, *supra* note 21, at 134-38.

37. See McDUGAL & BURKE, *supra* note 23, at 966-67.

38. Laws and Regulations on the Regime of the High Seas, 1 U.N.L.S. 112-13, (1951).

Analyzed by itself and on its own merits, this Proclamation would not suggest any move towards the extension of United States jurisdiction or sovereignty over the living resources of the adjacent seas, let alone the marine area as such. The proposed conservation zones would probably constitute a kind of special contiguous zone for conservation purposes, expressly recognized as part of the high seas with a certain control exercised by and from the coastal State. Similarly, the already mentioned Proclamation on the continental shelf, analyzed by itself and on its own merits, would not reveal that the living resources of the shelf were expressly included, though they were not expressly excluded either. If neither Proclamation contained a loophole in which other States might fit in a new practice meant to extend their jurisdiction or sovereignty *eo nomine* over the adjacent sea for conservation purposes, their simultaneous announcement was, by itself, the loophole.<sup>39</sup> What Professor George Scelle once described as the inflationary process of the Truman Proclamations turned indeed into a Pandora's box which the Administration was not able to close. The law of the sea would never be the same after Harry S. Truman put his signature to those twin papers.<sup>40</sup>

Mexico's President Avila Camacho issued a Declaration dated October 29, 1945, whereby the issues dealt with in Truman's twin Proclamations were united in one body; besides the continental shelf measured down to the 200-meter isobath, Mexico added "every known natural resource" after having made a direct reference to the depletion of fisheries. Freedom of navigation, however, was recognized.<sup>41</sup>

In 1946, Argentina moved one more step forward by extending her sovereignty over her extraordinary ample continental shelf and the epicontinental waters thereof, thus reviving an old Argentine ideal advocated by scientists and naval experts such as Jose Leon Suarez and Segundo Storni. That same year Panama promulgated a new constitution which included the continental shelf as part of the territory.

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39. Selak, *Recent Developments on High Seas Fisheries Under the Presidential Proclamation of 1945*, 40 AM. J. INT'L. L. 670 (1950).

40. Nweihed, *Truman Y El Mar*, El Nacional, Dec. 30, 1972, at A-6.

41. See EL UNIVERSAL, Vol. 116, No. 10,541 at 17.7. For Comments, see F.V. Garcia Amador, *Latin America and Law of the Sea*, Proceedings of the Seventh Annual Conference of the Law of the Sea Institute, 1972, at 28.

When it came to the South Pacific Latin American nations of Chile and Peru (later joined by Ecuador), the absence of a geomorphological shelf off their coasts would have rendered a Truman-style declaration quite meaningless. Nevertheless, there is another reality that would have never fit into Truman's scheme, for the presence of an extraordinary wealth of anchovies feeding on plankton made fabulously available by the Peru or Humboldt cold current at a distance that may vary from 50 to 200 miles from the coast is a fact that the coastal countries cannot possibly overlook. Consequently, Chile and Peru, under separate unilateral claims announced in 1947, extended their sovereignty and jurisdiction not only over their meager continental shelf but over an adjacent maritime zone whose breadth was initially fixed at 200 nautical miles, where they would exercise "protection and control", while confirming the right of free navigation on the surface. Five years later, Ecuador joined her southern neighbors in signing the Santiago Declaration of 18 August 1952, which set up a Permanent Commission for the Exploitation and Conservation of the Maritime Resources of the South Pacific while confirming the three States' sovereignty and jurisdiction over the adjacent sea up to a maximum of 200 miles, with the concession that innocent passage would not be restricted.

In the meanwhile, a few more Latin American republics had adhered to the 200-mile limit policy, evidently with view to protecting and exploiting adjacent fisheries, and more than a means to explore or exploit the mineral resources of the shelf. Such are the cases of Costa Rica (1949), Honduras (1950) and, El Salvador (1959), which was the first nation in the world to designate her 200-mile zone as plain territorial sea, though provisions were made not to restrict the freedom of navigation.

The diplomatic protests of the main maritime powers did not alter the new situation, neither did such serious incidents as the capture of Onassis' Olympic Fishing Fleet by Peruvian patrol vessels in 1954 or the previous conflict between Californian fishermen and the Ecuadorian government.

Aside from this shift in Latin American maritime legislation and policy, South Korea, nervous about Japan's comeback to the high seas, issued a Proclamation in 1952, to the effect of extending her sovereignty over the shelf and its epicontinental waters within an artificial diagram (Syngman Rhee Line) whose breadth varied from 20 to 200 miles. Disputes concerning fisheries ensued at once with the Japanese who were also running into trouble with Australia on account of her proclamation regarding the Pearl

Fisheries Act of 1952-53, which extended Australia's jurisdiction over foreign vessels operating in pearl fisheries on the continental shelf to a depth of 100 fathoms. Moreover, Iceland increased the size of her fishing grounds first by closing her bays and fjords from headland to headland and then by extending her territorial waters limit to 4 nautical miles in 1952.<sup>42</sup>

All these developments within less than ten years after the Paris Treaty and seven from Truman's Proclamations made more urgent and indispensable the task entrusted to the International Law Commission on preparing text articles of a future convention on the law of the sea. Europe had wisely refrained from tangling the web further by the addition of more unilateral declarations. The continental shelf doctrine being a Western Hemisphere creation, it seemed rather logical that the American States should agree on one version or another before taking the matter to the Geneva Conference.

Richard Young, a witness of the process with a deep knowledge of the problem from the very beginning, introduces this stage in his comments on Panamerican Discussion on Offshore Claims by saying:

In an effort to deal with a situation which was obviously on its way to becoming an irritant to good inter-American relations, the Tenth Inter-American Conference at Caracas in March, 1954, resolved to convene an Inter-American Specialized Conference on 'Conservation of Natural Resources: The Continental Shelf and Marine Waters,' which was duly held at Ciudad Trujillo from March 15 to March 28, 1956. To assist this conference with a preparatory study, the topic was later placed on the agenda of the Third Meeting of the Inter-American Council of Jurists, held at Mexico City from January 17 to February 4, 1956.<sup>43</sup>

The Mexico City meeting adopted five principles on territorial waters, continental shelf, conservation of living resources of the high seas, base lines and bays, but so many restrictive statements and reservations were appended that all that was left could not be taken as a measure of continental consensus, but rather as an expression of a group of individual positions. The Ciudad Trujillo (now Santo Domingo) Conference ran into better luck in as much as it deliberately abstained from recommending a single treatment

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42. S. ODA, INTERNATIONAL CONTROL OF SEA RESOURCES 21-44 (1963).

43. Young, *supra* note 32, at 910.

of the unsettled questions, that is to say, the breadth of the territorial sea and the juridical condition of the epicontinental waters. Its notable success lies in having been able to separate the continental shelf notion as a primarily submarine and geologic reality from the fisheries and conservation issue which is, fundamentally, a biological and ecological approach. Consulting the patient work of the International Law Commission on the most adequate definition of the continental shelf, the Conference adopted the so-called double definition which was destined to substantiate the Geneva Convention two years later: the outer limit would be the 200-meter isobath or, beyond that limit, to where the depth of the superjacent waters admits the exploitation (not the mere exploration) of the natural resources of the sea-bed and subsoil.

Four members of the 200-mile group—Chile, Ecuador, Peru, Costa Rica—and El Salvador under separate declaration, made it clear that their vote for a resolution that cleared the continental shelf could not alter or prejudice their previous views or decisions.<sup>44</sup>

Venezuela attended both conferences and attached a conciliatory note to both resolutions while a legislative committee was waiting for the results with a view to drafting a new and comprehensive municipal law on the maritime provinces, including territorial sea, contiguous zone, continental shelf and fisheries. Soon after Venezuela's delegation to Ciudad Trujillo, headed by the late Dr. Ramon Carmona, was back in Caracas, the Interministerial Committee designated five subcommittees to work out the new legislation.<sup>45</sup>

Since the approbation of the Treaty of Paria, Venezuela had not issued any unilateral declaration on the continental shelf. She had stayed wisely neutral watching the South Pacific nations go to 200 miles and the maritime powers adhere more firmly than ever to the 3-mile limit. Then, and not before a global appraisal of the situation following the Ciudad Trujillo Conference, the Legislative Assembly sanctioned the Law on Territorial Sea, Continental Shelf, Protection of Fisheries and Airspace, promulgated on July 27, 1956.

In the Dominican Republic, the Venezuelan delegate had requested to leave on record a statement in which the Venezuelan government expressed its support for a 12-mile wide territorial sea as the most adequate measure.<sup>46</sup> This criterion was embodied

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44. Texts in *Organización de Estados Americanos, Derecho del Mar I*, at 65, OEA/Ser. Q. II. 4, CJI-7 (1971). It may be useful to add that Honduras and Costa Rica, in later stages, abandoned the 200-mile limit.

45. Young, *supra* note 32, at 910.

46. Ministerio de Relaciones Exteriores, *Libro Amarillo* (1957).

in Title I of the aforesaid law which, in Article 3, declared an additional 3-mile contiguous zone for vigilance and security purposes. It may be worthy of mention that only a few nations in the world had adopted by then the present standard universal breadth of the territorial sea *de lege ferenda*. The Soviet Union, Romania, Bulgaria and Guatemala could be cited as examples before Venezuela joined the 12-mile group.

The most notable aspect of this law, however, was the definition it accorded to the continental shelf; not because it was different or special, but because it was the first in the world to apply the future definition approved in Geneva to a municipal law well in advance; it became evident that the double definition of the outer limit would soon prevail. Regarding the nature of the relationship between State and shelf, the essence of the annexation formula born in the Paria Treaty was maintained through a combination of the terms appurtenance and sovereignty over the sea-bed and subsoil, and not just the resources. The legislation included accidental trenches and troughs within the shelf, as in the case of the Cariaco Trench off Eastern Venezuela. The next case of a country to adopt the double criterion of depth and exploitability was registered in Honduras in 1957.<sup>47</sup> Needless to say, the entry into force of the Convention generalized this definition on a universal scale.

It is important to take note of the attention paid by the legislators to the exercise of sovereignty over the installations to be erected on the shelf, as well as to the protection of navigation and marine life, which reflects the permanent influence of the Gulf of Paria Treaty.

Title III empowers the government to explore and exploit sedentary fisheries, while Article 8 authorizes it to fix maritime fishing zones outside the territorial sea for the purpose of development, conservation and rational exploitation of their living resources, on the general lines of President Truman's second Proclamation on coastal fisheries. A meticulous distinction between the shelf and coastal fisheries regimes is worthy of notice.<sup>48</sup>

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47. HONDURAS CONSTITUTION, Art. 6, Congressional decree No. 21, Feb. 19, 1957; *Limits in the Sea, National Claims to Maritime Jurisdictions*, 36 GEOGRAPHER 46 (1972).

48. *Compilación Legislativa de Venezuela, 1956, Ley Sobre Mar Territorial, Plata forma Continental Protección de la Pesca y Espacio Aereo*. K. NWEIHED, LA VIGENCIA DEL MAR 492-94 (1973).



## B. *The Contemporary Stage: The Economic Sea*

If it is quite true that the conclusion of the Geneva Conventions was intended, *inter alia*, to put an end to the series of national claims to extensive jurisdiction over the adjacent sea, the legal instruments by means of which those claims had been consolidated have survived the Geneva Conferences, bearing all the force which their authors had designed them to bear. Thus, Chile, Peru, Ecuador, El Salvador, Korea, Iceland and any other coastal nation that had advanced its jurisdiction over the adjacent sea, irrespective of what the continental shelf doctrine had or did not have to do with their decision, were bound to confirm, stand and defend a policy common to all. Few of them signed the Geneva Conventions *ad referendum*, their attitude being especially critical of the Convention on Fishing and Conservation of the Living Resources of the High Seas. The lukewarm reception this Treaty was awarded by developing nations, (and not surprisingly by the Soviet bloc) despite its concessions to the coastal State's "special interest in the maintenance of the productivity of the living resources in any area of the seas adjacent to its territorial sea," could only be assessed as a rebuff to the half-measures approach this Convention symbolizes. "This instrument," wrote Ambassador Jorge Castañeda from Mexico, "has truly proved to be a dead-letter. Instead, the unilateral claims that it was supposed to have stopped, have more than doubled since 1958."<sup>49</sup>

None of the 200-mile group has subsequently ratified or acceded to the Geneva Conventions and, after a prudent truce, "tuna hostilities" broke out again between Ecuador and United States fishermen in 1965. The five years which elapsed between the Second Geneva Conference and the revival of the jurisdictional trend in the mid-sixties witnessed a very significant change in the attitude of the conservatives, as the so-called "exclusive fishing zone" emerged from the rubble of the Second Geneva Conference (1960) as a pragmatic and autonomous compromise between two extremes which had failed to win the day at Geneva. It may be recalled that Canada and the United States had tried to gain support for their 6+6 formula, that is to say, a 6-mile territorial sea plus a 6-mile exclusive fishing zone, as an attempt at separating the territorial sea issue from jurisdiction over coastal high sea fisheries. Defeated by one vote, this measure developed into a common State practice on its own soon after. It is probably a rare case of an abortive positive law rule that has survived, thanks to subsequent

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49. Castañeda, *Alternatives to Fisheries Management, GULF AND CARIBBEAN MARITIME PROBLEMS* 21 (1973).

usage and, thence, custom. Iceland was the first country to enact a similar measure in 1958, defying Great Britain and risking what has been called the "First Cod War." Soon after the Second Geneva Conference, which had been convened on this particular and other related issues, Albania decreed the measure, and was soon followed by several new African States. Denmark and Ireland thereupon approved, but it was only when the United Kingdom came along in 1964, convening simultaneously a European conference on fisheries, that the whole picture changed in Western Europe. In 1966, the United States, harassed by foreign fishermen just beyond the territorial 3-mile limit off Florida and New England, enacted the measure which was tantamount to enlarging the territorial sea up to 12 miles, but only in terms of exclusive fishing.<sup>50</sup>

The renewal of friction off the coasts of Ecuador started the second drive towards the 200-mile limit. Panama, Argentina and Uruguay proclaimed their sovereignty over the adjacent sea through municipal legislation, notwithstanding the use of different legal modalities. The circle was closed by Brazil whose joining the group in 1970, meant that virtually every South American nation facing either ocean had gone for the 200-mile limit. Colombia and Venezuela stayed aloof for obvious geographical reasons.

Distributed geographically, the nine members of the 200-mile group could be handily located in three distinct areas: three on the Pacific (Peru, Ecuador, Chile, known as PEC), three on the Atlantic (Argentina, Uruguay, Brazil) and three from Central America (El Salvador, Panama and Nicaragua.) During 1970, they realized two important regional meetings on the law of the sea; the first at Montevideo in May (hence the term Montevideo Group), and the second at Lima in August, when they invited all the remaining Latin American countries to join, besides several observers from Asia, Africa and Canada.

The Declarations of Montevideo and Lima are quite similar in their adherence to certain principles that confirm, once and for all, the validity of the 200-mile jurisdiction policy as a line of no return.

Venezuela was the only coastal Latin American State to vote negatively on the Lima Declaration. Since Article 2 asserted the

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50. ODA, *International Law of the Resources of the Sea*, 127 RECUEIL DES COURS (1969).

right of each riparian State to establish the limits of its maritime sovereignty or jurisdiction according to reasonable criteria, and since this particular disposition bore on all the rest of the document, Venezuela's delegation put on record that it was not able to admit any extension of the territorial sea that might diminish or affect rights of free navigation or rights that Venezuela enjoyed in the seas adjacent to her territory.<sup>51</sup>

That lone stand at Lima, typical of a conservative attitude towards the law of the sea, might have been necessary at that time, but it did not help to stress the image of Latin American cooperation and solidarity. Venezuela's role as the nation that led South America to political independence in the early nineteenth century would not be compatible with an ocean policy that might be interpreted in elusive and individual terms, even if it were perfectly valid from a legal point of view. But the same circumstances which stem from the objective geographical fact regarding the closeness of other jurisdictions on islands off Venezuela's Caribbean coast demanded a vigorous, pragmatic and positive ocean policy that would fall in line with the undeniable trend registered in Latin America without precipitating unnecessary conflicts with friendly Caribbean neighbors.

By then, Malta had set off a vigorous movement in the United Nations around her proposal aimed at the reservation of the seabed and ocean floor beyond national jurisdiction for peaceful uses in the benefit of mankind. A sea-bed committee, eventually enlarged and adequately helped by three subcommittees, has been acting upon the mandate of the General Assembly with a view to convening a universal Third United Nations Conference on the Law of the Sea. Venezuela was elected to join the Committee in December 1970, on the occasion of doubling the Committee's membership and the enunciation of the Declaration of Principles on the sea-bed and ocean floor. In other words, two fronts were open to the country for action on the law of the sea: on a regional (Latin American) and a sub-regional (Caribbean) scale; and within the United Nations Sea-Bed Committee.

It was on the Committee level that Ambassador Andres Aguilar Mawdsley submitted the notion of the patrimonial sea for the first time on August 12, 1971, in Geneva. The historic event may be better summarized by a statement from Professor L.D.M. Nelson, from the London School of Economics, who has recently written:

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51. For the full texts and individual State's declarations, see OEA, *Derecho del Mar*, *supra* note 44, at 241-55.

The first appearance on the international plane of the notion of the patrimonial sea *eo nomine* was in August 1971 when the Venezuelan delegate submitted it to the United Nations Deep Seabed Committee as a compromise proposal *de lege ferenda*.<sup>52</sup>

The term "patrimonial sea," reminiscent of canon law and Roman tradition, was first employed, as has been repeatedly stated, by the Chilean diplomat and delegate to the Inter-American Juridical Committee, Professor Edmundo Vargas Carreño in a report presented to that Committee also in 1971. The six main points on which Vargas Carreño's proposal rested can be described as a reasonable attempt to separate the territorial sea jurisdiction, essentially based on defense and security, from the economic and social motivations of the proposed patrimonial marine zone. The Chilean professor, however, used the term to cover the sum of both the inner jurisdiction of the coastal State (territorial sea) and the outer jurisdiction (economic or patrimonial zone),<sup>53</sup> which is not exactly the thesis expounded in Geneva by Ambassador Aguilar who clearly stressed the division between one belt and another, avoiding any authorization of the coastal State to fix for itself the extent of its jurisdiction.

Since Venezuela's thesis was largely adopted by a majority of Caribbean nations and embodied in the Declaration of Santo Domingo given on June 9, 1972, it may be more adequately summarized by direct reference to the Declaration. The notion rests on three grounds: a territorial sea, *strictu sensu*, not wider than 12 nautical miles; a patrimonial sea for economic purposes not to exceed 200 nautical miles from the coast (or 188 miles from the outer and maximum limit of the territorial sea); innocent passage for foreign vessels within the territorial sea, and freedom of navigation on the patrimonial sea.

The notion acquires its full sense when the nature of a State's rights in both zones is analyzed, both in comparative and in absolute terms. Within the patrimonial zone the State is empowered to exercise sovereign rights over renewable and non-renewable natural resources in waters, sea-bed and subsoil. This criterion,

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52. Nelson, *The Patrimonial Sea*, 22 INT'L & COMP. L. QUART. 68-86 (1973).

53. Carreño, *Mar Territorial y Mar Patrimonial Bases para una Posición Latino Americana sobre Derecho del Mar*, Document CCM/CP/3, Conference of the Caribbean Foreign Ministers, Preparatory Committee, Feb. 2, 1972.

by doing away with any unnecessary and outdated reference to the continental shelf doctrine, separates the fishing function from the regime of the high seas and attaches it to the authority of the riparian State, leaving intact the other three traditional liberties, namely navigation, overflight and the laying of submarine cables and pipes. The continental shelf regime, as provided in the Geneva Convention, will not disappear completely, for wherever the shelf lies entirely within the patrimonial limits, the patrimonial regime will prevail, and in cases where the shelf extends beyond the 200-mile limit of the patrimonial sea, the shelf regime will be in force from the said limit seawards.

With respect to the delimitation of patrimonial sea zones between neighboring States, the Santo Domingo Declaration provides that it should be carried out in accordance with peaceful procedures stipulated in the charter of the United Nations.

The other two major States in the Caribbean area, Mexico and Colombia, lent their full support to the patrimonial sea concept. In November, 1971, the Venezuelan Foreign Ministry invited the Ministers of Foreign Affairs of the Caribbean and Gulf Area to an informal meeting at Caracas to discuss the idea. Colombia's Minister of Foreign Affairs, Dr. Alfredo Vazquez Carrizosa, brought to the meeting a similar version of the same notion, easily fusible with the original. It was decided to call for a Specialized Conference to be held in Santa Domingo, Dominican Republic, and by the end of May, 1972, a Preparatory Committee sat in Bogota to prepare the agenda, finishing its job by February. The Santo Domingo meeting was attended by fifteen Caribbean States, including El Salvador and Guyana due to their strong economic commitment to the area. The Declaration on the Patrimonial Sea was affirmed by ten delegations (Venezuela, Colombia, Mexico, Costa Rica, Nicaragua, Guatemala, Honduras, Haiti, Dominican Republic, Trinidad & Tobago), with five abstentions (Panama, El Salvador, Jamaica, Barbados and Guyana).<sup>54</sup>

Aside from the fundamental issues already referred to, the Declaration recognizes the sea-bed and its resources, beyond the patrimonial sea, as a common heritage of mankind, in accordance with United Nations Resolution 2749 (XXV) of December 17, 1970.

In the spirit of the Paria Treaty, the Santo Domingo Declaration calls upon the signatory governments to abstain from performing acts which may pollute the sea and the sea-bed, either inside or

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54. *Conferencia Especializada de los Paises del Cariba*, CCM/RC/12 Rev. 1, CCM/RC/11, Santo Domingo. For the English text, see U.N. Doc. A/AC.138/80.

outside their respective jurisdictions. International responsibility of physical or juridical persons for damaging the marine environment is recognized and recommended to an international agreement.

Professor Nelson, who has done a thorough conceptual analysis of the Declaration, considers particularly important the idea that the coastal State, within its patrimonial zone, acts as an agent or custodian of the international community, just as it would be with respect to control and prevention of marine pollution. The criticism aimed at the patrimonial sea regime in a sense that it would result in underfishing, is refuted by Professor Nelson on the grounds that riparian States will have to enter in agreements with other fishing nations from outside. In support of his opinion Professor Nelson cited a few recent agreements: Belgium and Iceland in 1972, Brazil and Trinidad in 1971, and Brazil-United States on shrimp conservation in 1972.<sup>55</sup>

The suggestion that the patrimonial sea notion carries a potential violation of the fundamental freedom of the high seas *de lege lata* has been affirmed by Judge Fitzmaurice in the *Fisheries Jurisdiction Case (United Kingdom of Great Britain and Northern Ireland v. Iceland, February 2, 1973)* in his recent Separate Opinion which he based on the Geneva Convention of Fisheries.<sup>56</sup> On the other hand, and according to the Dissenting Opinion of Judge Luis Padilla Nervo in the same case,

... the recognition of the concept of the patrimonial sea which extends from the territorial sea to a distance fixed by the coastal state concerned, in exercise of its sovereign rights, for the purpose of protecting the resources on which its economic development and the livelihood of its people depend is entailed by the progressive development of international law.<sup>57</sup>

A significant step towards the accomplishment of a patrimonial sea regime was taken when Colombia, Mexico and Venezuela submitted a joint project to Subcommittee II of the Sea-bed Committee on April 2, 1973. Drawn in 18 articles the draft treaty gathers the essential principles of the Santo Domingo Declaration and adds

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55. Nelson, *supra* note 52, at 681-82.

56. *Id.* at 678.

57. See Auburn, *Some Legal Problems of the Commercial Exploitation of Manganese Nodules in the Pacific Ocean*, 1 OCEAN DEV. & INT'L L.J. 185 (1973).

a few more issues such as artificial islands and special interests in the productivity of living resources in the adjacent sea.<sup>58</sup>

Another noteworthy aspect to be mentioned is what Johnston and Gold have described as the merger of sentiment common to many of the developing countries in Africa, Asia and Latin America. Thus, the economic zone, as the African counterpart of the patrimonial sea, though somewhat more restrictive, entails a major support to the same principles from an extremely active and cautious continent.<sup>59</sup>

#### AN HISTORICAL NOTE

The first scholar to raise a voice against the depletion of the ocean resources was the great Venezuelan-born teacher Andres Bello. As early as 1852, Bello warned against overfishing and advocated a sort of control by the riparian State. Describing him as the "Spiritual Father of the Patrimonial Sea" is not an exaggeration. Bello's three life periods, spread over Caracas, London and Santiago, left him face to face with the three kinds of "seas" which the patrimonial sea notion has made compatible: in his home country, the sea meant defense and security; in London, it spoke of trade and navigation; in Santiago it suggested bounty and infinitude. These stages in one man's rich and generous life reflect the three pillars of the contemporary patrimonial sea concept.<sup>60</sup>

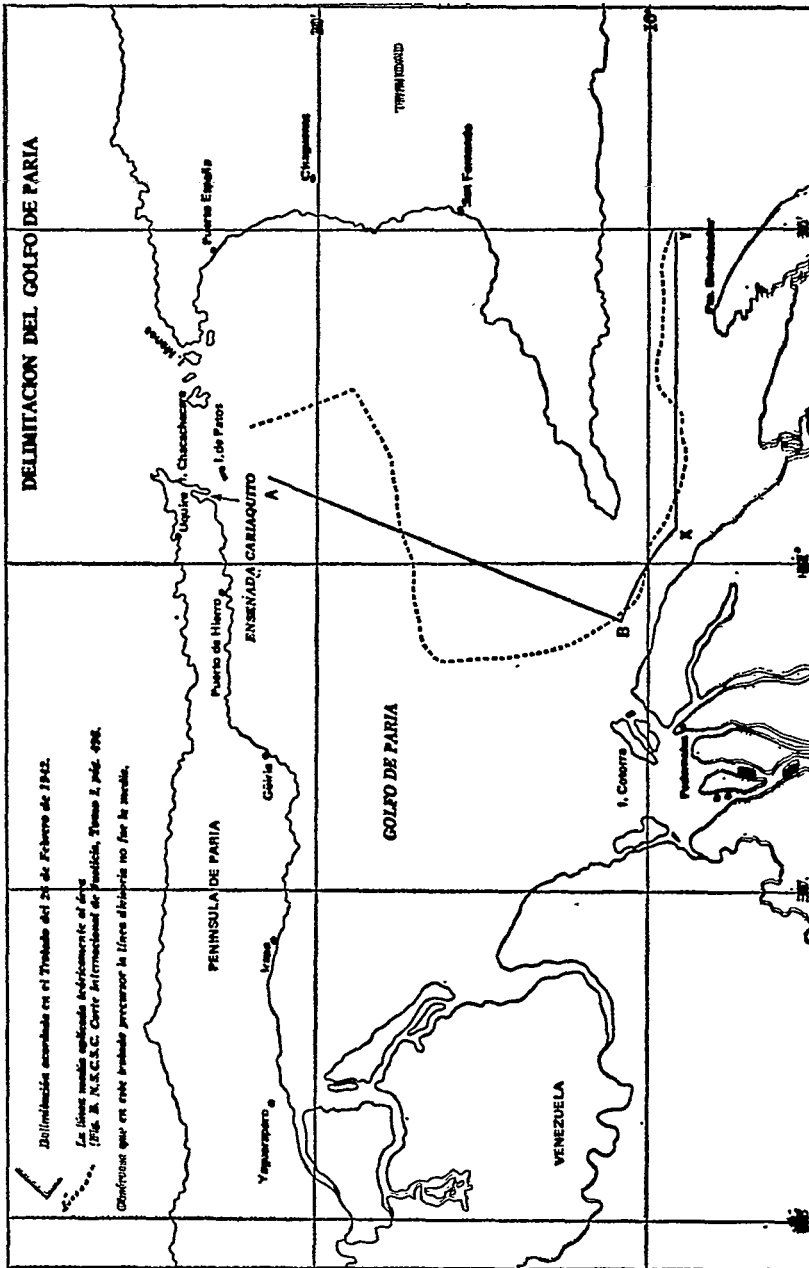
It may require a deeper research into his thoughts and writings to find out whether he had intended to establish a philosophy for the law of the sea in his epoch. Be that as it may, his ideas have always beamed light to Chileans, Venezuelans and Latin Americans as a whole.

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58. A/AC.138/SC.II/L.21.

59. D. Johnston & E. Gold, *The Economic Zone in the Law of the Sea: Survey Analysis of Current Trends*, Proceedings of the Seventh Annual Conference of the Law of the Sea Institute, 1972, at 7. Cf. Aguilar, *The Patrimonial Sea*, Proceedings at 161-62.

60. K. NWEIHED, ANBRES BELLO: PADRE ESPIRITUAL DEL MAR PATRIMONIAL (1973).



Map of the whole Gulf of Paria showing the 1942 Treaty boundary (AB-BX-XY), straight black line, and the would-be median line applied to same area (intermittent line). Taken from North Sea Continental Shelf Cases, International Court of Justice, Vol. I, 1968, p. 498.



