

Latin American Countries Facing the Problem of Territorial Waters

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I. INTRODUCTORY REMARKS

In fact, the international community never had recognized a universally accepted uniform criterion for the fixing of the limits of territorial waters. The traditional three-mile limit "established" according to the reach of a cannon in early times is as obsolete today as is the six or twelve or even the two hundred-mile limit if we keep in mind our technological progress in ballistic missiles and weapons of the like.

In any event, the three-mile limit came out a loser at The Hague Conference held in 1934¹; on the other hand, both the 1958 and 1960 international conferences convened by the United Nations in Geneva failed to establish a universally acceptable criterion.²

The purpose of this article is to present:

First, the stands on the problem that individual Latin American countries maintain today;

Second, Latin American political criteria, as laid down in public

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1. Gidel, *La mer territoriale et la zone contigue*, 2 RECUEIL DES COURS 193 (1934).

2. Dean, *The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas*, 54 AM. J. INT'L L. 751 (1960).

documents and multilateral Declarations by the involved governments as well as they are practiced in their international relations;

Third, the collective Latin American regional legal criteria, since there has been developed, as a matter of fact, a legal thought in the material which has already acquired a regional character. As such, it seems to be, as of today, the only regional doctrine on the limits of territorial waters, common to several nations, members of a regional organization.

II. SINGULAR LATIN AMERICAN CRITERIA

Argentina

Article 2340, paragraph 1 of the Argentinian Civil Code³ states that

the waters adjacent to the territory⁴ of the Republic to the distance of our marine league⁵, measured from the line of the lowest tide are public properties of the State; however, the law of policing for security reasons of the country and for the observation of fiscal laws extends to the distance of four marine leagues measured in the same manner.

Paragraph 6 of the same Article refers to the islands formed or which may be formed in the territorial waters.⁶

I should also mention in this connection that Argentina signed the Montevideo Treaty of International Penal Law of January 23,

3. Concerning the Civil Code of Argentina, cf. Santa-Pinter, *Una idea sobre la codificacion civil en America Latina* (An Idea on the Civil Codification in Latin America), 4 REVISTA DE DERECHO PUERTORIQUEÑO 64 (1962); and Santa-Pinter, *Civil and Commercial Codification in Latin America*, 13 REVISTA ACADEMICA 211 (1966-67) (Universidad de Pernambuco, Recife, Brazil).

4. Cf. the construction given the concept "territory" by the Supreme Court of the United States in *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 122 (1923): "[I]t means the regional areas—of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power."

5. "Marine league" means three "marine" miles (about 1855 meters, or 1.15 statute mile), called also "nautical" or "geographical" miles.

6. See the footnotes made by Dalmacio Velez Sarsfield, the Codifier of this article; see also CESAR DIEZ CISNEROS, *EL MAR TERRITORIAL Y LA REFORMA DEL CODIGO CIVIL LA ZONA DE SEGURIDAD AMERICANA* (The Zone) (Buenos Aires, 1943); and DEPALMA, *LIMITES DE LA REPUBLICA ARGENTINA. FUNDAMENTOS HISTORICO-JURIDICOS* (The Limits of the Argentinian Republic. Historical and Legal Foundation, (Buenos Aires, 1944).

1889 which provided that "territorial waters, for the effects of penal jurisdiction, include those which extend five miles from the coast of the mainland and islands which form part of the territory of each State."⁷

Professor José Leon Suárez claimed in 1918 that territorial waters include those that cover the continental shelf, especially with reference to fishing.⁸ (This special idea of fishing purposes should be kept in mind while we deal with Latin American countries concerning territorial waters.)

Admiral Storni submitted to the 31st Meeting of the International Law Association held in 1922 in Buenos Aires a project according to which territorial waters sought to have different measures.⁹ His purpose was to create, as early as fifty years ago, order for this worldwide problem for which no solution has been found yet.

A similar—if not identical—criterion to that of Suárez was upheld in two later Decrees of the President of Argentina: Decree No. 1.386 of January 24, 1944,¹⁰ and Decree No. 14.708 of October 11, 1946.¹¹ The former established (Article 2) that both the border zones of the National Territories (later on, Provinces or States) and the oceanic coasts of the country ought to be considered as "transitory zones of mineral reserves," while the latter (Article 1) stated that the Argentinian continental shelf is under Argentina's sovereignty granting, however, freedom of navigation (Article 2).

Note that Article 1 of Decree No. 14.708 (1946) invokes the "morphological and geological unity" of the submarine shelf and the Continent, and Article 2 refers to the "biological development of the waters which form the continental shelf." In conjunction with this, notice that Article 7 quotes expressly the Proclamation made by President Truman on September 28, 1945,¹² and the Declaration of President Avila Camacho of Mexico dated October 29, 1945, stating that "each country has the right to consider as national territory all extension of the subcontinental ocean and the adjacent

7. This rule, however, was officially ignored by Great Britain in 1906.

8. SUÁREZ, *DIPLOMACIA UNIVERSITARIA AMERICANA* (American University Diplomacy) 174, 180 (1918).

9. STORNI, *MER TERRITORIALE* (1922).

10. *BOLETIN OFICIAL* (Mar. 17, 1944).

11. *BOLETIN OFICIAL* (Dec. 5, 1946).

12. Actually, there have been two proclamations by President Truman, both made September 28, 1945, Presidential Proclamation 2667 on the natural resources of the subsoil and sea bed of the continental shelf, 10 Fed. Reg. 12303 (1945) and Presidential Proclamation 2668 on the coastal fisheries in certain areas of the high sea, 10 Fed. Reg. 12304 (1945).

continental shelf."¹³ But despite this, after the overthrow of the Peron regime, the new military government of General Pedro Eugénio Aramburu seemed to be willing to abandon the theories of both Decrees in order to return to the "traditional" three-mile limit.

In 1956, Dr. Isidoro Ruíz Moreno, then Legal Adviser at the Ministry of Foreign Affairs (Relaciones Exteriores) and Director of the International Law Institute of the University of Buenos Aires School of Law and Social Science, maintained before this writer that the problem concerning the Peruvian two hundred-mile claim consisted of making foreign nations respect it. Certainly the exercising of a real and practical sovereignty over such a large expanse of ocean seems to be difficult. At that moment Argentina was not yet considering an expansion of her jurisdiction, as she did in 1966, to claim two hundred marine miles for her territorial waters.

The problem of the limits of territorial waters jurisdiction, however, has been gaining a tremendous interest in Argentina. This interest is heightened by the fact that her territorial waters cover about 1,000,000 sq km with a general width of about 250 miles.¹⁴

When, in 1966, Russian fishing vessels had been operating close to the Argentinian coast, the new military government of General Juan Carlos Onganía enacted¹⁵ Law No. 17.094 on December 29, 1966,¹⁶ declaring that Argentinian sovereignty extends over the territorial waters to the distance of two hundred marine miles (Article 1) as well as two hundred meters or more in depth where exploitation of natural resources of the sea is possible (Article 2).

Consequently, Decree No. 5.106, also of December 29, 1966,¹⁷ provided (Article 1) that the Command of Naval Operations will issue

13. Cf. Santa-Pinter, *The Foreign Policy of Argentina*, in *FOREIGN POLICIES IN A WORLD OF CHANGE* (J. Black ed. 1963).

14. G. Galfrascoli, *La Extension de la Soberania Maritima Argentina* (The Extension of Argentinian Maritime Sovereignty), Extraord. No. 357 Marina (Mar. 1967), Liga Naval Argentina (Argentinian Naval League).

15. Paragraph 3 of the so-called *Act of the Argentinian Revolution*, a document issued by the Chiefs of the Three Branches of the Armed Forces on June 28, 1966 [BOLETIN OFICIAL (July 8, 1966)] after the overthrow of the constitutional Illia administration, dissolved the National Congress, and Article 5 of the *Statute of the Argentinian Revolution* invested the legislative power in the President of the Republic on June 30, 1966, BOLETIN OFICIAL (July 8, 1966).

16. BOLETIN OFICIAL (Jan. 10, 1967).

17. BOLETIN OFICIAL (Jan. 13, 1967).

permits to foreign fishing vessels in order to develop fishing activities in the Argentinian territorial waters within a limit of not less than 12 miles from the coasts.

The following year, Law No. 17.500 of October 25, 1967,¹⁸ declared that "the resources of the Argentinian territorial sea are properties of the National State which will make concessions for their exploitation in accordance with the provisions of this Law and its regulations" (Article 1). Further, Article 2 provides that the resources within twelve marine miles from the coast "may be exploited by national vessels only." In addition, "the Executive Branch will annually establish a zone of the Argentinian territorial sea whose exploitation will also be reserved for national vessels."

In the text preceding the text of Law No. 17.500 (a kind of foundation for the Law made by the Minister for the respective Branch in the absence of Congress¹⁹) there are references made to the following concepts: "sovereignty", "ichthyologic richness", "fishing industry", "sources of labor", "contribution of foreign currencies", "economic development", and the like.

The foregoing data will explain sufficiently the participation of Argentina in both the Montevideo Declaration, May 1970, and the Lima Declaration of August 1970. These points will be returned to at a later point in this discussion.

Ecuador

During the first week of February, 1971, the government of Ecuador issued a communique²⁰ concerning its position as to the capture of a large number of United States fishing vessels involved in fishing activities, presumed in Ecuadorian territorial waters. In this communique Ecuador invoked for its thesis the following *foreign* precedents:

- (1) Proclamation of the President of the United States of America of September 28, 1945;²¹
- (2) Declaration of the President of Mexico, of October 29, 1945;
- (3) Decree of the President of Argentina, October 20, 1945;²²

18. BOLETIN OFICIAL (Oct. 31, 1967).

19. See note 15 *supra*.

20. Spanish text has been released by the Honorary Consul of Ecuador, Carlos Arcos Moscoso, in San Juan, Puerto Rico and published in *El Mundo*, San Juan, P.R., February 7, 1971 at 10-B.

21. It did not specify which of the two proclamations issued on that date it relied on. See note 12 *supra*.

22. This reference must be a mistake; it is probably Decree No. 1.386 of January 24, 1944.

- (4) Decree of the President of Argentina, of October 11, 1946;²³
- (5) Declaration of the President of Chile, of June 23, 1947;
- (6) Declaration of the President of Peru, of August 1, 1947.

In addition, by Decree No. 1.542 of November 11, 1966, Ecuador incorporated into its domestic legislation the principle of exclusive jurisdiction and sovereignty in the sea of two hundred miles, and further ratified that the adjacent sea up to the said distance is territorial sea and under the dominion of the State.

In the same manner, the communique invokes the "Declaration on the Maritime Zone", issued in Santiago de Chile on August 18, 1952, and subscribed by Chile, Ecuador and Peru²⁴ in which, briefly, the three countries proclaimed

as a rule of their international maritime policy the exclusive sovereignty and jurisdiction which correspond to each of them over the sea which bathes the shores of their respective countries, to a minimum distance of two hundred nautical miles from the above mentioned coasts.

Another interesting point of the Ecuadorian opinion is the statement that in the absence of any international rule universally accepted by multilateral agreement, "each State has the sovereign right to establish the limits of its territorial waters." Therefore, the States have modified the breadth of their territorial seas for the following reasons:

- (1) The necessities of national defense;
- (2) The necessities of economic defense; and
- (3) In consideration of the extension of the sea which bathes their coasts.

In addition, Ecuador maintains that

the international community doesn't deny at the present time the right of each State to fix its territorial sea taking into account its peculiar geographic position, the necessities of the economic development of its inhabitants, the duty of the State to offer its inhabitants the indispensable conditions for their subsistence, as well as the obligation to preserve the resources of the sea which bathes its coasts.

23. See text accompanying note 11 *supra*.

24. In the Spanish text, see MEMORIA DEL MINISTRO DE RELACIONES EXTERIORES 1954-55 (Memoria of the Minister of External Relations) 134 (Lima 1955) and 14 REVISTA PERUANA DE DERECHO INTERNACIONAL 104 (Lima 1954).

Consequently, the "sovereignty act", sustaining the communique by which Ecuador fixes its territorial sea within a zone of two hundred miles, has its foundation not only in the said international consent but also in multilateral international compromises which are receiving day to day a major support.

Finally, it seems to be of interest to add another portion of the communique which states as follows:

No State can arrogate today the representation of the international community and ignore the attribution to the coastal State of the power to fix the limit of its territorial sea. The old practice of maritime States delegating themselves to exercise protection over the Ocean, over peoples or over properties which correspond to another given State, is today contrary to the foundations of international law and the Charter of the United Nations.

It is easy to discover in both the *newest* Argentinian and the *old* Ecuadorian positions²⁵ the influence of the famous fishery case *United Kingdom v. Norway*, decided in 1951 by the International Court of Justice²⁶ where the Court actually mentions principles (perhaps only as dicta) such as the following:²⁷

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 a 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"

If we keep in mind that the number of the arguments *in pro* is equaled by that of the arguments *in contra*²⁸ in this case, it seems

25. See note 14 *supra*.

26. *United Kingdom v. Norway* [1951] I.C.J. 116.

27. For the invocation of these principles, see Latin American multilateral legal pronouncements, this article.

28. 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;"
- (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."

to be fair to recognize that *United Kingdom v. Norway* has the same force as precedent both in favor of, and against the Latin American positions.

Positions of other Latin American Countries

As samples I am going to quote just two *new* Latin American Constitutions which deal expressly with the problem.

Brazil. Article 4 of its new Constitution of January 24, 1967 states that "the property of the Union includes: . . . III. The continental shelf; and . . . VI. The territorial waters."

Dominican Republic. Section II, Article 5, paragraph 3 of the new Constitution of November 28, 1966 reads as follows:

The territorial sea and the corresponding submarine soil and subsoil also form part of the national territory, as well as the air space which extends over them. The extension, utilization, and defense of the territorial sea, the air space and the contiguous zone, as well as of the submarine soil and subsoil will be established and regulated by law.²⁹

On the other hand, among the *old* Latin American Constitutions, many of them amended, note the following:³⁰

Costa Rica. Constitution of 1871 with amendments in Article 3, paragraph 2 states: "The State has full and exclusive sovereignty over the air space which corresponds to its territory and territorial waters to all the effects."

Ecuador. Article 3, paragraph 2 of the 1945 Constitution: "Sovereignty is exercised over the national territory, the territorial sea and the atmosphere which gravitates over them."

El Salvador. Constitution of 1950, Article 7, reads:

The territory of the Republic within its present limits is irreducible. It includes the adjacent sea to the distance of two hundred nautical miles measured from the line of the lowest tide, and it includes the correspondent air space, the subsoil and the continental shelf.

Paragraph 2 adds: "The provision of the preceding paragraph does

29. English version by the author.

30. A. ZAMORA, *DIGESTO CONSTITUCIONAL AMERICANO* (American Constitutional Digest), Ed. Claridad, (Buenos Aires 1958).

not affect freedom of navigation in accordance with the principles accepted by international law.”

Nicaragua. Article 2 of the 1948 Constitution states that the national territory “also includes the adjacent islands, the territorial sea, the continental shelf and the air and atmospheric space.”

Venezuela. Article 2 of the 1953 Constitution reads as follows:

The sea floor [of the Republic] and the subsoil of the areas which constitute its continental shelf as well as the islands to be formed or to appear in this zone are also declared subject to [the Republic's] authority and jurisdiction. The extension of the territorial sea, the contiguous maritime zone and the air space within which the State exercises its vigilance will be determined by law.

The foregoing panorama may be completed by noting that three countries have made a Declaration of the extension of their territorial waters to the limit of two hundred miles: Costa Rica on July 29, 1948, Chile on June 23, 1947, and Peru on August 1, 1947.

As of October 1969, seven Latin American countries claimed a two hundred nautical mile limit for their territorial waters. These are: Argentina, Costa Rica, Chile, Ecuador, El Salvador, Panama, and Peru.

While Chile, Ecuador and Peru were meeting in Lima in December 1969, Uruguay too decided to extend the limits of its territorial waters to two hundred nautical miles.³¹

With this data in mind, let us consider the collective Latin American criterion which may be regarded as a regional criterion common to Latin American countries with very few exceptions.³²

III. THE COLLECTIVE LATIN AMERICAN REGIONAL CRITERION

As a forerunning date for the whole Latin American platform in this subject matter attention must be drawn to the “Declaration on the Maritime Zone” issued in Santiago de Chile on August 18, 1952 and subscribed by the Pacific Nations of Chile, Ecuador and Peru.³³ In this Declaration the representatives of those nations declared, among other principles, as follows:

31. Harrison, *Controversia sobre el Limite Territorial* (Controversy on the Territorial Limit), *El Mundo*, San Juan, P.R., Jan. 12, 1970, at 7-A. Island suggested in the United Nations that the two-hundred-mile standard should be included in international law. See also Leronux, *Colombia decide extender soberania limite maritimo* (Colombia Decides Extension of Sovereignty of Maritime Limit), *El Mundo*, San Juan, P.R., Dec. 23, 1970, at 9-B.

32. See *infra* note 37.

33. See *supra* note 24.

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

II. The Governments of Chile, Ecuador and Peru therefore proclaim as a norm of their international maritime policy that each of them possesses exclusive sovereignty and jurisdiction over the areas of sea adjacent to the coast of its own country and extending not less than two hundred nautical miles from the said coast.³⁴

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

In Point V they declare that the right of innocent and inoffensive passage of vessels of all nations through the said zone will be honored.

When the United States proposed, in 1968, the calling of a meeting to create a Regional Institute for the Development of Fishing, these three countries turned down the invitation answering that they were, indeed, willing to study any "other" initiatives of the United States in order to resolve the fishing problems "if those initiatives will not affect in any manner whatsoever their legal position concerning territorial sea."³⁵

In May 1970, Argentina, Brazil, Chile, Ecuador, El Salvador, Nicaragua, Panama, Peru and Uruguay signed the "Declaration of Montevideo" in which the nine countries reaffirmed the right of the coastal States to establish the limit of their territorial waters as well as to dispose of their natural resources.

In August 1970, another Latin American meeting took place in Lima, Peru. During the meeting, Guatemala supported the countries, parties to the "Montevideo Declaration" stating that Guatemala is "spiritually" with those countries. Colombia, too, expressed its decision to cooperate with those nations, in order "to

34. In the communique of the Ecuadorian government this part reads as follows:

They proclaimed as a norm of their maritime international policy the exclusive sovereignty and jurisdiction which correspond to each of them over the sea which bathes the shores of their respective countries to the minimum distance of two hundred nautical miles from the mentioned coasts.

Supra note 20.

35. In the text of the communique, *supra* note 20.

elaborate a common Latin American thesis on the legal regime of the sea."³⁶

This meeting in Lima adopted, by overwhelming majority,³⁷ the so-called "Declaration of Latin American Countries on the Law of the Sea". The signatory States were Argentina, Brazil, Colombia, Chile, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Uruguay.

The Declaration contains, among other things, the following principles:

(1) The *right* of the coastal State to exploit the resources of sea adjacent to its shore in order to develop the economy of its inhabitants and to raise their standard of living.

(2) The *right* of the coastal State to establish the limits of its maritime sovereignty and jurisdiction according to reasonable criteria, keeping in mind its geographical, geological, and biological characteristics as well as the necessities of the rational utilization of its resources.

(3) The *right* of the coastal State to supervise and protect its waters from contamination.

(4) The *right* of the coastal State to regulate the above-mentioned principles without prejudice of the freedom of navigation.³⁸

IV. CRITERIA OF LATIN AMERICAN CONTINENTAL REGIONAL ORGANS

Significantly, the "Declaration of Panama", issued in 1939 by the Foreign Ministers of the Latin American Republics established for the period of World War II the "zone of security" around the Latin American Continent. The line extended more than three hundred nautical miles off the shores. The reason invoked was "self-protection".³⁹

36. Camarra, *Discuten en Peru Temas de Soberania Maritima y Explotacion Marina* (They Discuss in Peru Problems of Maritime Sovereignty and Exploitation), *El Mundo*, San Juan, P.R., May 14, 1970, at 6-B.

37. Fourteen votes for, three against, one abstention, and two absentees. Bolivia and Paraguay voted against the Declaration because it did not mention the rights of non-coastal States to access to the sea. Venezuela reluctantly identified itself with the interests of Latin American countries for the defense of their resources; however, it voted against the Declaration, maintaining that some points of the document did not accord with its position. Trinidad-Tobago abstained, and Jamaica and Barbados were absent. In any event, the last three members are not Latin American countries.

38. *El Mundo*, San Juan, P.R., Aug. 10, 1970, at 9-A.

39. CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE: INTERNATIONAL CON-

When World War II was over, Uruguay proposed a twenty-five mile limit at the Second Meeting of Consultation of Ministers of Foreign Affairs of the Latin American Republics, held in Havana from July 21-30, 1940. It was rejected, based on the same argument used by Dr. Isidoro Ruíz Moreno of Argentina in 1956,⁴⁰ that is, "It would create duties of sovereignty . . . which it would be difficult to fulfill."⁴¹

On August 8, 1941 the Inter-American Neutrality Committee recommended the twelve-mile limit⁴² but the Inter-American Council of Jurists prepared on July 30, 1952 a Draft whose Article 2 reads as follows:

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.⁴³

The Tenth Inter-American Conference held in Caracas, Venezuela in 1954 adopted Resolution No. LXXXIV on "Conservation of Natural Resources: The Continental Shelf and Marine Waters". However, the pronouncement of this Resolution was vaguely drafted since it just mentioned the rights "to exploitation or surveillance to a certain distance from the coast."⁴⁴

The Third Meeting of the Inter-American Council of Jurists held in Mexico City from January 17-February 14, 1956, drafted Resolution XIII on "principles of Mexico on the Juridical Regime of the Sea" which recognized the insufficiency of the three-mile limit and declared that "each State is competent to establish its territorial waters within reasonable limits"⁴⁵ where "reasonable limits" mean twelve nautical miles, according to a recommendation of the Inter-American Neutrality Committee fifteen years before.⁴⁶

FERENCES OF AMERICAN STATES 334-336 (1st Supp.), 1 DEPT. STATE BULL. 331 (1939).

40. See § II, this article.

41. 36 AM. J. INT'L L. 22 (Supp. Jan. 1942).

42. *Id.* at 17-19.

43. INTER-AMERICAN JURIDICAL COMMITTEE, DRAFT CONVENTION ON TERRITORIAL WATERS AND RELATED QUESTIONS, Doc. CIJ-11, Pan American Union, Wash., D.C. (Nov. 1952).

44. PAN AMERICAN UNION, INTERNATIONAL CONFERENCES OF AMERICAN STATES 424-425 (2d Supp. 1958).

45. PAN AMERICAN UNION, FINAL ACT OF THE THIRD MEETING OF THE INTER-AMERICAN COUNCIL OF JURISTS 36 (1956).

46. INTER-AMERICAN JURIDICAL COMMITTEE, OPINION ON THE BREADTH OF

After the failure of the two Geneva Conferences in 1958 and 1960 to arrive at any conclusion concerning fixing a uniform and universally accepted standard for the extension of territorial waters,⁴⁷ the Inter-American Juridical Committee adopted a Resolution in Rio de Janeiro on July 21, 1965,⁴⁸ recommending that American States enter a regional convention in order to adopt the twelve-mile limit leaving free any American State to fix the limit of its territorial waters in which "the coastal State has a special interest in maintaining the productivity of 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 3 of the proposed Draft Convention).⁴⁹

It is worth mentioning that the Colombian delegate, Dr. Jose Joaquin Caicedo Castilla wrote a separate vote to the said Resolution in which he commented:

It is recognized that it is valid for an American State to fix, or have fixed, for special reasons, a breadth of up to two hundred miles over which it exercises sovereignty and jurisdiction, chiefly for purposes of fishing rights and the conservation of the living resources of the sea.⁵⁰

To back up his position, Dr. Caicedo Castilla enumerated the following reasons:

- (1) Existing regional agreements in the subject matter;
- (2) The importance of fishing as a factor of industrial development;
- (3) Economic needs of the coastal State;
- (4) The obligation the governments have to ensure their peoples the conditions necessary for subsistence;
- (5) Special geographical and maritime conditions; and
- (6) Protection of natural resources and their utilization for

THE TERRITORIAL SEA, 38 PAN AMERICAN UNION, Washington, D.C. (1966). I wish to express my thanks to Mrs. Helen L. Clagett, Chief, Hispanic Law Division, Library of Congress, who was kind enough to provide me with this important publication.

47. For the intervention of Latin American delegates, see INTER-AMERICAN JURIDICAL COMMITTEE, OPINION ON THE BREADTH OF THE TERRITORIAL SEA, 63, 85; see also, FERNANDO CEPEDA ULLOA, LA CONVENCION DE GINEBRA SOBRE LA PLATAFORMA CONTINENTAL; UN ANALISIS POLITICO (The Geneva Convention on the Continental Shelf; A Political Analysis) 101 (Instituto Colombiano de Estudios Internacionales, Escuela Superior de Administracion Publica, Bogota, D.C., ed. 1963).

48. INTER-AMERICAN JURIDICAL COMMITTEE, OPINION ON THE BREADTH OF THE TERRITORIAL SEA 92-95.

49. *Id.* at 95.

50. *Id.* at 96.

benefits of the country in question.⁵¹

His vote was followed by the Argentinian delegate Dr. Miguel Angel Espeche Gil on September 28, 1965.⁵²

V. POSTSCRIPTUM

This problem has received a practical approach during the first two months of 1971 when Ecuador captured—again—a large number of United States fishing vessels which had supposedly violated Ecuadorian territorial waters by fishing without being licensed. The United States, in turn, ordered on January 18 the suspension of the sale of certain military equipment to Ecuador. Against this suspension Ecuador protested by invoking Articles 19 and 59 of the Charter of the Organization of American States.⁵³

Obviously, it seems to be hard to construe (as Ecuador does⁵⁴) as a "coercive measure" the decision of the United States government. Clearly, as Secretary of State William P. Rogers maintained in a recent press conference,⁵⁵ the United States has the same right as any other country to protect its own interests.

Upon the basis of Article 59 of the OAS Charter, the Meeting of Consultation of the Foreign Ministers has been convened in the Headquarters of the OAS in Washington, D.C. On January 30, it was decided that both countries shall and will resolve their differences by a bilateral agreement.⁵⁶

The solution, for the time being, might be found in paying the previous license fee which is a relatively low⁵⁷ amount of money in

51. *Id.*

52. *Id.* at 97.

53. Article 19 (as revised by the Buenos Aires Protocol of February 27, 1967) provides: "No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind." On the other hand, Article 59 states: "The Meeting of Consultation of Ministers of Foreign Affairs shall be held in order to consider problems of an urgent nature and of common interest to the American States, and to serve as the Organ of Consultation."

54. Cf. the communique of the Ecuadorian government, *supra* note 20.

55. *El Mundo*, San Juan, P.R., Jan. 30, 1971, at 2-A.

56. *La Opinion*, January 31, 1971 at 1.

57. Cf. Szaszi, *El Caso de las 200 Millas: Ecuador-E.U.* (The Case of the Two Hundred Miles: Ecuador v. United States) *El Mundo*, SAN JUAN P.R., Feb. 1, 1971, at 7-A; see also Galfrascoli, *supra* note 14.

order to avoid fines which are, of course, much higher. But this might be construed as a United States' recognition of the Ecuadorian two hundred-mile limit. However, such payment could be made under express reservation that it does not constitute American recognition of the Ecuadorian stand on the two hundred-mile limit. Payment by the United States Department of State, out of public funds, of the high fines imposed upon American fishing vessels, would clearly favor the fishing companies involved rather than the American tax paying citizen. This would be a difficult domestic matter for the United States, but of no interest at all to Ecuador.

It is impossible, of course, to foresee what will happen when (and if) the new Geneva conference on the Law of the Sea meets in 1973. The only thing which is reasonable to be assumed is that according to historical background and present status, Latin American countries will probably represent a compact block of their own, accompanied perhaps by nations on other continents facing similar or identical problems.