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A 21st century perspective on Peru and the 1982 United Nations Convention on the Law of the Sea

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A 21st Century Perspective on Peru & the 1982 United Nations Convention on the Law of the Sea

By

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DECLARATION

I certify that all the material in this Dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this Dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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The information contained in this Dissertation reflects the academic views of the Author on the subject and by no means it represents the position of the Peruvian Government in this regard. The author does not accept responsibility for any political view expressed by other publicists or stated in historical references on any of the themes addressed in this Dissertation.

This Dissertation has been developed in partial fulfilment of the requirements for the degree of Master of Sciences in Maritime affairs at the World Maritime University, and it should be solely considered as a pure academic research on the subject.

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ABSTRACT

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The adoption of the United Nations Convention on the Law of the Sea in 1982, constituted the major political and legal achievement that the International community has ever achieved, regarding the uses of the sea. It is considered as the Constitution of the Oceans binding upon all States, whether they are party or not to the Convention, as part of the current customary international law. Countries holding unilateral positions in this regard are every day less accepted and supported by the international community as a whole.

The fundamentals of the 200nm thesis are now part of the main legal regimes under the Convention, providing its member States with sound juridical safeguards to ensure the protection of their maritime and economic interests within and beyond 200nm.

This dissertation is a study of the current situation of Peru's maritime interests with regard to the Convention, discussing Peru's role in its development, and the benefits that Peru may obtain from acceding to the Convention at this point in history. In doing so, the juridical nature of Peru's maritime domain is examined, the development of the 200nm thesis and its international advocacy are reviewed, and the reasons behind Peru's decision not to sign UNCLOS in 1982 are discussed. Additionally, Peru's political, economic, and environmental developments over the last 20 years are reviewed, following by a discussion of the benefits that Peru may obtain from acceding to the Convention to protect its maritime interests within and beyond 200nm, including the maritime boundary delimitation with Chile and Ecuador. Finally, some of the reasons why Peru should accede to UNCLOS at this point in history are briefly discussed in the concluding section of this dissertation.

The discussions contained in this dissertation are based on the analysis of the researched information using a deductive methodology. This dissertation concludes that Peru should accede to the Convention and the 1994 and 1995 Implementing Agreements to ensure the protection of its maritime interests within and beyond 200nm.

TABLE OF CONTENTS

Declaration ii

Disclaimer iii

Acknowledgements iv

Abstract v

Table of Contents vi

Chapter One

Introduction 1

Chapter Two

Perú's Maritime Interests and the relevant Provisions of the United Nations Convention on the Law of the Sea 1982

2.1 Perú's Maritime Interests

2.1.1 Perú's Marine Ecosystem 8
2.1.2 Perú's Maritime boundaries 11

2.2 The relevant provisions of UNCLOS regarding Perú's Maritime Interests

2.2.1 The Territorial Sea 14
2.2.2 The Contiguous Zone 17
2.2.3 The Exclusive Economic Zone 18
2.2.4 The Continental Shelf 22
2.2.5 The High Seas 23
2.2.6 The Right of Access of Land-Locked States to and from the Sea and their Freedom of Transit 25
2.2.7 The Area, the International Seabed Authority, and the Enterprise 26
2.2.8 The Settlement of Disputes 28

Chapter Three:

The Peruvian Claim and the Law of the Sea

3.1 The Law of the Sea and Maritime Claims 30

3.2 The Peruvian Thesis regarding the 200nm Claim 31

3.2.1 The Thesis of 200nm in the National Context 33

3.2.2 The Thesis of 200nm in the International Context 36

3.2.2.1 Among the Latin American Countries 37
3.2.2.2 Among the African and Asian Countries 39
3.2.2.3 Among the Non-aligned Countries 40
3.2.2.4 At the United Nations Conferences on the Law of the Sea held in 1958 and 1960 and the *Travaux Preparatoire* for the Third United Nations Conference on the Law of the Sea (1971-1973) 41

3.3 Perú's Participation in the Third United Nations Conference on the Law of the Sea 44

Chapter Four

Perú and the 1982 United Nations Convention on the Law of the Sea

4.1 The Reasons for Perú's Decision not to sign UNCLOS in 1982 46

4.2 Peru's Changes and Developments over the last 20 years

4.2.1 The Political and Economic Contexts 53
4.2.2 Perú's Environmental Developments 56

Chapter Five

Perú's Accession to the 1982 United Nations Convention on the law of the Sea

5.1 The Protection of Peru's Maritime Interests within and beyond 200nm 60

5.2 The Establishment of Peru's Maritime Boundaries with Chile and Ecuador 63

Conclusions and Recommendations 77

References 81

Annexes

Annex A: The Peruvian Presidential Decree 781, Concerning Submerged Continental or Insular Shelf August 1, 1947

Annex B: The 1952 Santiago Declaration on Maritime Zone

Annex C: The 1954 Agreement on Maritime Boundary Special Zone between Peru, Chile and Ecuador

Annex D: The Special Fishing Zone between Peru and Chile according to the 1954 Agreement on Maritime Boundary Special Zone

Annex E: The Special Fishing Zone between Peru and Chile according to the 1954 Agreement on Maritime Boundary Special Zone

Annex F: The Sea Areas where Peru cannot exercise its National Jurisdiction due to the use of the Parallel of Latitude as *de facto* Maritime Boundary between Peru and Chile

Annex G: The Areas within Peru's National Jurisdiction where it cannot exercises a 200nm Jurisdiction due to the use of the Parallel of Latitude as a Maritime Boundary with Chile

Annex H: The 1952 Joint Declaration on Fishery Problems in the South Pacific.

Chapter One

Introduction

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) was adopted in Montego Bay, Jamaica, after 14 years of hard negotiations among representatives of more than 150 countries, seeking to meet their national interests regarding the uses of the sea. Peru did not end up signing the Convention, although it actively participated in all of the negotiations. However, the representatives of Chile, Ecuador and Peru at the Conference issued a joint Declaration, stating that although their governments recognized the incorporation of the essential principles of the 200nm thesis into the Convention, they believed that a further study of its main provisions was needed to know whether or not the Convention met their national interests. Today, Chile is a party to UNCLOS, and to the 1994 Implementing Agreement of Part XI of the Convention regarding "the Area", and it is now assessing the convenience of acceding to the 1995 Agreement on Straddling Fish Stock and Highly Migratory Fish Stock shortly. Similarly, Ecuador is expected to do so in the near future, since it has already set up its baselines according to UNCLOS (MINRREE, 2001).

UNCLOS entered into force in 1994, after having been ratified by the 60th country. As of date, it has been signed by 157 out of 186 United Nations member States and ratified by 138 of them, meaning that it is the principal international instrument governing the uses of the seas worldwide. It is also deemed to be the hardest negotiated and extensive international instrument ever achieved in the history of the United Nations, and one of the most comprehensive and complex instruments of international law focused on spatial issues (Perez de Cuellar, 1982). It is nowadays considered to be the Constitution of the Oceans binding upon all States whether they are party or not to the Convention. Therefore, States holding unilateral positions regarding the uses of the seas are everyday less accepted and supported by the international community as a whole.

This Convention divides the world's oceans into a number of basic maritime zones: "Internal Waters" (IW) extending landward from a coast's low-water line or baseline; "Territorial Sea" (TS) extending seaward from the low-water line or baseline; "Exclusive Economic Zone"

(EEZ) extending seaward up to 200 nm from the low-water line or baseline; and "High Seas" (HS) extending seaward from the outer edge of the coastal State's EEZ. It also provides different legal regimes ensuring coastal State's rights and obligations over each of the defined maritime zones respectively. The "Contiguous Zone" (CZ) to the TS in most purposes is under the EEZ legal regime, where the State may apply a broader law enforcement jurisdiction than in the EEZ with regard to customs, sanitary, fiscal, and immigration matters (Article 33). The CZ, if claimed, extends seaward up to 12nm from the outer limit of the TS, meaning that its outer limit may be up to 24nm. Lastly, the "Continental Shelf" (CS) regime is a special one, since in practice it should be applied in concordance with the EEZ and the HS regimes, depending on whether the outer edge of the CS of a coastal State extends beyond 200nm or not (Thompson, 1995).

Likewise, UNCLOS provides a system of ocean institutions for ensuring the compliance with its provisions. Then the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea (ITLOS), the Commission on the Limits of the Continental Shelf (CSC), deal with specific maritime zones and/or specific aspects of ocean affairs, while the United Nations Secretariat concentrates on matters of overall implementation of the Convention through the "Central Program on Oceans of the United Nations" (UNCLOS Website, 2002). This program focuses attention on monitoring State's practice and provides information, advice and assistance to States and international organizations on the uniform and consistent application of the Convention in relation to the different fields of interest and concern. In addition, it supports efforts helping States to implement the Convention more effectively and derive greater benefits from the new ocean's order. The main achievements of these institutions have been the successful entrance into force of the 1994 Agreement for the implementation of Part XI of the Convention in 1996, and the adoption of the 1995 Fish Stock Agreement to further develop and facilitate the implementation of UNCLOS for the conservation and management of marine living resources in the HS (PUCP, 2001).

At present, many of the UNCLOS provisions are part of the customary international law binding upon all States, because it effectively ensures traditional HS freedoms for all nations, not only fulfilling most of the coastal States' interests and priorities regarding the sea, but also ensuring peaceful mechanisms for the settlement of disputes among its member States. Today, these States cover more than 71% of the seas worldwide.

As noted above, Peru participated actively in all of the negotiations that led to the adoption of the Convention in 1982. Such participation began in 1947, when Peru's president, Dr Luis Bustamante y Rivero, enacted the Presidential Decree 781 August 1, 1947, extending Peru's sovereignty and jurisdiction over its adjacent seawaters, seabed and subsoil up to a distance of 200nm from its shoreline, to preserve, protect, conserve, and utilize all natural resources found within its jurisdiction, without hampering the right of freedom of navigation and with due regard to international law and all treaties that Peru had ratified (See Annex A). Five years later in 1952, Chile, Ecuador and Peru adopted the "Santiago Declaration", establishing their national sovereignties and exclusive jurisdictions over their adjacent seawaters, seabed, and subsoil up to 200nm from their shorelines for the same purposes as provided in the 1947 Presidential Decree. This zone was called "Patrimonial Sea" after the 1972 Santo Domingo Declaration until it was defined as "Maritime Domain" by Peru's 1979 national constitution. Both concepts were based on the interrelationship between the ocean and the coastal population (Perez de Cuellar, 2001). The 1952 Santiago Declaration also stated the decision of the signatory governments to advocate "the 200nm thesis" internationally, and establish it as a matter of priority within their maritime and international policy. It recognized the right of "innocent and inoffensive passage" of all ships, while exercising their freedom of navigation throughout the 200nm zone they claimed as jurisdictional waters (See Annex B). Both, the 1947 Peruvian Presidential Decree and the 1952 Santiago Declaration, were formulated on the basis of the economic interests that these States had in preserving, and utilizing all marine resources for the socio economic development of their nations at the time (PUCP, 2001).

Thirty years later, and as a result of the intensive negotiations carried out, mainly, by the member States of the 1952 Permanent Commission of the States bordering the South-East Pacific Coast (*Comision Permanente del Pacifico Sur-Este* [CPPS]) (Chile, Ecuador, and Peru), and other African and Asian countries, the Third United Nations Conference on the Law of the Sea was held in 1982. Generally speaking, this Conference recognized the coastal State jurisdiction over its adjacent seawaters, seabed, and subsoil up to 200nm from its coastline to preserve, protect, conserve, utilize, and manage all the natural resources found in there, as well as other important coastal States' rights beyond such a jurisdiction as provided in the Convention itself. Despite this fact, Peru did not sign the Convention in 1982.

This recognition has brought some of the traditional countries supporting the 200nm thesis to become party to the Convention over the last decade, for instance Panama (1996) and Chile

(1997). This situation has placed Peru at a disadvantage vis-à-vis its neighbours in a number of matters, including possible negotiations to delimit its maritime boundaries with them. It suggest that Peru should re-assess its unilateral claim and analyse the benefits it may obtain from acceding to the Convention, since the UNCLOS legal framework has effectively safeguarded the maritime interests of its member States to date, and there seems to be no other internationally accepted means to enable a coastal State to protect its maritime interests effectively. By analogy, Peru's maritime interests may also be successfully safeguarded, if it accedes to UNCLOS and to the implementing agreements.

Regarding the maritime boundary issues between Peru and its neighbours, Chile and Ecuador sustain that the seaward extension of the parallels of latitude delimiting their land borders with Peru constitute their maritime boundaries as well. On the contrary, Peru sustain that it has no maritime boundary agreement with these countries to date. These different perceptions emerged from the use of the seaward extension of the parallels of latitude delimiting the land-border between Peru and these countries, as references to define special fishing zones nearby their jurisdictional seawaters according to the 1954 Agreement on the Maritime Boundary Special Zone (*Acuerdo sobre la Zona Especial Fronteriza Maritima de 1954*) (See Annex C). In fact, Chile and Ecuador have assumed these parallels of latitude as *de facto* maritime boundaries between them and Peru for almost 48 years to date, jeopardizing Peru's legitimate rights over large extensions of adjacent seawaters off southern Peru, off northern Chile and off southern Ecuador. These special fishing zones between Peru, Chile and Ecuador, were established as part of a package of complimentary agreements adopted at the second Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific held in Lima-Peru in 1954, after the creation of the CPPS in 1952. The 1954 Agreement intended to facilitate the fishing activities in the adjacent sea areas between these countries, but not to establish maritime boundaries between them (Arias-Schreiber, 1990).

This lack of clarity in boundary delimitation between Peru and its neighbours has resulted in the incorrect assumption of the existence of maritime boundaries between them, and in the possibility for Chile and/or Ecuador to argue the existence of a historical right derived from this erratic practice before any future negotiation on maritime boundary delimitation between Peru and these countries. Unfortunately, Peru has contributed to this error by its own conduct and consent over the last 48 years. However, as this practice has been unfair to Peru, it has deposited a unilateral declaration with the United Nations Secretary General in 2001, stating

that Peru does not recognize the parallels of latitude defining the special fishing zone as maritime boundaries with Chile or Ecuador; as well as that no maritime boundary Agreements delimiting its adjacent seawaters with these countries exist to date, stressing that this issued is unsolved as yet. Peru issued this Declaration after having sent several official notices to the governments of Chile and Ecuador in this regard (Perez de Cuellar, 2001).

On the other hand, many reasons can be suggested for Peru's decision not to sign UNCLOS in 1982 and to maintain this position for the last 20 years. However, the main reasons were the lack of a national public awareness on the benefits of UNCLOS, the limited perception of the scope of the Convention among politicians, and the political instability felt in the country in the 1980s. In this sense, the main shortfall for the acceptance of UNCLOS among politicians and the national opinion over these years was the misinterpretation of the nature of the 1947 Peru's maritime claim as 200nm. This claim has often been misunderstood as an actual extension of Peru's TS, although neither the 1947 Presidential Decree nor the current national constitution have defined Peru's national jurisdiction over its adjacent seawaters as TS. In fact, paragraph 3 of the 1947 Presidential Decree clearly established the purposes of the extension of Peru's national jurisdiction. Similarly, Article 54 of Peru's 1993 national constitution defines its adjacent seawaters as "Maritime Domain", where the State is to exercise its sovereignty and national jurisdiction, without hampering the freedom of communication (meaning as navigation) and with due regard to the international law and the treaties Peru has ratified. Many scholars have sustained that such a constitutional Article establishing sovereignty and jurisdiction over Peru's Maritime Domain is to be understood within the context of the 1947 Presidential Decree that represents the original claim of Peru as 200nm. In other words, the sovereignty and jurisdiction set forth such an Article is for the purposes of preserving, protecting, conserving, and utilizing all the natural resources therein, without hampering the right of the international freedom of navigation, and with due regard to international law and treaties ratified by Peru, as provided in the 1947 Presidential Decree. It means that, Peru has a national jurisdiction for functional purposes, where international standards are applied through its national law.

At present, such a discussion should not be relevant, since the provisions regarding the EEZ and the CS regimes have addressed the original purpose of the 200nm thesis and most of Peru's maritime interests to date. Further, UNCLOS establishes sufficient safeguards for the protection of the marine environment, national security, freedom of navigation through TS

subject to innocent passage (IP), and exclusiveness for fishing matters. Therefore, it may not be acceptable that Peru, as one of the twelve mega-diverse countries with the richest marine ecosystem worldwide and party to the 1992 Convention on Biological Diversity, should be out of the only international Convention regulating the uses of the seas, thereby losing all the benefits derived from the juridical security that it ensures to its member States. Despite the Convention does not resolve all the disputes that may arise from the uses of the sea, it does provide the essential legal framework to ensure a balance of interests among States through a jurisdictional claims regime, and an acceptable utilization of the sea to all of them.

On the other hand, this dissertation is based on library research and data collected from many other different sources on this subject, such as primary sources, government archives, Internet sources, and Peruvian media. The author has analyzed the information using a deductive methodology, in order to present a discussion on the current situation of Peru with regard to the United Nations Convention on the Law of the Sea Convention 1982, and the benefits that it may obtain from acceding to the Convention, including the main aspects regarding the establishment of Peru's maritime boundaries with Chile and Ecuador.

In this sense, this dissertation comprises this current introduction as Chapter One and four additional Chapters, which are summarized as follows:

Chapter Two reviews and discusses Peru's maritime interests, and the relevant UNCLOS provisions. This Chapter is primarily based on data related to Peru's marine ecosystem and national economy, and the Convention itself. It also considers the interpretation given to its main provisions by well-known publicists on the subject (R. Churchill & Lowe 1999, B. Kwiatkowska 1989, A. Arias-Schreiber 1990, J. Perez de Cuellar 2001, and La Pontificia Universidad Catolica del Perú [PUCP] 2001). The main objective of this Chapter is to outline the importance of Peru's marine ecosystem to the socio economic development of its nation, and identify the provisions of UNCLOS relevant to Peru's maritime interests.

Chapter Three reviews and discuss the main historical facts of Peru's maritime claim of sovereignty and jurisdiction over its adjacent seawaters up to 200nm, and the defense of the 200nm thesis at the national and international for a. Additionally, it reviews Peru's participation in the *travaux préparatoire* of the III United Nations Conference on the Law of the Sea, and in the negotiations held in the 1982 Conference. This Chapter is based on

historical documentation retrieved from Internet sources, and collected from Peru's Ministry of Foreign Affairs, Peru's Ministry of Defense, political reports, and articles written by different members of the Peruvian diplomatic body, such as the ambassadors and publicists A. Arias-Schreiber 1990, J. Perez de Cuellar 2001, E. Guillen 1994, and J. Bakula 1995. The objective of this Chapter is to highlight the importance of Peru's role for the recognition of the coastal States' rights over their adjacent seawaters up to 200nm, as well as the principles of the 200nm thesis by the international community at the Conference in 1982.

Chapter Four analyzes the reasons that have prevented Peru from signing the Convention in 1982 and over the following years, as well as reviews and discusses the main political and economic changes and environmental development that Peru has experienced over the last 20 years.

Finally, Chapter Five discusses the benefits that Peru may obtain from acceding to UNCLOS to protect its maritime interests within and beyond 200nm, and to establish its maritime boundaries with Chile and Ecuador under the Convention.

This Dissertation concludes suggesting that Peru should accede to the Convention, including the 1994 Implementing Agreement regarding the Area, and to the 1995 Fish Stocks Agreement to ensure the protection of its maritime interests as a coastal State within and beyond 200nm, to consolidate all the actions it has taken in this regard to date, and to carry out negotiations for the establishment of maritime boundaries with Chile and Ecuador according to UNCLOS and the current environmental development to date. Therefore, it is essential for Peru to make this decision in light of the juridical safeguards that the Convention provides to its member States to protect its economic interests at sea, and the increasing consideration of many of the UNCLOS provisions as customary international law binding upon all States.

Chapter Two

Peru's Maritime Interests and the relevant Provisions of the United Nations Convention on the Law of the Sea 1982

This Chapter outlines Peru's main maritime interests and the relevant provisions of UNCLOS. In particular, it focuses on the main facts of Peru's marine ecosystem and its significance for Peru's national economy, as well as the main aspects regarding the maritime boundary issue between Peru and its neighbors.

2.1 Peru's Maritime Interests

The Peruvian Ministry of Foreign Affairs has set out the protection of Peru's marine ecosystem for the socio economic development of its nation, as the ultimate objective of Peru's maritime interests. It implies that a number of other related interests must be dealt with, for instance the protection of the sea from pollution, the settlement of its maritime boundaries with Chile and Ecuador, the establishment of an effective jurisdiction to enforce national and international law within and beyond 200nm, the control of maritime traffic for safety reasons, marine scientific research activities, and the protection of its economic interests beyond the 200nm including the Area. However, the protection of Peru's marine ecosystem and the establishment of its maritime boundaries with Chile and Ecuador, are the overriding Peru's maritime interests embracing the others (MINRREE, 2001).

2.1.1 Peru's Marine Ecosystem

Peru is a South American coastal State located in the South Eastern Pacific Ocean, with a shoreline 3,080 km long and a coastal area covering 136,370 sq km out of 1,285,221 sq km total area. Peru has a narrow and sharp continental shelf area of 87,200 sq km. Its total population is estimated around 27,483,864 people as of July 2001, out of which 65% live in coastal areas (FAO, 2001). Peru is one of the twelve countries called "mega diverse", and deemed to have one of the most productive fishing areas and one of the richest marine ecosystems worldwide (IMARPE, 2002).

There are two main reasons for the high marine biodiversity of Peru. First, the existence of different eco-regions throughout the country; and secondly, the coastal upwelling adjacent to its coast. An eco-region is a geographical area that is characterized by homogeneous conditions of climate, soil, hydrology, flora and fauna. Five of the eleven eco-regions existing in Peru are located along the coast. The coastal upwelling of the Peruvian Sea is the result of deep oceanic currents colliding with sharp coastal shelves forcing nutrient rich cool water, containing phytoplankton, to the surface. Phytoplankton enriches the whole biomass in the region, feeding a variety of creatures including anchovy, sardines, predatory fish, pelagic species, guano birds, and mammals, among others (IMARPE, 2002).

The marine areas along the Peruvian coast consist of the cold Humboldt Current, the tropical sea and a zone of transition between both of them. The waters of the Humboldt Current are relatively cold with average temperatures between 13° C and 14° C in winter (May to October) and 15° to 17° C in summer (November to April). The Humboldt Current moves from south to north and carries the cold sub-Antarctic and subtropical waters to the coast of Peru causing the low water temperatures necessary for the existence of phytoplankton, and high content of oxygen and carbon dioxide at proper levels. At 5 degrees southern latitude the currents start moving away from the coast towards the Galapagos Islands. These currents occasionally change direction in what is known as El Niño Southern Oscillation (ENSO), when the surface temperature of the water rises up to 22° C in average and the nutrient rich environment that promotes such an abundance of sea-life disappears (HIDRONAV, 2002).

Generally, 900 species of fish, 917 species of mollusks, 502 species of crustacean and 687 species of marine algae can be found within the Peruvian marine ecosystem (IMARPE, 2002). Globally, there are 175 species of marine birds, 95 of which are Peruvian species. The other 89 species are migratory birds (IMARPE, 2002). Most of the pelagic species (tuna, jurel, caballa, cojinova, trout, etc) are part of the food chain of the Peruvian coastal population, accounting for almost 35% of the total consumption of protein (FAO, 2001).

The world's upwelling zones are 66,000 times more productive than the ocean per unit area, in terms of fish yield (IMARPE, 2002). And this bio-system is so enormous and the waters are so full of fish that the Peruvian coastal upwelling accounts for almost 13 percent of the world's total commercial fish catch. It is the most biologically productive example of a coastal upwelling ecosystem on Earth. For these reasons the resources in this ecosystem have

historically been viewed as infinitely renewable (Thompson, 1981). However, it may certainly be depleted as a result of over fishing activities within and beyond Peru's national jurisdiction, as this has already happened in Canada where much of the commercial offshore fisheries have been depleted (FAO, 2002).

On the other hand, the Peruvian economy is fairly modern and reliant on the fishing and mining industries, which have become increasingly market-oriented over the last ten years. A major part of the national GDP of 123 billion USD in 2000 (CIA WFB, 2002) is provided by the industrial sector, which accounts for 42% of the total national exports (7 billion USD) while the service sector accounts for 43% (CIA WFB, 2002). Land mining, fish meal and fish oil, fish processed products, sugar cane, oil, and clothing are the major exporting industries. Mining accounts for about 25% of the national exports, while the fish meal-fish oil and fish products industry accounts for about 13.4% (1.5 billion USD) (CIA WFB, 2002). Today, Peru is the world's second largest fishing nation after China, and the largest exporter of fish meal-fish oil, and fish products worldwide (MEF, 2002). Peru's fishing industry and its related activities are major sources of employment for the Peruvian population, accounting for almost 121.000 people employed. In this context, Peru's GDP is not big enough to absorb a possible loss of such a large and profitable industry (MEF, 2002).

The future development of the fishing industry and its related activities are of high priority for the Peruvian government, since the 85% of the annual fish catch goes for export purposes and the remaining 15% for national consumption (MINPES, 2002). In this sense, Peru has planned to become the world's export leader of fishing products by 2004 on the basis of improving of the added-value level in the fish products, and promoting marine scientific research to ensure the preservation of the marine species (MINPES, 2002).

Peru carries on a sustainable management of the marine ecosystem for the preservation and proper exploitation of the marine species as a matter of major importance within its fisheries policy, since it is a party to the 1992 Convention on Biological Diversity (CONAM, 2002). Peruvian Fishing Law has been designed to maintain the annual take at the maximum sustainable levels in order to ensure the continued existence of the species. This Law is in accordance with the FAO's recommendations for sustainable growth. However, Peru's national law provides no additional measures to ensure the preservation and protection of its

marine resources beyond its national jurisdiction, which represents an important constrain for the protection of Peru's straddling fish stocks during the ENSOs' periods (MARPE, 2002).

Peru's fishing law has limited the over-fishing of anchovy since 1964 when the season began closing for two months during the winter, while limiting the catching of young fish by measuring size. After the impact of the ENSO of 1972, the fisheries law was updated implementing tighter restrictive measures and lengthening season closings, as well as limiting fleet size to reduce the existing over-fishing capacity. Studies indicate that the maximum sustainable harvest is 9.5 million metric tons per year, which is only one fifth of the current industry capacity. Likewise, additional measures were taken by the government to ensure that anchovy is fished at sustainable levels, such as limiting the allowable catch for each vessel, limiting working days to a number of 5, and limiting the season to a fraction of the year. This precautionary approach has permitted Peru to be the world's leading exporter of fish meal and fish oil at present (MINPES, 2002). Peru's Fishing Law also allows foreign countries to carry out fishing and marine scientific research activities within Peru's national jurisdiction on the basis of similar rules to the EEZ regime under UNCLOS. Thus, foreign fishing or scientific vessels must request to the relevant Peruvian authorities the respective license and be subject to the national laws regulating these activities (MINPES, 2002).

Therefore, the marine ecosystem is crucial for the sustainable and socio economic development of the Peruvian nation in light of the closed interdependence between each other, and the importance of the fishing industry for Peru's national economy (MEF, 2002).

2.1.2 Peru's Maritime Boundaries

With globalisation in trade and technology development, the concept of maritime boundaries implies more than just the drawing of a linear limit between countries with opposite or adjacent waters. Governments have to evaluate carefully the purposes and limitations of their maritime boundaries, as well as the efficiency and equitability of their claims. In this sense, UNCLOS bases its provisions on the principle of "equitability" and "equity", which are based on the concepts of "fairness" and "equality" as well. Article 15 of the Convention suggests the principle of the "equidistant line" as criteria for the establishment of maritime boundaries between States with opposite or adjacent TS. Articles 74 and 83 establish that any negotiation

to delimit the maritime boundaries of the EEZ and CS respectively, among member States with opposite or adjacent waters, shall be carried out in an equitable basis (UNCLOS, 1982).

On the other hand, UNCLOS has some weaknesses regarding boundary-making, for instance it provides no binding criteria or other guidelines to people who are responsible for the diplomatic and adjudicative tasks of delimitation (judges, arbitrators); States usually denounce the UNCLOS provisions for settlement of disputes when they become party to the Convention; and it fails to link delimitation settlements with boundaries arrangements for coastal governance (Johnston, 1991). Despite these deficiencies, UNCLOS has coded the principle of "Equitability" as a customary approach for boundary making among States.

At present, Peru has no specific agreements establishing its maritime boundary either with Chile or Ecuador. However, as noted in Chapter One, these countries have assumed the seaward extension of the parallels of latitude delimiting their special fishing zone with Peru as *de facto* maritime boundary with it. Peru has filed statements on the contrary, as it will be discussed in Chapter Five of this dissertation. This situation has placed Peru at a disadvantage in negotiating specific maritime boundary agreements with both countries in the future. In this regard, a number of arguments have been sustained to support the use of these parallels of latitude as *de facto* maritime boundary between Peru and its neighbours. These arguments have been inaccurate for the reasons to be explained in Chapter Five of this dissertation.

Similarly, the 1947 Peruvian Presidential Decree extending Peru's sovereignty and national jurisdiction up to 200nm, provided that such an extension was to be measured following the line of the geographical parallels. Perhaps, this Peru's self-delimitation of its national jurisdiction at sea would have influenced on the decision made by Peru, Chile and Ecuador to use those parallels of latitude to define the special fishing zones in 1954. However, no documentary records exist in this regard.

These special fishing zones were defined as a breadth of sea of 10nm running along either sides of the seaward extension of the parallels of latitude constituting the land borders between Peru-Chile and Peru-Ecuador from 12nm up to 200nm from shoreline (See Maps-Annex D and E). The purpose of this agreement was to create a "flexible fishing zone" beyond 12nm, where small fishing vessels and/or fishing boats with no efficient means for

positioning at sea or accurate navigational aids should not be considered as being violating the national jurisdiction of the neighbouring State (Brousset, 1999).

This lack of clarity on maritime boundary delimitation between Peru and these countries has resulted in Peru's inability to claim its legitimate rights as coastal State over rich marine ecosystems located off the northern Chilean coast and off the southern Ecuadorian coast. The areas off Chile may result from drawing a median line between the parallel of latitude used to define the southern special fishing and a perpendicular line to the Peruvian shoreline, extending seaward up to 200nm from the point called "la Concordia-hito 1". This assumption has been made on the basis of Articles 15, 74 and 83 of UNCLOS, generating two different zones: one of approximately 35.000 sq km (now, under the Chilean jurisdiction) and another of approximately 26.000 sq km (now, under the HS regime), (See Map-Annex F), (Brousset, 1999). These are the areas where Peru's straddling fish stocks use to migrate, when the ENSO phenomenon appears within Peru's national jurisdiction warming up its marine ecosystem, and are deemed to produce around 12 million tons of fish and other mineral resources from the seabed and subsoil per year (IMARPE, 2002). The area off Ecuador may result from drawing a median line from a point called "Punta Capones" on Peru's coastline extending seawards between Santa Clara Island (Ecuador) and the parallel of latitude defining the northern special fishing zone with Ecuador. This assumption is also based on Articles 15, 74 and 83 of UNCLOS, and generates an area of 5.390 sq km (now, under the Ecuadorian jurisdiction), which is deemed to produce approximately 3.5 million tons of pelagic resources per year (Brousset, 1999). This production of fisheries may enhance the food chain of Peru's coastal population and the local economy in northern Peru (MINPES, 2002).

Therefore, Peru has deposited a Declaration with the Secretary General of the United Nations, stating that it does not recognize the parallels of latitude delimiting the special fishing zone established by the 1954 Agreement, as maritime boundaries with Peru-Chile or Peru-Ecuador. It also stated that there is no boundary agreement between them to date.

2.2 The relevant provisions of UNCLOS regarding Peru's Maritime Interests

Having outlined the current situation of Peru's main maritime interests in the last section of this chapter, this section will review the relevant provisions of UNCLOS.

2.2.1 The Territorial Sea

Before reviewing the definition of Territorial Sea (TS) according to UNCLOS, it is important to know that Peru did not sign the 1958 United Nations Territorial Sea Convention, in light of the position assumed in its 1947 Presidential Decree extending its national jurisdiction up to 200 nm, and the failure of this Convention to ensure the protection of marine resources for the socio-economic development of a nation (Arias-Schreiber, 1990).

Likewise, Article 54 of Peru's current national constitution establishes that (in translation):

> The national territory is inalienable and inviolable. It includes the surface, subsurface, maritime domain and air space above them. The maritime domain of the State includes the adjacent seawaters to its coastline, the seabed and subsoil, up to a distance of 200nm measured from the base lines established by law. The State exercises sovereignty and jurisdiction in its maritime domain, without hampering the freedom of international communication, in conformity with international law and treaties ratified by the State. Likewise, the State exercises sovereignty and jurisdiction over the air space above its territory and adjacent seawaters up to a distance of 200nm, without hampering the freedom of international communication, in conformity with international law and treaties ratified by the State" (Peru's National Constitution, 1993).

At first sight, it seems that Peru claimed a TS jurisdiction over its adjacent seawaters; however, its national law does not provide for some essential elements that a TS regime should have in accordance with UNCLOS, for example Peru's national law does not provide for the right of innocent passage as it is internationally established either by UNCLOS or customary law, instead it provides for the right of freedom of communication (meaning as freedom of navigation) throughout its entire maritime domain. This right of freedom of communications is not ruled in Peru's national law, meaning that it may be interpreted as a full freedom of navigation of foreign vessels within Peru's national jurisdiction. Similarly, Peru's national law does not impose stricter national standards on shipping than those provided by international law for the EEZ regime. Although in practice, Peru has implemented a maritime traffic control regime over its entire maritime domain for the purposes of traffic control and search and rescue operations. This regime requires ships to comply with the international standards regarding safety of navigation and marine pollution prevention, without imposing stricter regulations regarding ship's construction, design, machinery or manning than those established by the international conventions concerned. In

fact, this constitutional Article is deemed to reflect the purposes of the 1947 Presidential Decree, which represented the original claim of Peru as 200nm.

On the other hand, Dr. Patricio Rubio defines the term "Domain" as the capacity of a State to legislate over a territory under its jurisdiction, without assuming its ownership. It means that, the term "Domain" does not imply the right of property of the State over a territory subject to its domain. In fact, Article 54 provides that Peru's sovereignty and national jurisdiction over its maritime domain are to be exercised without hampering the freedom of communications (navigation) and with due regard to international law, which suggests that Peru's national law is to apply international standards over the entire national jurisdiction. Thus, Peru's maritime domain should be understood as the power of Peru to exercise its national jurisdiction over its adjacent seawaters according to its national law applying international standards, without assuming ownership over such an area. Therefore, Peru has a *sui generis* jurisdiction over its maritime domain, where it applies international standards regarding the uses of the sea through its national law.

On the other hand, the basic jurisdictional framework of rights, freedoms and responsibilities of States regarding the TS concept is laid down in Part II, section 2 of UNCLOS. It establishes that the jurisdiction of a coastal State extends beyond its land territory and its internal waters to an adjacent belt of sea, described as the TS. Article 3 defines it as follows: "Every State has the right to establish the breadth of its territorial sea up to the limit not exceeding 12 nautical miles, measured from the baselines determined in accordance with the Convention". This sovereignty extends to the air space over the territorial sea and its bed and subsoil. The baselines as described in Articles 5 and 7 of UNCLOS may be drawn as "normal baselines" or/and "straight baselines", depending on the country's coastline configuration. The waters enclosed by these baselines are called internal waters, being under the same legal regime as in the land territory. The TS regime involves duties as well rights for a coastal State.

The delimitation of the TS is an essential aspect for any developed, undeveloped or developing coastal State, since maritime boundary delimitation has been one of the hardest issues to negotiate among States with adjacent TS, for example the International Court of Justice (ICJ) has heard more than 15 cases to date and it is deemed that there are still around 100 different cases waiting to be analysed (ICJ, 2002). Article 15 of UNCLOS establishes that no state has the right to extend its territorial sea beyond the median line every point of

which is equidistant to the nearest point on the baselines from which the breadth of the territorial sea is measured. This provision does not apply where it is necessary by reason of historic title or other special circumstances (geographic particulars of the coastline, islands, etc) to delimit the territorial seas of the two states in a way, which is at variance therewith. In this sense, it is important to note that most of the parties to UNCLOS and all other States recognising its lawfulness, have claimed a TS at least up to 12 nm (Churchill, 1999).

The navigational right of Innocent Passage (IP) of ships is inherent to the TS concept as defined in the Part II, section 3 of UNCLOS. This right can be exercised by all foreign ships, including warships, while complying with the coastal State legislation enacted to regulate such a right and the provisions established in the UNCLOS to ensure the security, peace and good order of the coastal State. Foreign submarines may also exercise this right, but they must navigate on surface flying their flag. The coastal State may demand that any foreign ship leave its Territorial Sea and/or apply its full jurisdiction over that ship, and even arrest it if, it does not comply with its legislation regarding Innocent Passage (Churchill, 1999). For any coastal State to exercise its jurisdiction over foreign ships within its TS as provided in UNCLOS, it should claim TS when becoming party of the Convention. Today, a TS of 12nm is essentially customary law, where the State may impose stricter standards on shipping regarding to safety and pollution prevention matters than those required under international law, but not for aspects related to ship's construction, design, engineering and manning.

Another matter within the scope of the TS concept also relevant to the Peruvian maritime interests is the coastal State jurisdiction over marine pollution matters. Article 194 of UNCLOS places responsibility on coastal States to take, individually or jointly, all necessary measures to prevent, reduce and control pollution of the marine environment from any source, as well as to ensure that activities under their jurisdiction are so conducted as not to cause damage by pollution beyond the areas where they exercise sovereign rights. It means that a coastal State may exercise legislative and enforcement jurisdiction for pollution matters within 200nm, including its TS. It is important to note that a coastal State may exercise legislative and enforcement jurisdiction for ship's pollution matters in its TS according to its national law, which may be stricter than those applied under international law. Within its EEZ the State is to apply only international standards in this regard through its national law. When implementing international regulations on pollution matters into its national law a coastal State must be careful in providing judicative standing to its national courts to try

pollution offenses within their respective jurisdiction. It should be noted that the sovereignty that a coastal State may exercise over its TS is a bit weaker than the one it exercises over its land territory due to the right of IP of ships.

In this regard, Peru has ratified most of the key conventions regarding marine pollution, such as: 1969 Civil Liability Convention, including the 1976 protocol, MARPOL 1973/78 (annexes, 1,2,3,4,and 5), the 1992 Biological Diversity Convention and its Protocol on Biological Safety, and OPRC 1990. These Conventions have already been implemented into its national law, enabling Peru to enforce them throughout its national jurisdiction according with their scope of application. However, Peru encounters some legal constrains in carrying out proceedings against offenders successfully, since all these Conventions are based on the definitions of TS, EEZ, and HS as provided by UNCLOS and Peru holds a different maritime regime as defined in Article 54 of its national constitution. It suggests that, offenders may not recognize Peru's national law beyond 12nm, if it imposes stricter regulations than international law. For instance, if Peru wants to apply the CLC 1969 Convention to a pollution incident caused by a foreign vessel anywhere beyond 12nm in light that Peru has not claimed TS. Then, its national law enacting the CLC 69 provisions may not be recognized by the offender to compensate victims for pollution damages, since the incident occurred outside the internationally recognized breadth of TS. In addition, Peru is not party either to the 1971 or CLC/FUND 1992 Conventions, placing the country at a disadvantage in case of major pollution damage caused by an oil spill in its national jurisdiction beyond 12nm. Particularly, in cases where a State owned tanker ship is involved in a commercial voyage, since no financial security to cover any possible pollution damage is required under the CLC69 Convention to which Peru is subject to. Despite these facts, Peru is covering most of the key aspects of marine pollution prevention and remedial actions into its national law.

2.2.2 The Contiguous Zone

The basic jurisdictional framework of rights, freedoms and responsibilities of states regarding the Contiguous Zone (CZ) is laid down in UNCLOS Part II, section 4, Article 33, which defines it as a belt of sea up to 12nm adjacent to the outer limit of the TS with a maximum extension of 24nm overall measured from the baselines of a coastal State. This is a zone that must be claimed if a State wants to exercises jurisdiction to prevent the infringement of its customs, fiscal, immigration or sanitary laws within its territory or TS. It also allows the

coastal State to punish such offences when committed within these areas. It means that the coastal State has enforcement jurisdiction in these matters, but only for offences that have an effect or will have an effect of breaching a law in its territory or TS, not in respect of anything done within the CZ itself. However, illegal traffic of narcotics is being internationally deemed to fall within the scope of offences against sanitary law and therefore under the enforcement jurisdiction of the coastal State (Churchill, 1999). In this regard, Peru has ratified and implemented into its national law the 1988 Suppression of Unlawful Acts Convention in order to counter act drug smuggling and other unlawful acts at sea effectively.

It should be noted that, a coastal State may enforce its national law enacting international standards to prevent and take remedial actions regarding marine pollution matters as provided in Part XII of UNCLOS. For this matter and others than listed under Article 33, the CZ is considered to be under the scope of the EEZ regime (Churchill, 1999). Lastly, the coastal State has jurisdiction for controlling the removal of archaeological and historical wrecks in the CZ, in accordance with Article 303 of the Convention. This Article provides that States have the duty to protect objects of an archaeological and historical nature found at sea and are obliged to co-operate for this purpose, as well as, if the removal of such objects is conducted without its authorization, it would be presumed as an infringement against its national law.

2.2.3 The Exclusive Economic Zone

The basic jurisdictional framework of rights, freedoms and responsibilities of States regarding the EEZ is laid down in Part V of UNCLOS. However, the complexity of the EEZ regime also involves the provisions of all parts of the Convention, other than Part XI dealing with Area, in light of its socio-economic significance and multifunctional nature. The breadth of the EEZ regime is defined in Article 57 of UNCLOS. It cannot extend beyond 200nm from the baselines of the coastal State. However, the EEZ regime is measured from the outer limit of TS, meaning that the breadth of the EEZ may be more or less than 188nm, since the outer limit of the TS may be up to 12nm (Churchill, 1999).

The EEZ regime recognizes the coastal State's sovereign rights over the marine living resources found up to 200nm, as well as its exclusiveness for matters related to scientific research, artificial islands, etc. It originated as a result of previous wider claims made by some coastal countries such as Peru, Chile, and Ecuador for the protection of their marine

resources at sea (Arias-Schreiber, 1990). It is a *sui generis* concept in the sense that a coastal State does not enjoy the same rights as in its TS, but has sovereign rights to explore, exploite, conserve, manage and utilize the marine resources within its EEZ. Likewise, foreign States may exercise a wider range of freedoms than in the TS of the coastal State, but not as widely as they do in the HS. The freedom of fishing is not included for instance. Some publicists argued that Articles 55 and 86 clarify that the EEZ does not have any residual HS character. Equally it is also clear that the EEZ does not have a residual TS character, which has created the presumption that any activity not falling within the clearly defined rights of non-coastal States would come under the jurisdiction of the coastal State (Churchill, 1999).

A State has responsibility for marine environment protection limited to international standards. Similarly, all States enjoy in the EEZ navigational and other communication freedoms. Land locked countries and other geographically disadvantaged countries have specific rights of participation in fisheries and marine scientific research activities, if it is agreed with the coastal State involved. It is important to note that, the EEZ needs to be claimed by the coastal State, although it is a concept customarily accepted as an inherent right of all coastal States irrespective of acceptance of UNCLOS (Kwiatkowska, 1989).

As noted above, the coastal State has "sovereign rights" to explore, exploit, conserve and manage the living and non-living resources in the EEZ including the seabed and subsoil. Article 56 establishes sovereign rights with regard to other activities for the economic exploration and exploitation of the EEZ, such as the production of energy from the water, currents and winds. This provision reflects the developments in technology and the opportunity for States to take advantage of them. The same Article and Article 60 also provides "exclusive rights" to the coastal State with regard, not only to the establishment and use of artificial islands, installations and structures, but also to authorize and regulate their construction, operation and use by other states. These rights apply to structures used for exploring and exploiting natural resources in the Continental Shelf. They are to be exercised with due regard to safety of navigation and pollution prevention standards.

Likewise, UNCLOS also gives the coastal State, jurisdiction to regulate, authorize and conduct marine scientific research in its EEZ, authorizing other states to conduct pure research in its EEZ subject to its national law, but withholding its consent to resource-oriented research. Finally, Part XII of the Convention confers on the coastal State limited

legislative and enforcement jurisdiction according to international standards for the protection and preservation of the marine environment in its EEZ. It enable a coastal State not only to arrest a vessel alleged to have violated the pollution international standards, but also to establish proceedings against it according to international law.

UNCLOS also provides rights and obligations to coastal States for the preservation and utilization of marine living resources in its Articles 61 and 62, establishing that the coastal State must determine the allowable catch of fisheries in its EEZ to ensure its proper conservation and management, avoiding its overexploitation. To do so, the State is required to enhance the exchange of the available scientific information, statistics of catch and fishing efforts, and other relevant data to the conservation of fishing stocks with the competent international organizations, and other states whose fishing fleets are allowed to fish in the EEZ of the coastal State under its national law or regional agreement. In other words, the State is to ensure the preservation and proper management of those fishing stocks within its EEZ, and those considered as straddling fish stocks and highly migratory species beyond its EEZ under the 1995 Straddling Fish Stocks and Highly Fish Stocks Agreement. This is an instrument that it is not part of the Convention, but has to be interpreted and applied in the context of and in a manner consistent with it. Similarly, the State is required to determine the actual fishing capacity needed according to the availability of fish stocks in its EEZ, and allow foreign fishing fleets to capture part of the surplus of fish stocks under due national law or bilateral/regional agreement. It should be borne in mind that, the management of these activities is always under the responsibility of the coastal State, meaning that the nationals of other states fishing in its EEZ must comply with the conditions and regulations established by the coastal State's national law.

Likewise, Article 63 provides that States with adjacent EEZ sharing the same fish stocks or associated stocks, must co-operate either directly or through the competent international organization to agree upon the measures necessary to coordinate and ensure the proper management for the conservation and development of such stocks. The same Article and Article 64 also establish obligations on the coastal State to co-operate, either directly or through the competent international organization, to ensure that nationals of other States fishing in areas beyond the EEZ straddling stocks of highly migratory species listed in Annex One to the Convention comply with the conservation measures. In this sense, UNCLOS and the 1995 Fish Stocks Agreement promote the establishment of sub-regional and regional

arrangements, to preserve the marine life resources within the states' EEZ and beyond them. In this regard, Peru, Chile, Ecuador, and Colombia have recently adopted the 2002 Santiago Declaration on August 14, in which they have stated their wish to establish cooperative measures for the protection of straddling stocks and highly migratory species in areas nearby the outer limit of their EEZ, in addition to those preventive measures accorded in the 1952 and 1954 Conferences for the protection of the marine resources in the South Pacific held by Peru, Chile and Ecuador. Further, this Declaration seeks to compliment the actions that have already been taken by the CPPS, and call upon developed States to participate in marine scientific research activities in this regard (EL COMERCIO, 2002).

Articles 69 and 70 of UNCLOS also provide rights to land-lock countries to participate, on an equitable basis, in the exploitation of the surplus of marine living resources in the EEZ and areas beyond it, under proper agreements with the coastal States concerned. These rights must be exercised according to the limitations established in paragraphs 2 and 3 of Article 69. Likewise, Article 71 provides coastal State with the right to withdraw itself from the compliance with article 69, if its economy depends entirely on the exploitation of the marine resources in its EEZ. Further, Article 72 establishes that land-lock countries are not allowed to transfer the rights of exploitation of marine resources in the EEZ of any state or beyond it, directly or indirectly to any other state neither by licensing, concession, joint-ventures, or any other method of rights-transferring, unless a proper agreement with all states concerned exists.

On the other hand, Article 297 provides that a State is not obliged to accept the submission of settlement of disputes relating to its sovereign rights over the living resources in its EEZ, including its discretionary power for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other states, and the terms and conditions established in its conservation and management laws, to any binding decision regarding the settlement of disputes. A Conciliation Commission may hear a dispute in this regard, but its decisions cannot substitute in any case the discretionary right of the coastal State in this regard (Churchill, 1999). In this sense, it should be noted that conflicts may always arise between the rights of the coastal States and the rights of other States, which are mostly regulated by the provisions of UNCLOS, and solutions may be reached. However, in some cases it contains no specific rules to avoid conflicts of use. For example, it is unclear to whether and to what extent a coastal State may, as a part of its sovereign rights to exploit and manage living resources, regulate foreign shipping in order to minimise conflicts with fishing in its

EEZ, for instance hampering the freedom of navigation by requiring ships to avoid areas where there are standing nets or which are important spawning and nursery grounds for fish.

Lastly, the aspects of delimitation of the EEZ between States with adjacent or opposite seawaters is also relevant to Peru's maritime interests. The following criteria are provided by UNCLOS on a basis of the principles of "Equitability" and "Equity" for the settlement of disputes, in order to achieve an equitable solution to both States (Article 74). The first one is based on the principle of equidistance, which is directly related with the median line, every point of which is equidistant to the nearest point on the baselines from which the breadth of the outer limit of the TS is measured (Article 15). The second one is by carrying out meaningful negotiations in good faith, pursuing to achieve an agreement between both States within a reasonable period of time (Article 74). The third one is regarding to the establishment of provisional delimitation arrangements, while the negotiations pursuing a definitive agreement between both States are being carried out. If, no agreement is achieved within a reasonable period of time, both States are then to be subject to the provisions of Part XV of the Convention, which establish peaceful means for the settlement of disputes through the establishment of a Conciliation Commission, an Arbitral Tribunal, or the trial by the International Court of Justice (Article 74). It is important to note that States may be subject to the provisions of Part XV of UNCLOS only, if they agree to do so. Finally, if a boundary agreement between both States is in force at the moment that the disputes arise, the States must be subject to that agreement in order to achieve an equitable solution to the dispute.

In addition to all the benefits that the EEZ brings to coastal States, it is important to be aware of the universal establishment of the EEZ regime among states, embracing about eighty percent of the world's known oil deposits, and about ten percent of manganese nodules. Furthermore, most the marine scientific research activities take place within the EEZ area, and almost all major shipping routes of the world pass through the EEZs of States, when engaged in international trading. Therefore, the EEZ regime is of major importance, in light of the large number of activities carried out within them (Churchill, 1999).

2.2.4 The Continental Shelf

The basic jurisdictional framework of rights, freedoms and responsibilities of states regarding the Continental Shelf (CS) is laid down in Part VI of UNCLOS. However, the complexity of

this regime also involves the provisions of some other parts of the Convention other than Part XI dealing with the Area. The CS regime is also important for the significance to the socio economic development of a coastal State. The definition of the CS is set out in Article 76 of the Convention, which establishes that the CS of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its TS throughout the natural prolongation of its land territory to the outer edge of the continental margin or to the distance of 200nm from the baselines from which the breadth of its TS is measured where the outer edge of the continental margin does not extend up to that distance (UNCLOS, 1982). It means that the breadth of the CS may be up to a distance of 350nm at the most, when the CS goes beyond the outer limit of the EEZ. These principles are now part of the international customary law.

Thus, Peru may be able to exercise national jurisdiction under the CS regime up to 200nm from its shoreline, despite the fact its CS is narrow. The Convention provides coastal States with "sovereign rights" for exploring and exploiting all natural resources on the seabed and its subsoil, including jurisdiction in connection with the prevention and punishment of violations of any applicable national law. Fisheries stocks are not included in this regime, but a limited jurisdiction over wrecks out of 24nm is also provided in Article 303. Equally, UNCLOS provides coastal States with "exclusive rights" over the CS, not only to establish and use artificial islands, installations and structures, but also to authorize and regulate the construction, operation and use of them by other states. These rights also apply with regard to exploring, drilling and exploiting activities, which must be exercised with due regard to safety of navigation. Likewise, the Convention provides coastal States with jurisdiction to regulate, authorize and conduct marine scientific research in its CS, authorizing other states to conduct pure scientific research in there. These CS rights do not depend on occupation or proclamation, but automatically attached to the coastal State (Churchill, 1999).

2.2.5 The High Seas

The basic jurisdictional framework of rights, freedoms and responsibilities of States with respect to the High Seas (HS) is laid down in Part VII, Section 1 and 2 of UNCLOS. Part VII provides the four customary freedoms of the HS. These are: the freedom of fishing, freedom of navigation and over flight, freedom to lay down communication cables and pipelines, and freedom to conduct marine scientific research activities. These rights granted to all States in the Convention do not apply, as such, in TS, or inland waters; however, some of them do in

the EEZ subject to the rights of the coastal State. These are: freedom of navigation and over flight, and freedom to lay down communication cables and submarine pipelines. The freedoms in the HS are subject to the requirement of due regard for the interests of other States in their exercise of the HS freedoms under the Convention. No State may subject any part of the HS to its sovereignty, or prevent any ship of other States from using the HS for any lawful purpose. As the HS is deemed to be a cornerstone of modern international law, the customary international law is reaffirmed (Churchill, 1999).

The Convention is explicit that all States have the right to fish on the HS subject to any treaty obligations, or coastal State's rights or duties. However, all States are under a duty to co-operate with each other to take such measures as may be necessary for the conservation of the living resources of the HS (Churchill, 1999). Excellent examples of such co-operation may be seen in the regional and sub-regional agreements resulting from the implementation of the 1995 Fish Stock Agreement among States, as well as the EU Regulations issued as a result of the 1995 Canadian/Spanish fish war, such as the European Council Regulation (ECR) 850/95, which lays down the management measures to be adopted by EU fishing vessels in the North West Atlantic Fisheries Organization (NAFO), and ECR 847/96, which set the Total Allowable Catch (TAC) regulations for that area (Newton, 1998).

As noted above, all States, whether coastal or not, have the right to exercise the HS freedoms, but subject to the "due regard" obligation. This obligation may be read as "reasonable regard" as to protect the interests of other States exercising not only the freedoms of the HS but also their rights regarding the Area according to Article 87 (2) of UNCLOS (PUCP, 2002). Thus, when there is a potential conflict between these two uses of the HS, there should be a case-by-case weighing of the actual interests of the States concerned, in order to determine which use is the more reasonable in that particular situation, for instance weapon testing activities, or the right of immersion versus the right of laying down submarine cables and pipelines (Churchill, 1999). The freedom of fishing in the HS is subject to a general duty to agree upon measures necessary for the conservation of the HS fisheries. It is regulated in Articles 63 and 116-120 of UNCLOS, but amplified by the 1995 Straddling Stocks and Highly Migratory Species Agreement. The exercise of the HS freedoms is also subject to general rules of international law, such as those governing the use of force. In this sense, Article 88 of the Convention establishes that the use of the HS must be reserved for peaceful purposes, which is commonly regarded as prohibiting any kind of acts of aggression in the HS (PUCP, 2001).

Generally speaking, a State has jurisdiction in the HS over the vessels flying its flag only. Thus, the flag State has legislative and enforcement jurisdiction over its vessels anywhere based on the doctrine of "floating island". This exclusiveness entails responsibilities with regard to adopting and enforcing legislation, to ensure the compliance with the international duties concerning the safety at sea and the rendering of assistance to ships in distress, as provided in Articles 94 and 98 of UNCLOS. The exclusiveness of the flag State's jurisdiction is not absolute. It admits several exceptions, where flag States has shared enforcement and judicative jurisdiction with other states in matters, such as collisions, piracy, drug trafficking, slave trading, unauthorized broadcasting, ships of uncertain nationality, stateless ships, and pollution incidents, among other exceptional cases (Churchill, 1999).

In this sense, the right of hot pursuit plays an important role in the coastal State's enforcement jurisdiction against foreign ships, because this State may initiate the pursuit of a vessel when there are clear grounds for believing that the ship has committed a violation against its national law or regulations in its territory, IW, TS or CZ according to Article 111 of the Convention. A coastal State may also exercise this right in its EEZ and CS, when the hot pursuit action has been commenced in the TS without being interrupted (PUCP, 2001).

2.2.6 The Right of Access of Land-Locked States to and from the Sea and their Freedom of Transit

The basic jurisdictional framework of rights, freedoms and responsibilities of States regarding the rights of access of land-locked States to and from the sea including freedom of transit is laid down in Part X of UNCLOS. Articles 69 and 70 of the Convention provides for the participation of these States, on an equitable basis, in the exploitation of the surplus fish stocks in the EEZ and areas beyond under proper agreement with the coastal State involved. Articles 124-132 outline the right of these States to exercise freedom of transit and navigation to and from the sea of the coastal State and its territory, by any means of transportation. The conditions and methods for exercising this right are to be established by agreement with the coastal State concerned. This agreement must safeguard the interests of the States in transit and not prejudice them in any way. This right of transit must not be subject to any kind of taxes or customs duties, except those fees resulting from specific services provided to the vessel in transit by the coastal State. UNCLOS also allows the establishment of duty-free zones and other facilities, if the States agree to do so. The rights and facilities given to these

States to exercise its freedom of transit cannot be transferred directly or indirectly to any other State by licensing, concession, or any other method of rights-transferring, unless an agreement allowing such transference is in force between the States involved (PUCP, 2001).

In this regard, the governments of Bolivia and Peru adopted in January 1992 a 50-year renewable agreement permitting the former to establish customs and shipping operations in a duty-free area and industrial park in the Peruvian port of Ilo situated 1,260 km south of Lima and 460 km west of La Paz. In addition, Peru conceded to Bolivia a tourist zone for 99 years together with 5 km of Ilo coastline as private property. This area is called "Playa Boliviamar." In return, Peru received similar facilities at Puerto Suarez on the Paraguay River at the border with Brazil to promote Peruvian trade with Argentina, Brazil and Paraguay (Perez de Cuellar, 2001). Additionally, both governments are negotiating the concession of a 1,400 hectare area to establish a natural gas processing plant, allowing Bolivia to freely trade this commodity with Asian countries and the USA.

2.2.7 The Area, the International Seabed Authority, and the Enterprise

The basic jurisdictional framework of rights, freedoms and responsibilities of States regarding the Area, and the functions of the International Seabed Authority (ISA), and the Enterprise (E) is laid down in Part XI of UNCLOS. Article 136 establishes the status of the Area and its resources as the "Common Heritage of Mankind". This means that all solid, liquid or gaseous minerals *in situ* in the Area at or beneath the seabed, including poly-metallic nodules, are the patrimony of all countries and cannot be claimed by any one State, although no precise definition in the Convention either of the concept of "patrimony" or "mankind" has been provided. In this respect, Scovazzi points out that the word "patrimony" for the purpose of the Convention means an asset which shall be adequately managed today for the future generations, and the word "mankind" which seems to be referred to "all individuals" means an International Organization which takes care of the Area in the interests of all states, in a clear reference to the International Seabed Authority (ISA) (Scovazzi, 2000).

The principles supporting the regime of the Area are two. First, the Area must not be property of any State and no State should assume its ownership; and secondly, the indivisibility of the Area and its use for peaceful aims. These principles take place within an international legal framework requiring data and information exchange, transference of technology, coordinated

policy-making actions for marine pollution prevention, and preservation, conservation, utilization, and management of natural resources among States (Scovazzi, 2000). The general conduct of the States in relation to the Area must be in accordance with the principles embodied in the Charter of the United Nations to maintaining peace and security, and promoting international co-operation and mutual understanding (Churchill, 1999).

The Convention established ISA to act on behalf of mankind for the purposes of planning, organizing, and monitoring all the activities in the Area. It has its headquarters in Kingston, Jamaica. These activities are to be carried out for the benefit of mankind as a whole by an organ of ISA called the "Enterprise", which performs all the planned activities in the Area directly, pursuant to Article 153 of UNCLOS detailing the powers and functions of ISA regarding to the Area. To date, ISA has held six sessions since its establishment, having adopted the "Mining Code" for exploration and exploration activities in the seabed in its last meeting (Pérez de Cuellar, 2001). Finally, UNCLOS establishes procedures for the settlement of disputes regarding the Area in its Articles 186-191, which are to be exercised by a special court of the International Tribunal of the Law of the Sea appointed for such a purpose.

The 1994 Implementing Agreement of Part XI of UNCLOS has further developed the provisions regarding the Area. It incorporates legally binding changes on Part XI, and is to be interpreted and applied together with the Convention as a single instrument. However, in the event of any inconsistency between the Agreement and Part XI of the Convention, the provisions of the Agreement must prevail. Furthermore, after its adoption any ratification or accession to UNCLOS represents also consent to be bound by the Agreement, and no State or entity can establish its consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention. Following its entrance into force in July 1996, States that were parties to UNCLOS prior to the adoption of the Agreement now have to establish their consent to be bound by the Agreement separately, by depositing an instrument of ratification or accession.

This implementing Agreement embodies sound market oriented principles for administering the Area, enabling member States to participate in the substantive administering decisions on the Seabed regime. ISA is to develop rules and regulations for commercial ocean mining based on sound commercial and economic principles. Specifically, the Agreement provides for a market-oriented management of the deep seabed resources, the distribution of revenues

accumulated as a result of royalties on the basis of a consensual decision of the ISA council, the creation of the "enterprise" of ISA for carrying out exploring and exploiting activities when doing so is profitable for all member States only, the voluntary transference of technology to the enterprise from private contractors, establishing only a general obligation of cooperation in this regard, and ensuring member States a seat on the ISA Council where substantive decisions are made by a voting arrangement. These provisions are also relevant to Peru's interests in light of the importance of the mining industry for its national economy and the potential consequences that the oceanic mining may have in the world market of land mining products for the technological developments in the field (PUCP, 2001).

2.2.8 The Settlement of Disputes

The basic jurisdictional framework for the settlement of disputes arising between member States is laid down in Part XV of UNCLOS. An "international dispute" is defined as a matter of law, fact, opposite thesis, or conflict of interests between Sates concerned (PUCP, 2001). Apparently, a literal interpretation of the provisions regarding the settlement of disputes is to be enough to come up with a fair solution to a case; however, it may be more complex than one can imagine (Perez de Cuellar, 2001). In this connection, Part XV obliges States to settle any disputes resulting from the interpretation or application of the Convention by peaceful means, through the method established by them or in accordance with the mechanisms provided in UNCLOS. The latter takes place if the parties achieve no solution to settle the dispute or the time allowed to reach an agreement is exceeded. Then, member states are obliged to follow the procedures embodied in the Convention without delay.

When a dispute arises, member States are obliged to exchange diplomatic notes expressing their position regarding the issue matter of dispute to solving the issue through negotiations or another peaceful mean. There are two different procedures provided by the Convention for the settlement of disputes. First, the States may agree to be subject to obligatory procedures leading to a non-legally binding decision to the parties, as it is in the case of being subject to a conciliation commission. The final report of a conciliation commission is not binding on any of the parties, but the obligation to reach a definitive solution exists. Then, parties must follow the procedures established in Part XV of UNCLOS if the dispute still persists. Secondly, the States may agree to be subject to obligatory procedures leading to a legally binding decision on the parties, as it is when parties are subject to a final decision of the

International Court of Justice, or the International Tribunal of the Law of the sea. Parties may also choose the way of arbitration, when they have failed to agree on the selection of the procedure to be subject. Once parties have agreed on which procedure they are going to use, the competent court or tribunal must carry out the trial and make its decision on the basis of UNCLOS and those established in the international law (PUCP, 2001).

Finally, the Convention admits no exceptions to any of its provisions when a country is becoming party to it. It is deemed to be an integral and comprehensive international instrument meeting all States' interests in the sea. It is a "package deal". However, it admits tacitly some exceptions regarding the procedures for the settlement of disputes leading to legally binding decisions, which States are obliged to comply with. In this sense, States may declare such exceptions when signing, ratifying, and acceding or while being party to the Convention, as well as, States may withdraw them at any time in the future. In fact, many States have done so. The exceptions that a State may declare are: the provisions regarding to the procedures for the settlement of disputes on the delimitation of the TS, CZ, EEZ, and CS. It may also declare to be exempted from the application of Part XV on matters regarding the settlement of disputes related to military activities or matters under the responsibility of the UN Security Council within its national jurisdiction (Perez de Cuellar, 2001).

At this point of the dissertation, it should be highlighted that this Convention constituted the major political and legal achievement of the International community to date. At present, UNCLOS is considered to be the Constitution of the Oceans binding upon all States, whether they are party or not to the Convention, in light of the wide international acceptance of most of its provisions, particularly those regarding the EEZ regime and the legal framework for the protection and preservation of the marine environment, as part of the customary international law. Others, such as those related to the Area, aim for the progressive development of the Convention according to the world's technological and environmental developments to become part of the general practice as well. Therefore, countries holding unilateral positions in this regard are every day less accepted and supported by the international community, for which Peru should reassess the possibility of acceding to UNCLOS to consolidate its national efforts in protecting its maritime interests to date.

Chapter Three

The Peruvian Claim and the Law of the Sea

At this point of this dissertation, the Peruvian maritime interests and the relevant UNCLOS provisions have been reviewed, providing a fair idea about the significance of Peru's marine ecosystem for the socio economic development of its nation. This Chapter briefly outlines the history of maritime claims and the Law of the Sea. It then reviews and discusses the 1947 Peruvian maritime claim as of 200nm, Peru's advocacy supporting its thesis at the national and international levels, Peru's participation in the *travaux préparatoire* for the Third United Nations Conference on the Law of the Sea, and the Conference itself, in order to present the importance of Peru's role for the recognition of the coastal States' interests and rights at sea, and the incorporation of the principles of the 200nm thesis into UNCLOS 1982.

3.1 The Law of the Sea and Maritime Claims

The coastal States' efforts to develop a set of rules governing the seas accounted for several centuries until the adoption of UNCLOS in 1982. Some publicists have argued that there has been some debate on the nature of States' claims over ocean spaces, since the times of colonization by ships. Historically, the claims over sea areas have been summarized as a result of commercial and military security interests of States. Hugo Grotious sustained in his book "De Mare Liberum" (1609), that the seas were free and open to all States, and no State can assume ownership over them in any way (Brousset, 1999). The main right protected by Grotious' doctrine was each State's freedom of navigation on the oceans. Other publicists argued that coastal States also have vital maritime interests for the protection and development of their nations, for which they should enjoy special rights over the sea. These issues were finally addressed successfully by UNCLOS 1982 (PUCP, 2001).

The States' interests noted above were in relation to the extension of the TS from their shoreline. During the 17th and 18th centuries the doctrine of the "cannon shot" prevailed. It was based on the distance that the State could cover with a shot from its coastline. Then, the customary breadth of the TS agreed under this theory was of 3nm. However, the continuous

claims and initiatives raised by many states pursuing a wider TS for the protection of fisheries and its coastlines from foreign navies, as well as other interests related to sanitary aspects, customs, law enforcement, and the protection of marine resources, brought the issue of the TS under the attention of the international community (Brousset, 1999).

Since many of these claims worked against shipping interests creating conflicts between States, the League of the Nations tasked a committee of experts on international law in 1927 to codify the existing international law regarding the seas and oceans. So, the League of the Nations convened an International Conference for the Codification of International Law in 1930 (Brousset, 1999). The proposals submitted by the 48 participant States and the opinions expressed during the Conference showed that the TS claims ranged from 3 to 12nm, out of which 23 States also proposed a CZ of double extension of their TS to control fishing activities in particular. The variety of proposals regarding the breadth of the TS showed that no customary law on the issue was in place to that date; and therefore no agreement in this regard was reached at the Conference. Despite this fact, the concept of TS as a belt of sea adjacent to the State's coastline was reaffirmed (Brousset, 1999).

During the following decade a series of events took place, developing the Law of the Sea regime. In October 1939 in Panama, the ministers of foreign affairs of the American nations made a joint declaration claiming a security zone at sea between 300 and 1200nm to protect the American hemisphere from any foreign attack in light of the beginning of the Second World War. It was called the "Panama Declaration". This initiative was refused by Germany and the United Kingdom, leading the USA to abandon it one year later (Brousset, 1999). Similarly, the United Kingdom and Venezuela signed an Agreement on the Submarine Areas of the Gulf of Paria in 1942, reserving the exclusive rights of exploration and exploitation of the mineral resources in this area to themselves, although it was far beyond the national jurisdiction of Venezuela. The basis of this Agreement was the consideration of such an area as *res nullius;* and therefore, subject to any State's jurisdiction through effective occupation. In 1945 the USA President issued two Declarations claiming sovereignty over its CS.

3.2 The Peruvian Thesis for the 200nm Claim

The 200nm thesis was preceded by the Declarations issued by the USA President in 1945, known as the "Truman Declaration". This initiative seek to preserve and exploit all natural

resources found in the USA's CS and its subsoil in light of the large CS containing oil reserves that this country has, as well as to establish protected areas extending out to 200nm to preserve fishing stocks; particularly, the salmon stocks in Alaska (PUCP, 2001).

The US position was not based on principles recognized by the customary or conventional international law, but on the rationale that these claims were absolutely essential to protect its vital interests as coastal State (PUCP, 2001). In response to these Declarations, Mexico produced a Presidential Decree establishing its sovereignty and jurisdiction over its adjacent seawaters and CS to supervise, control, and establish special fishing areas to preserve its marine living resources (PUCP, 2001). Likewise, Chile promulgated a Presidential Decree on June 23, 1947, declaring the extension of its national sovereignty and jurisdiction up to distance of 200nm from its coastline to preserve, conserve, explore, and exploit all natural resources found in its adjacent seawaters, CS and subsoil. Argentine did the same to extent its national sovereignty over its CS, and adjacent seawaters up to a distance no less than 200nm from its coastline. Although, Argentine's CS goes out to 400nm (PUCP, 2001).

In this international context, Peru produced the Presidential Decree 781 on August 1, 1947, extending its national sovereignty and jurisdiction up to a distance of 200nm from its coastline, for the purpose of preserving, conserving, exploring, exploiting, and utilizing all natural resources that may be found in such a sea belt adjacent to its coastline, seabed and subsoil (DS 781, 1947). In other words, it was for a "modal or functional" purpose (See Annex A). Similarly, Four Latin-American countries followed up these initiatives adopting more or less the same principles, such as Panama (1946), Costa Rica (1949), Honduras (1950) and El Salvador (1950), (PUCP, 2001).

Two important elements characterized these Declarations. First, they established a clear difference between the State's jurisdiction over its land territory and over its adjacent waters, since all of them where specifically referred to the preservation of the marine resources within 200nm and not to any other activities at sea that would imply sovereignty as it is on the territory. Secondly, they avoided the use of the term "Territorial Sea" to define their jurisdiction at sea, with the exception of Panama, because of the specific purpose for which they were enacted. On the other hand, Peru reserved its right to modify the limits of its national jurisdiction at sea according to futures developments or discoveries in the field, as provided in paragraph three of the 1947 Presidential Decree (Perez de Cuellar, 2001).

On August 18, 1952, Chile, Ecuador, and Peru issued the Santiago Declaration for advocating the 200nm thesis as part of their international maritime policy for the benefit of their nations. This Declaration reaffirmed the right of "Innocent and Inoffensive Passage" conferred to ships from all Sates throughout the national jurisdiction of these countries (PUCP, 2001). Finally, the 200nm thesis went through a hard process of argumentation and interpretations, both, nationally and internationally. In Peru for example, politicians, well-known jurists, and publicists of the subject, were involved in long discussions on the actual purpose of the extension of the national jurisdiction up to 200nm. These are ongoing discussions to date.

3.2.1 The Thesis of 200nm in the National Context

Since the enactment of the 1947 Peruvian Presidential Decree, members of the Peruvian diplomatic body, and other scholars of the subject have presented several studies and papers interpreting this Presidential Decree. Some of these documents support the interpretation that it was to extend the State's sovereignty up to 200nm from its shoreline and; therefore, the extension of Peru's TS. Others, instead, said that the purpose of this Decree was for preserving, conserving, exploring, exploiting, and utilizing properly all marine resources found within the 200nm seawaters, its seabed and subsoil. In other words, they supported the view that it was a "functional or modal claim", which did not imply absolute sovereignty of the State (Arias-Schreiber, 1990). A few remarkable examples supporting the latter view would be helpful in understanding the actual nature of the 1947 Presidential Decree.

The first is a 1954 article written by the Dr. Jose Luis Bustamante y Rivero, President of Peru in 1947, about the thesis of 200nm (Bustamante y Rivero, 1954). In this paper Dr. Bustamante y Rivero said (in translation):

> The Presidential Decree 781 meant the real extension of the Territorial Sea of the country up to 200 nautical miles, but not for the purpose of establishing an absolute ownership, or exclusive and excluding rights over that area, but for the purposes established in the Decree. Likewise, the Presidential Decree makes clear, by itself, that the freedom of navigation of all ships is not hampered in any way, from which it is possible to understand that the sovereignty exercised by the State (Peru) over that area will be limited to the purposes established in the Presidential Decree only, in other words, it is a Declaration of jurisdiction for such purposes. It is a similar claim of jurisdiction to the one made by the United States of America in 1945 (PUCP, 2001, page 53).

By this statement, Dr. Bustamante y Rivero clarified that the spirit of the Presidential Decree was not for extending Peru's TS, but for the purposes established in there and without implying ownership over such an extension. In other words, this claim differs from the concept of TS as defined in UNCLOS, where the coastal State is conferred sovereignty as an extension of its territory subject to the right of IP of all ships.

The second example is a study prepared in 1955 by the former minister of foreign affairs at the time of the enactment of the Presidential Decree, Dr. Enrique Garcia Sayan, who actually drafted this document according to the national policy at the time. He sustained in this study, called "Notes on the Peruvian Maritime Sovereignty" (*Notas sobre la Soberania Peruana*), that (in translation):

> The purposes explicitly expressed in the Presidential Decree reveal the nature of the extension of the Peruvian jurisdiction up to the 200nm, and if, the purpose of such extension was for the actual extension of the TS, such definition would be expressively defined in the Decree, but it was not (PUCP, 2001, page 53); And that (in translation): [t]he adoption of the extension of the Peruvian jurisdiction over its adjacent seawaters was for economic purposes, with due regard to the freedom of international navigation for all ships of all flags. This concept is far away from any pretended absolute sovereignty over such extension of Sea, as the definition of Territorial Sea would be (PUCP, 2001, page 53).

In 1973, Dr. Garcia Sayan repeated these statements in an international conference held at Oxford University on the subject "The Doctrine of the 200nm and the Law of the Sea". But on this opportunity, he was more precise, and said (in translation):

> [t]he Chilean, Peruvian, and Ecuadorian governments, according to their interests, were enough careful to expressively identify their national interests in the text of the 1952 Santiago Declaration, in order to avoid any misunderstanding with regard to the concept of the Territorial Sea (PUCP, 2001, page 54).

By these statements, he clarified that Peru's national interest behind both, the 1947 Presidential Decree and the 1952 Santiago Declaration, were to ensure the socio-economic development of the Peruvian nation on the basis of the purposes expressed in these Declarations, but not to pretend the actual extension of Peru's sovereignty over such an area as the TS concept implies.

Similarly, Dr. Alberto Ulloa Sotomayor, minister of foreign affairs, and co- author of the joint Declaration in 1952, sustained in his book on "Public International Law" (*Derecho Publico Internacional*) (1993), that (in translation):

> [t]he littoral States claiming the recognition of its rights regarding fisheries and the protection of its marine natural resources, are claiming a modal sovereignty over such a resources in order to protect them by exercising the right to regulate their exploration and exploitation by any state under their respective national law, and therefore, those claims do not mean, in any sense, the claim of absolute sovereignty or restriction to the international freedom of navigation that all states enjoy over such areas (PUCP, 2001, page 270).

By this statement, he also clarified the difference between Peru's claim and the TS concept.

In 1955, when the USA protested against Peru, Ecuador, and Chile for the extension of their national jurisdiction up to 200nm, enquiring them for the juridical implications of such claims, these countries responded jointly to the USA, as follows (in translation):

> [t]he 200nm zone established in the 1952 Santiago Declaration does not have the scope that your government is attributing to it, conversely, it aspires to conserve and utilize prudently the natural resources in those areas without hampering the freedom of navigation that all States can enjoy (PUCP, 2001, page 54).

By this Declaration, Peru, Chile, and Ecuador differenced the actual meaning of the national jurisdiction at sea claimed by these States as of 200nm from the concept of TS that the USA pretended to attribute to such an extension.

There are many other studies on the subject supporting that the 1947 Presidential Decree was for a functional or modal purpose rather than the actual claim of Peru's TS. Further, considering the timeliness in which these statements were issued, it is possible to affirm that the meaning conferred to the 200nm thesis at that time, was closer to an actual extension of Peru's sovereign rights over its marine resources rather than an actual extension of its TS. Therefore, Peru's claim pursued the recognition of its economic interests as coastal State of preserving, conserving, exploring, exploiting, and utilizing the natural resources found within its adjacent seawaters, seabed and subsoil. In this sense, the 1947 Presidential Decree advocated the importance of the oceans and coastal areas for the sustainable development of human life, and the close interdependency existing between the coastal people and the ocean.

On the other hand, some studies on marine ecosystems and CSs have concluded that the reason behind the acceptance of an extension of 200nm area, where a coastal State may exercise its sovereign rights over all natural resources, is a geological one. When the oceanic currents hit the sharp edge of the CS encountering the surface currents, the nutrients lying down on the sea bottom come up to the surface enriching the waters above the CS. The distance covered by these enriched waters is on average 200nm (CONNECT, 1997). In fact, more than 90% of the world's fish production (84 million tons) is derived from waters over CSs and from major currents, and just 6% from world ocean areas. In other words, the rich marine ecosystem found in the water column over CSs, is the reason why coastal States now enjoy a 200nm jurisdiction (CONNECT, 1997). In the case of Peru, the decision of assuming 200nm as its national claim in 1947 was based on its rich marine ecosystem resulting from the Peruvian upwelling system and the Humbolt current as discussed in section 2.1.1.

3.2.2. The Thesis of 200 nm Claim in the International Context

Since the enactment of the 1947 Presidential Decree and the 1952 Santiago Declaration, a series of steps were taken by Ecuador, Chile and Peru, in order to defend the 200nm thesis internationally. The first important step taken by these countries was the creation of the Permanent Commission of the Countries bordering the South East Pacific Coast (*Comision Permanente del Pacifico Sur Este* [CPPS]) in 1952. The main purpose of this Commission was to carry out marine research activities at sea to enable its member States to take the measures necessary to preserve, conserve, and ensure productivity and good utilization of all marine resources, considering the socio-economic importance of their marine ecosystems for their coastal population. In 1954 these countries adopted three complimentary agreements to establish at a regional level the legal framework to defend the 200nm thesis, to provide the statutory regime for licensing of fishing activities, and to establish a system of sanctions for those that violate the legal regime in place. These agreements were: the Implementing Agreement of the Santiago Declaration, the Agreement on Measures for the Surveillance and Control of Activities within the 200nm, and the Agreement on the System of Sanctions for violations committed against the regulatory regime within the 200nm (Arias-Schreiber, 1990).

By that time, several incidents took place within the 200nm areas claimed by these countries; particularly, within the areas controlled by Peru and Ecuador. Unauthorized fishing activities carried out by US fishing vessels and others from long distance fishing countries, as well as

the breach of the statutory measures imposed by these countries on fishing activities within their national jurisdiction, were the most common violations against their national law (Arias Schreiber, 1990). The decade of the 50s was characterized by a series of arrests of US fishing vessels for unauthorized fishing activities within the 200nm jurisdiction. These incidents were followed by a series of complaints posed by the USA government and other fishing countries, which argued that Peru, Chile and Ecuador were exceeding their rights as coastal States hampering the freedom of navigation and fishing in the HS. They considered as HS waters beyond 12nm at that time. The most conspicuous incident occurred in November 1954, when warships of the Peruvian Navy arrested and conducted to port five US fishing vessels belonging to Aristoteles Onassis, one of the most powerful ship owners at that time. These vessels were detected fishing without authorization within Peru's national jurisdiction claimed as of 200nm. They were subject to administrative proceedings and fined as of 5 million US dollars for such a violation. This incident caused a major protest from the USA government against Chile, Peru and Ecuador in 1955, to which these countries responded the USA as discussed above (PUCP, 2001).

These States defended the 200nm thesis not only within their own political, diplomatic, and security contexts, but also before the international community by in four different fora: Latin America, Asia and Africa, the group of non-aligned countries, and the United Nations Conferences on the Law of the Sea held in 1958, and 1960.

3.2.2.1 Among the Latin American Countries

Peru, Chile and Ecuador advocated the 200nm thesis achieving its acceptance among Latin American countries. They participated in a number of Law Conferences carried out by the Inter American Commission of Jurists (*Comision Latino Americana de Juristas*) in B. Aires, Argentina (1953), Mexico City, Mexico (1956), Rio de Janeiro, Brazil (1965), and Trujillo, Peru (1973), to present the 200nm thesis. These Conferences pursued the establishment of a broader marine zone than the accepted TS at the time for preserving, conserving, exploring, exploiting, and utilizing all natural marine resources in adjacent seawaters, seabed, and subsoil, according to the socio-economic interests of a coastal State (PUCP, 2001). As a result of these conferences, a clear regional position on the matter was developed among Latin American countries. This position supported the establishment of a marine zone according to the geographical, geological, and biological characteristics of each country and

its socio-economic interests for the sustainable development of their coastal populations. The defense of the thesis of 200nm at this stage was focused on the recognition of the rights of a coastal State to exercise jurisdiction in its adjacent seawaters, in order to exercise its exclusive rights over all marine resources therein. The objective was achieved.

However, in the late 60s when the idea of having a Third International Conference on the Law of the Sea was under consideration as a means of resolving issues left aside in the 1958 and 1960 Conferences, one of the most important steps given for the defense of the thesis of the 200nm took place at a conference in Montevideo, Uruguay in May 1970. This Conference was called "The International Meeting on the Law of the Sea". The Conference was held on the initiative of Peru as a measure to harmonize the Latin American position to advocate the 200nm thesis at the third Conference on the Law of the Sea. As a result of this Conference, nine Latin American countries adopted a Declaration of the basic principles on the Law of the Sea. It was called "the 1970 Montevideo Declaration" (Arias Schreiber, 1999). This Declaration stated the right to preserve, protect, explore, utilize, and exploit all natural resources in the adjacent seawaters of a coastal State up to whatever distance it may consider necessary to protect them according to its geographical, geological and biological characteristics for the socio-economic development of its nation (PUCP, 2001).

In August 1970 in Lima, Peru organized another Latin American Meeting on the Law of the Sea with the participation of twenty countries from South and Central America, including some islands and land-locked States, where a similar Declaration to the one in Montevideo was adopted. It included six resolutions on the actions to be taken regarding the seabed in the HS, and the subjects to be presented during the *travaux preparatoire* for the Third UN Conference on the Law of the Sea. Five months later, Peru organized another international meeting in Lima in 1971, in order to gather the legal expertise that participated in the Montevideo Conference and design an international strategy to carry out an intensive advocacy campaign supporting the 200nm thesis among African and Asian countries through the participating in any international event related to the Law of the Sea. This meeting was called "the 200 nautical miles club" (PUCP, 2001).

In October 1971 in Lima, Peru organized the twelfth meeting of the Special Commission for the Latin American Coordination (*Comision Especial de Coordinacion Latino Americana* [CECLA]). The participants at this meeting reaffirmed the recognition of the right of a

coastal State to exercise jurisdiction over all marine natural resources in its adjacent seawaters, seabed and subsoil, and utilize these resources for the sustainable socio economic development of its population. The recognition of the potential damage that seabed mining in the HS may cause to coastal States' economies and the importance of commercial fishing for their economies were highlighted as well (Brousset, 1999).

As a result of the Caribbean Specialized Conference on the Issues related to the Sea held in Santo Domingo in 1972, a Declaration of Principles called "the Santo Domingo Declaration" was adopted. It recognized the right of coastal States to have TS up to 12 nm, as well as a contiguous zone called "Patrimonial Sea" up to 200nm. This Declaration stated, at regional level, the right of a coastal State to exercise its "sovereign rights" over all renewable and non-renewable natural resources found within its "Patrimonial Sea", as well as to regulate scientific research activities and take preventive measures to protect its marine environment from pollution without hampering the right of freedom of navigation and over fly that all States should enjoy. Thus, the 1970 Montevideo Declaration and the 1972 Santo Domingo Declaration, contributed considerably to reaffirm and support the principles laid down in the Santiago Declaration issued by Chile, Ecuador and Peru in 1952. Later on, it constituted the necessary basis for the development of the EEZ regime (Perez de Cuellar, 2001).

Meanwhile, Peru held a series of bilateral meetings 1969 and 1973 to ensure any consistent support to the 200nm thesis regardless of the agenda of these meetings. In this sense, different supporting statements were included in every final Declaration or official notice issued at these meetings. Therefore, Peru held the following meetings with: Chile (Lima, Feb. 1969), Argentina (Buenos Aires, Jun. 1969), Colombia (Lima, Jun.1969), Venezuela (Lima, Nov. 1970), Brazil (Brasilia, March. 1971), China (Lima, Apr. 1971), Spain (Lima, Jun. 1971), Chile (Lima, Sep. 1971), Yugoslavia (Belgrade, Sep. 1971), Argentina (Lima, Oct. 1971), Cuba (La Havana, Sep. 1972), Ecuador (Lima, Nov. 1972), Mexico (Lima, Dec. 1972), Colombia (Lima, Jan. 1973), Yugoslavia (Lima, May. 1973), Brazil (Lima, Jul. 1973), Colombia (Bogotá, Aug. 1973), and Cuba (La Havana, Oct, 1973) (PUCP, 2001).

3.2.2.2 Among the African and Asian Countries

Earlier in 1963, a few actions were taken by Peru to introduce the 200nm thesis to some of the African and Asian countries with similar geographic, geological and biological

characteristics in their coasts. This task was carried out by a Peruvian delegation to the governments of Nigeria, Cote d'Ivoire, Liberia and Senegal, explaining the scope of the 200nm thesis and the importance of the role of the CPPS in the protection and preservation of the marine resources (PUCP, 2001). Later, Peru and the participant States of the Montevideo Conference attended different sessions of the Asian-African Legal Consultative Committee held in Colombo, Sri Lanka (1970), Lagos (1972), Tokyo, Japan (1974), Teheran, Iran (1975), and Bagdad, Iraq (1976), where a variety of matters related to the Law of the Sea was dealt with and considerable support to the 200nm thesis was achieved. Meanwhile, the African Regional Seminar on the Law of the Sea held in Yaoundé, Cameroon in 1972 adopted the notion of EEZ as an adjacent zone to the TS reaffirming the State's sovereign rights over its marine resources. No outer limit for such a contiguous zone was agreed.

One year later, the Ministers' Council of the African Unity Organization (AUO) met in Ethiopia in 1973 to formalize the adoption of the notion of EEZ, establishing a limit of 200nm as its outer limit. This happened as result of the meetings held between the diplomatic representatives of the Latin American countries and their African partners to analyze and finally support the Latin American thesis of 200nm claim. The Peruvian diplomatic delegation visited 7 African countries (Algeria, Coté d'Ivoire, Egypt, Kenya, Nigeria, Senegal and Zambia) and 8 Asian countries (China, the Philippines, India, Indonesia, Iraq, Iran, Pakistan, and Sri Lanka) to support the 200nm thesis before their respective authorities.

3.2.2.3 Among the Non-aligned Countries

As a part of the international advocacy to introduce the 200nm thesis, Peru was invited to Third International Conference of the Non-Aligned Countries held in Lusaka, Zambia in September 1970. There, the Peruvian delegation presented the 200nm thesis to the Conference, although the subject was not in the agenda. As a result, the final Declaration adopted by the Conference stated the agreement of all the participant States to fully exercise their rights and duties to maximize the utilization of all the natural resources from land and adjacent seawaters to support the economic development of their nations, as well as their compromise to coordinate national policies in order to achieve this objective. This Declaration contributed to advocate the 200nm thesis among these States (PUCP, 2001).

Additionally, Peru was participated in the Fourth International Conference of the Non-Aligned Countries held in Algeria in 1973, where the participant States agreed to recognize the right of a coastal State to explore, exploit and utilize all the natural marine resources within their national jurisdiction up to 200nm. These rights were to be exercised considering the rights and interests of the land-locked countries, and without hampering the freedom of navigation and over flight of other States, where it may be applicable. Likewise, they also agreed to reaffirm the condition of the seabed beneath the HS as of "Common Heritage of Mankind", recommending the establishment of an International Seabed Authority to administer it for the benefit of all States (Arias-Schreiber, 1990). Both agreements were of major relevance to the *travaux preparatoire* of the Third UN Conference on the Law of the Sea. There, the major maritime countries realized that it would not be possible to stop coastal States from claiming national jurisdiction over 200nm from their coastline, considering the popularity reached by such a thesis among developing countries, and the need to establish an international seabed authority to administer the exploitation of natural seabed resources beyond the national jurisdiction of coastal States for the benefit of all States.

3.2.2.4 At the United Nations Conferences on the Law of the Sea held in 1958 and 1960, and the *Travaux Preparatoire* for the Third United Nations Conference on the Law of the Sea (1971-1973)

The actions and initiatives described in the prior section were just part of all the efforts displayed by the Latin American countries to introduce the principles of the 200nm thesis to the international community. The participation of these countries in the United Nations Conferences on the Law of the Sea held in 1958 and in 1960 was an earlier effort to generate international awareness on the principles of the 200nm thesis, and build a broader foundation for further diplomatic actions supporting this thesis in the future. At the 1958 Conference, Peru presented a proposal for the extension of the coastal State's jurisdiction to regulate, preserve, and exploit all marine resources found in a contiguous area to the TS, without specifying any breadth for such an area. Peru finally withdrew this proposal from the Conference for lack of support from the major maritime powers at the time. However, Chile, Ecuador and Peru issued a joint Declaration stating that (in translation):

> [c]onsidering the lack of a comprehensive international consensus to recognize and reasonably balance the rights and interests of the coastal States regarding the

> protection, exploration and exploitation of the natural marine resources, the CPPS will continue working as it has been done to the date, yet it represents the protection of the legitimate rights of the bordering states for the conservation and exploitation of their marine resources (PUCP, 2001, page 65)

At the 1960 Conference, Peru submitted a new proposal saying that (in translation):

> [w]hen the biological conditions of the adjacent waters to the TS of a coastal State were scientifically tested and determined to be closely linked to the waters of the TS with regard to fisheries, the sustainable development of a coastal population, and the national economy of a country; that country may claim a jurisdictional zone for the regulation of fishing activities and the exercise of its sovereign right to explore and exploit those resources and protect other interests in light of its particular situation of dependence (PUCP, 2001, page 66).

Furthermore (in translation):

> [t]he particular situation of dependence of a country shall be duly proved by presenting all the supporting geographical, geological, biological, and economical data, as well as the respective environmental studies to back its position to the specialised technical bodies of the United Nations Organization. Likewise, the country shall not make distinctions between national or foreign fishermen, or between fishing vessels when they have made themselves subject to the national regulatory regime. And, the coastal State shall not hamper the freedom of navigation and over fly in such a zone (PUCP, 2001, page 66).

This proposal was also withdrawn from the Conference for the same reason as in 1958. Seven years later, the UN General Assembly created "the Special Committee for studying the utilization of the seabed areas beyond the national jurisdiction of the coastal States for peaceful ends". It was composed of 35 States. Peru was not only a member of this committee, but also an active participant contributing substantially to build the legal framework needed to regulate the exploitation of minerals in these areas under a due international authority intended to supervise the States' compliance with the legal regime and administers the exploitation activities for the benefit of all nations. At this time, Peru proposed the suspension of all exploiting activities in those areas until the required legal regime and the international authority were in place (Brousset, 1999). Likewise, Peru proposed to the General Assembly the revision of the latest changes in the international context regarding to the Law of the Sea, being supported by several African and Asian countries on this opportunity. This proposal aimed to review the entire existing legal framework regarding the sea, as well as to analyse the latest developments in the economic, scientific, technological,

political, and juridical fields related to the conservation, exploration, and exploitation of the sea (Perez de Cuellar, 2001). As a result, the General Assembly adopted in New York, in 1973, two important resolutions approving a declaration of principles regarding the seabed and subsoil beyond the outer limit of national jurisdiction. The first Resolution established the condition of "Common Heritage of Mankind" of such areas, as well as the need for an international authority to administer tem for the benefit of all States. The second Resolution appointed the Special Seabed Commission to undertake the *travaux preparatoire* for the Third United Nations Conference on the Law of the Sea to begin in 1973 (Brousset, 1999).

The Preparatory Commission for UNCLOS III began working in 1971. It gathered proposals from all States regarding TS, CZ, HS delimitation, fishing zones, conservation of marine live resources, and sea bed issues, which were submitted in its final report to the opening session of the Conference in 1973. At the opening session of the Preparatory Commission in 1971, the representative of Peru presented an overview of the most important economic, political, social, legislative, scientific, and technological changes regarding the uses of the sea and the conservation of the marine resources since 1958. This overview also included a comparative description of the different national laws establishing TS and claims established by the African, Asian, and Latin American countries to protect their marine resources and economic development. These claims ranged between 12nm and 200nm. In this context, Peru proposed the recognition of a 200nm zone as to be the national jurisdiction of a coastal State to preserve, explore and exploit its natural resources at sea, with due regard to the rights of freedom of navigation, over flight, and Innocent Passage (Perez de Cuellar, 2001).

During the working meetings of this Preparatory Commission, Peru submitted several documents regarding the creation of the enterprise as part of the International Seabed Authority to carry out the exploitation activities directly in the area; the establishment of different zones of national jurisdiction up to a distance of 200 nm considering a TS zone, where the right of Innocent Passage is to be applied; and a zone called International Sea (IS), where the coastal State is to have sovereign rights to regulate the conservation and exploitation of all natural resources with due regard to international freedoms; the right of coastal State to regulate fisheries management, the protection of the marine environment from all sources of pollution and scientific research activities in the IS; and the encouragement of the international community to exchange information regarding scientific research activities, prevention of marine pollution, and prohibition of nuclear tests at sea

(PUCP, 2001). These proposals were included in the final report of the Commission submitted to the General Assembly of the Third III Conference on the Law of the Sea in 1973.

At this point of the dissertation, it is possible to realize that magnitude of the efforts displayed by Peru to elaborate, defend, and project the 200nm thesis among the international community, obtaining international support to validate this thesis and address other issues related to the uses of the sea.

3.3 Peru's Participation in the Third United Nations Conference on the Law of the Sea

The Third United Nations Conference on the Law of the Sea was the last international conference held for establishing a global legal framework governing the uses of the Sea. This Conference was opened for discussion and negotiation among States on December 3, 1973 in New York, USA and closed in Montego Bay, Jamaica on December 10, 1982. The objective of the Conference was achieved as a result of the good will and compromise of all States in this regard (Perez de Cuellar, 2001). In this sense, Peru's participation in the Conference was developed in two different fronts: the negotiations carried out during the formal and informal meetings; and the substantive participation in the Conference through the submission of specific proposals for the recognition of coastal States' rights over their adjacent seawaters, and the seabed regime beyond the national jurisdiction, as well as other proposals regarding the settlement of disputes and general provisions.

With regard to the first front, Peru was member of three different groups, the Group of 77, the Latin American and Caribbean Group, and the coastal and Land Locked States Group. The Peruvian representative was elected to be the coordinator between the Group of 77 and the first Commission of the Conference, which dealt with the establishment of the provisions regarding the international seabed regime. This opportunity was of great advantage for Peru to protect its interests in this regard. Similarly, the representative of Peru was several times elected President of the Latin American and Caribbean Group, which also contributed to maintaining the unity of the Latin American position for the protection of the coastal State's interests under the 200nm thesis. These meetings contributed to shape the EEZ regime.

During the Conference, two main informal groups among the participant States were possible to be distinguished, the group of countries supporting opposite positions or in conflict with

the 200nm thesis, and the group of countries supporting similar positions to the 200nm thesis. In this context, Peru participated in different meetings held by the former Group, in order to achieve consensus and similarities with Peru's position. In this connection, Peru participated in the drafting group on the provisions regarding the rights, duties of a coastal State within the EEZ, the provisions regarding the accession of land locked countries to sea areas under the national jurisdiction of coastal States and HS, the provisions related to the TS and HS, the freedoms of international communication within the EEZ, and the rights and duties of the States regarding the preservation of the marine environment, and marine scientific research activities within the EEZ. Peru also participated in the meetings held by the latter Group, moving the group of land locked countries towards the groups composed by the Latin American and African countries that had declared TS or a national jurisdiction up to 200nm from their coastlines. This action strengthened Peru's negotiating position in the Conference. Finally, the Canadian delegation constituted a group of countries with similar interests in the EEZ regime, among which Peru participated in order to accord positions on issues of common interest to counter possible proposals by the major maritime countries against the EEZ regime (PUCP, 2001).

With regard to the second front, Peru submitted different proposals to the main working commissions of the Conference, not only to compliment the proposals that it presented to the Preparatory Commission in 1971, but also to prohibit the installation of platforms and other military artifacts in the CS without the authorization of the coastal State concerned under a potential CS regime. It also made different proposals regarding to a number of other issues including: transference of technology to developing countries for exploring and exploiting activities at sea properly; a regulatory regime for marine scientific research activities; the establishment of regional centers for the transference of technology and information aiming at the preservation of marine resources; and the obligation of all States to agree upon measures to ensure a proper management of straddling fish stocks and highly migratory fish stocks within their jurisdictions.

Finally, the adoption of UNCLOS in 1982 recognized the rights of coastal States within and beyond 200nm, including the Area. This recognition also meant the incorporation of the principles of the 200nm thesis into the current UNCLOS provisions regarding the EEZ regime. Despite these facts, Peru did not end up signing the Convention in 1982 for different reasons, which are going to be analysed in Chapter Four.

Chapter Four

Peru and the 1982 United Nations Convention on the Law of the Sea

As noted in Chapter Three, the adoption of UNCLOS by the international community meant the recognition of coastal States' rights regarding the uses of the sea. This recognition also meant the incorporation of the principles of the Peruvian claim into such an international regime governing the seas. Despite these facts, Peru did not end up signing the Convention in 1982, and it has not acceded to it as yet. In this context, this Chapter discusses the reasons behind Peru's decision not to sign UNCLOS in 1982, as well as the political and economic changes and environmental development for the protection of its maritime interests over the last 20 years. The primary objective of this Chapter is to discuss Peru's situation regarding to UNCLOS and the protection of its marine ecosystem.

4.1. The Reasons for Peru's Decision not to sign UNCLOS in 1982

Several studies on the subject developed by Peruvian scholars, among which a study prepared in 1999 by Dr. Alfonso Arias-Schreiber on "the Law of the Sea and the Peruvian Maritime Interests", suggests that the main reasons for Peru's decision not to sign UNCLOS in 1982 were the misinterpretation of the real purpose of the 1947 Peruvian Presidential Decree, the uncertainty posed by politicians on whether or not the scope of UNCLOS may cover the full range of Peru's maritime interests, and the lack of a public awareness policy at that time.

Thus, for politicians understanding the purposes of the 1947 Presidential Decree to know the nature of the Peruvian claim was of major importance during the prior years to the adoption of UNCLOS in 1982. Two opposite interpretations with regard to the purpose of the Decree were advocated at that time. The first view supported that the 1947 Presidential Decree was for the real extension of Peru's TS. The second one supported that it was for extending Peru's sovereignty and national jurisdiction over its adjacent seawaters to protect and exploit all natural resources found in there for the socio economic development of its nation. Indeed, a functional or modal claim for such economic purposes. Today, Article 54 of Peru's national constitution defines such an extension as "Maritime Domain".

Generally speaking, the former view was advocated by politicians and scholars educated under the traditional concepts of international law, who did not take part in the advocacy campaign developed between 1971 and 1982 to enhance international support for the 200nm thesis. The latter view was supported by diplomats, scholars and politicians educated under the contemporaneous concepts of international law, and by those people who participated in the advocacy campaign supporting the 200nm thesis from 1971 to 1982. They were familiarized with Peru's efforts displayed for the recognition of coastal States' rights over their adjacent seawaters; and therefore, knew the actual nature of Peru's claim as of 200nm.

According to the text of the 1947 Presidential Decree, Peru aimed an extension of sovereignty and national jurisdiction up to 200nm to protect, preserve, explore, exploit and utilize its natural resources in the seabed, subsoil, and waters above them; without hampering the freedom of communications and with due regard to the international law and treaties ratified by the State. It suggests that Peru claimed a functional or modal zone rather than TS as such. In this regard, many scholars have sustained that the concept of TS was purposely avoided in the text of this Decree, in order to leave open the possibility for Peru to adjust its maritime claim and national law according to the new events and developments that may occur in the future, as provided in paragraph 3 of such a Decree. Additionally, this Presidential Decree provided for freedom of navigation rather than the essential right of IP that is to exist in a TS regime. Similarly, it provided no definitions to the concepts of sovereignty and national jurisdiction that Peru was to exercise over the 200nm, meaning that Peru might have exercised alternatively an absolute sovereignty or sovereign rights, as well as a full jurisdiction (legislative, enforcement, and judicative) or a limited one over the uses and resources of such an area. Therefore, it was a *sui generis* claim similar to the EEZ regime.

Article 54 of Peru's national constitution defines Peru's adjacent seawaters as "Maritime Domain", establishing sovereignty and jurisdiction over such an area without defining the meaning of this expression. Thus, Peru's national law holds the same limitations. Therefore, in practice Peru has performed a *sui generis* jurisdiction over its "Maritime Domain". In some cases, it has exercised absolute sovereignty over this area, as for suppressing drug trafficking at sea for instance. In other cases, it has exercised its exclusive rights only, as provided in UNCLOS for the EEZ regime, as for fishing licensing and marine scientific research activities for example. As a result, governmental authorities have often misperceived this *sui generis* jurisdiction as a full sovereignty of the State over the 200nm, although no

sufficient national law exists to back up a full jurisdiction and sovereignty over such an area (Arias-Schreiber, 1999). For instance, there is no national law ruling the exercise of the right of freedom of communication and over fly throughout the 200nm, or a law establishing specific judicative jurisdictions over its Maritime Domain rather than a general provision establishing a jurisdiction as in the territory (PUCP, 2001). Usually, the jurisdiction that a State should exercise as a flag, coastal, or port State differ substantially one from another (Churchill, 1999). In spite of these facts, it is possible to say that the maritime domain concept reflects the original Peruvian claim as a functional or modal zone more similar to the EEZ regime than TS as such. Furthermore, the lack of a precise meaning of sovereignty and national jurisdiction, as well as the absence of the "Territorial Sea" expression in the 1947 Decree support the idea that Peru expected to exercise a functional jurisdiction over 200nm.

Now, how could this misinterpretation happen if the provisions of the 1947 Presidential Decree were as clear as they seemed to be? To answer this question, it is necessary to revise the domestic political context in the year prior to the adoption of UNCLOS, which will help to understand Peru's decision not to sign UNCLOS in 1982.

Numerous scholars have sustained that Dr. Fernando Belaunde Terry, President of Peru at that time, was experiencing the worst time of his government for which he was highly sensible to public opinion. Media at the time coincided in the following facts: Belaunde assumed the Presidency of Peru in 1981 with a neo-liberal economic program, emphasizing privatisation and exports after two periods of military governments. The first period was headed by General Juan Velasco Alvarado from 1969 to 1975, which was characterized for the suspension of the national constitution, and the undertaking of most of the industries, including mines, infrastructure services, banking, and the media by the State. The second period was headed by General Francisco Morales Bermudez from 1976 to 1980, who implemented an austerity program to aid the failing economy and promulgated a new constitution in 1979. A year later, Fernando Belaúnde was elected President of Peru in the middle of an instable political and economic context left by the military government. Unfortunately, he failed to bring economic growth between 1981 and 1982; and therefore, he began to become unpopular. The appearance of ENSO and dropping international commodity prices in 1981 worsened the domestic political and economic contexts, raising economic inflation. This situation led to social unrest triggered by Shining Path (*Sendero Luminoso* [SL]) and the emerging Túpac Amaru Revolutionary Movement (MRTA) (CIA WFB, 2002).

In this political context, former President Belaunde did not want to undertake the risk of making a decision to sign UNCLOS without having support from the public opinion, in light of the potential criticisms that the political opposition would raise making its government even less popular as yet. As a result, the government decided to hold to a national debate on the draft Convention among politicians, scholars, jurists, media, and all other interested sectors to assess UNCLOS on whether it covers Peru's maritime interests or not, although the government was in favor of signing the Convention (Arias-Schreiber, 1990).

Unfortunately, it was a major mistake not only because the national debate derived into a political debate of the draft Convention, whereby political parties tried to exploit the issue as much as they could for their own interests without having a deep knowledge on the subject, but also because the government did not use the knowledge and experience of the diplomatic and technical bodies that were involved in supporting the 200nm thesis at the international level between 1971 and 1982, resulting in the recognition of the 200nm principles into UNCLOS 1982. Therefore, the interpretation of the 1947 Presidential Decree was of major importance to know whether or not UNCLOS would cover fully Peru's maritime interests.

In this sense, two different interpretations of the 1947 Presidential Decree took place in the national debate. The political opposition supported the opposite view (the TS perspective) to the government's view on the issue (the functional or modal perspective). Thus, the opposition advocated the TS interpretation by media and universities strengthening its view on the subject. This advocacy built a great feeling of nationalism in the society working against the signature of UNCLOS on the basis of an argument saying that UNCLOS was a means to reduce Peru's sovereignty over its adjacent seawaters to 12nm. This argument was based on the political misinterpretation of the TS, CZ, EEZ, and CS regimes as provided by the Convention (Arias-Schreiber, 1990). Therefore, the TS interpretation of the 1947 Presidential Decree prevailed at the moment, resulting in Peru's decision not sign UNCLOS.

As discussed in Chapter Three, the Statements issued in 1955 by the former President of Peru, Dr. Jose L. Bustamante y Rivero and the former Minister of foreign Affairs, Dr. J. Garcia Sayan, stating that the extension of Peru's national jurisdiction up to 200nm was an actual extension of Peru's sovereign rights as coastal State for the purpose of preserving, conserving, exploring, and exploiting its natural resources for the socio-economic development of its nation, reflected the context at the moment. In fact, Peru wanted not only to regulate Sea

activities within 200nm for the socio economic development of its nation, but also to protect fisheries from long distance fleets fishing off the Peruvian coast (Arias-Schreiber, 1990). Therefore, the 1947 Presidential Decree established the extension of Peru's jurisdiction for a functional purpose rather than TS as such.

Additionally, this Presidential Decree provided for freedom of navigation over the 200nm of Peru's adjacent seawaters, without establishing anything with regard to the right of IP. However, the 1952 Santiago Declaration provided that the right of freedom of communication (to be understood as navigation) was to be performed by foreign vessels in an "innocent and inoffensive way", but no further ruling was established in this regard. Therefore, both Declaration left this concept unclear, and without definitions into Peru's national law.

Likewise, neither the 1947 Peruvian Decree nor the 1952 Santiago Declaration provided anything with regard to over flying the sea area under Peru's jurisdiction, meaning that any plane would freely exercise this right or that Peru might simply impede it at all. In this sense, it should be noted that Peru's 1939 national constitution in force at that time, provided nothing at all with regard to Peru's jurisdiction over its adjacent seawaters. However, by reading some of its articles it is possible to realize that it was mainly regarding to the land territory. Thus, it is evident that the national jurisdiction that Peru expected to exercise within the 200nm in 1947 implied a different concept from the one defining the TS regime.

On the other hand, the political opposition to Belaunde's government sustained a variety of arguments against UNCLOS. One of these political arguments was based on the presumption that the signature of UNCLOS by Peru would imply the reduction of its TS to 12 nm, and consequentially a reduction of its sovereign rights over all natural resources to such a distance as well. This argument is inaccurate, because UNCLOS provides coastal States with different levels of sovereignty and jurisdiction, as discussed in Chapter Two, over their adjacent seawaters up to 200nm, and even beyond that when its CS goes further from the outer limit of its EEZ, and for straddling fish stocks management, pollution matters, and activities in the Area. In other words, UNCLOS provides for much more safeguards than Peru's own national law to achieve the purposes of the 1947 Decree.

It was also argued that the control of the air space above the Maritime Domain would be reduced to 12 nm, meaning that no jurisdiction would be possible for Peru to exercise beyond that. In this regard, the 1947 Presidential Decree provided nothing with regard to over flying the seawaters under Peru's jurisdiction. However, Peru's 1979 national constitution in force at the time, established in its Article 99 that the State was to exercise sovereignty and national jurisdiction over the air space above Peru's adjacent seawaters under its national jurisdiction up to a distance of 200nm from its shoreline, without hampering the freedom of communications and with due regard to international law and treaties ratified by Peru. As it may be noted, the wording of this Article is almost the same as in Article 54 of the 1993 national constitution currently in force, meaning that the notes made above on limitations of this Article regarding the right of IP as an essential element for the TS concept may also be applied in this case. In this context, such an argument was inaccurate as well. Furthermore, Peru may manifest its wish to continue exercising air traffic control over the 200nm for safety reasons and search and rescue purposes, without hampering the freedom of over flying and with due regard to international law, at the moment of depositing its document of accession to UNCLOS. Therefore, Peru would be able to exercise air traffic control primarily within its territory, TS and CZ, and secondarily within its EEZ enforcing its national standards in the former areas and international standards through national law in the latter ones.

Another argument raised by the political opposition was related to the obligation imposed by UNCLOS on coastal States to grant permission to land-locked countries for exercising fishing activities in its EEZ over surplus fish stocks. The political argument sustained that conferring this right to a land-locked country may transform the EEZ of a coastal State in a co-domain area, where the land-locked State may obtain proprietary rights over the area and its resources. This argument was inaccurate as well, because such a right is a right to fish the surplus of fish stocks declared by the coastal State and is to be exercised under proper agreement with it, according to the limitations established in paragraphs 2 and 3 of Article 69 of UNCLOS. Furthermore, Article 71 enables the coastal State to withdraw itself from the compliance with Article 69, if its economy depends entirely on the exploitation of the marine resources in its EEZ. Likewise, Article 72 establishes that land-lock countries are not allowed to transfer the right to exploit marine resources in the EEZ of any coastal State or beyond it, directly or indirectly to any other State neither by licensing, concession, joint-ventures, nor by any other method of rights-transferring, unless a proper agreement involving all states concerned exists.

Therefore, there is no chance for a land-locked State to lawfully assume any proprietary right over any EEZ area, unless it would be granted specifically by the coastal State involved.

Similarly, it was said that signing the convention would imply for a coastal State to concede facilities to land locked states for transiting through its territory towards its coastline, which would signify a serious disadvantage for it in terms of national security. The scope of the Convention in this regard is limited to carrying out trading activities by sea using the port's facilities of the coastal State. There should not be any threat against the security of the coastal State if necessary measures are properly set in a bilateral agreement. In fact, Peru and Bolivia have adopted a bilateral agreement in 1992 in this regard, as discussed in Section 2.2.6, allowing individuals and goods to transit freely through the southern part of the Peruvian territory for the purpose of trading by sea and tourism in South Peru. This agreement provides for a series of fiscal and port fees incentives, in order to enhance commercial trading through the area, and a duty free zone that has enhanced the local economy.

These were the main arguments on which the political opposition based its advocacy campaign against the signature of UNCLOS in 1981-1982. As it may be noted, these arguments were politically misinterpreted leading to an incorrect picture of the scope of the Convention. This inaccurate interpretation of UNCLOS within the unstable political context felt at the time, led the population to an incorrect feeling of nationalism against UNCLOS, resulting in the government's decision not to sign the Convention in 1982 (Bakula, 1995).

The following government headed by Dr. Alan Garcia Perez from 1985 to 1989 also convoked to national debate on whether or not to sign UNCLOS among political parties, scholars, media, etc in 1988 (Arias-Schreiber, 1999). Although, no definitive conclusion thereabout was reached at the time, the debate achieved more fruitful results than the previous one held in 1981. Politicians were acknowledged on the subject and a public awareness on the issue was increased. Therefore, most of the concepts of the Convention were clarified though the necessary consensus to sign UNCLOS was not achieved.

Despite this lack of consensus for the signature of UNCLOS, Peru has taken several steps for the protection of its maritime interests over the last 20 years; particularly some measures regarding the protection of its marine ecosystem according to the international environmental regime, which are going to be discussed in the next section.

4.2 Peru's Changes and Developments over the last 20 years

The discussion carried out in the prior section suggests that the national context during the remaining years of the 1980s was not suitable enough for Peru to undertake the reassessment of its accession to UNCLOS. However, Peru has experienced some political and economic changes, as well as some environmental development over the last 20 years; particularly, regarding the protection of its marine ecosystem. These changes and developments are going to be reviewed and discussed in this section

4.2.1 The Political and Economic Contexts

As noted in the prior section, Belaunde's government experienced a highly unstable political period in 1981-1982, resulting from the failure of the neo-liberal economic program implemented by his government on the basis of privatisation and exports. This political and economic instability worsened as a result of the terrorist acts carried out by terrorists groups at the time (the Shinning Path and the Tupac Amaru Revolutionary Movement), leading the country to social unrest and financial insecurity among nationals and foreign investors by 1985. As a result, Peru's international image reflected a socially and politically risky country for foreign investment. This situation scared off foreign investors and slowed down national investment (CIA WFB, 2002).

In this domestic context, Dr. Alan Garcia Perez was elected President of Peru in 1985, assuming the presidency of Peru in the middle of a conflictive political arena where political parties were demanding quick economic solutions to alleviate the political and economic instability at the moment. Meanwhile, terrorism spread throughout the country generating a great feeling of insecurity among the population and foreign investors. As a response, President Garcia implemented several fiscal and economic reforms, including price and exchange controls, in order to bring growth and inflation reduction to Peru's economy. It led the nation to a short period (1986-1987) of economic optimism and political stability. However, in 1988, President Garcia made two political decisions toward reassuring this economic program and maintaining his political image. First, he decided to nationalise private banks to control prices and money exchange rate towards an effective control over the national market. This decision provoked a number of reactions from the international financial community, leading the country to an international economic isolation; and

secondly, he authorized the Peruvian Central Bank to overextend its credits and issue more national currency to the market than it could actually back up with the national reserves. It raised economic inflation to hyperinflation proportions and generated financial insecurity as well. By the end of Garcia's government, Peru's economy was already phased out from international credit lines, and reached a thousand percent of inflation (PBS, 2002).

In this domestic context, Dr. Alan Garcia decided to carry out a national debate on whether Peru should sign UNCLOS or not. Despite the political instability felt in 1988, this national debate was considered fruitful for Peru's interests as discussed in the prior section.

After a decade of different degrees of political and economic instability in Peru, some important changes took place during the 1990s. These changes were focused on the reorganization of the State, the abolishment of terrorism, the settlement of Peru's land boundary disputes with Chile and Ecuador, the reinsertion of Peru's economy into the global economy, and environmental development on the basis of the 1992 Convention on Biological Diversity and the international regime for the protection of the marine environment and the proper utilization of marine resources (CIA WFB, 2002).

In 1990, Eng. Alberto Fujimori assumed the presidency of Peru in the middle of economic uncertainty. His government implemented a series of sound economic reforms to move Peru's economy towards liberalization based on free market laws, privatization of the major state-owned enterprises, and a liberal foreign investment regime, among others. Fujimori's government set up one of the most liberal foreign investment regimes in the world, and slashed tariffs on imports (CIA WFB, 2002). It also tightened fiscal responsibility by eliminating many government subsidies, expanding the tax base and making the bureaucracy more efficient. These changes resulted in consistent economic growth of over 6 per cent a year during the 1990s, bringing under control the hyperinflation reached in the 1980s.

This economic growth was possible as a consequence of not only the economic reforms undertaken by Fujimori's government, but also some political achievements in the early 1990s. These political achievements together with the government's economic program brought stability to both the political and economic contexts. One of these achievements was the reorganization of the State carried out at different levels of the government for enhancing efficiency and effectiveness. Likewise, the abolition of the terrorist groups that began with

the capture of the leader of Sendero Luminoso (Shinning Path) in 1992, and the main executive heads of the MRTA in 1993, generated confidence in foreign and national investors.

In 1995, after an armed conflict with Ecuador resulting from an actual occupation of a territory located on the Peruvian side of the land border between both countries by Ecuadorian forces, the former President Fujimori carried out negotiations with the Ecuadorian President to settle such a dispute, and undertake the demarcation of the remaining and already delimited land border with Ecuador. The negotiations ended up with the actual demarcation of the border between these countries and the adoption of an Agreement on Boundary Demarcation and Trade Integration between both countries in 1998. Similarly, Peru and Chile achieved the implementation of the remaining issues of the 1929 Lima Treaty on Land Boundary between both countries in 1999. These agreements have enhanced the relations between Peru and its neighbours and promoted a better economic integration between them. At present, Peru has no land boundary disputes with its neighbours, reducing the economic and political uncertainty that a boundary issue may signify to foreign investors.

In 1997, the existing political stability and sound economic management restored confidence of investors in Peru's economy, which exceeded all expectations and showed a GDP growth of 6.7% and inflation fell to 6.5% compared to 11.5% in 1996 (MEF, 2002); however, the economic growth slowed down in 1998. The first part of the year was particularly difficult with growth slowing to a virtual standstill as a result of the combined effect of the ENSO phenomenon (which was felt particularly by the fishing sector) and the Asian economic crisis. The economy also suffered from the following Russian crisis of August 1998, when international credit lines were cut. The impact was felt by all sectors of the economy. In 2000, there was some recovery in the Peruvian economy, with GDP growth at 3.1% and inflation at 3.1% due to the recovery of output from the fishing sector (MEF, 2002).

However, in 2000 Fujimori's government was indicted with corruption charges by the political opposition, because of some corruption cases detected among the government officials. Consequentially, the political stability was weakened again, which led Fujimori to resign from the presidency in September 2000. Then, a transitional government was established until July 2001, when Dr. Alejandro Toledo, the current President of Peru, assumed the presidency of the Republic.

Toledo's government is basically continuing the same economic model set up by Fujimori, but he has incorporated some slight changes to attract foreign and national investors. The current economic program includes a general sales tax reduction from 18% to 16%, and the reduction of the average bank reserve requirement from 34% to 30%. It is enhancing individual economy and improving the government's image among the people. The Peruvian government is expecting 5% GDP growth for 2002 (MEF, 2002).

Thus, Peru's economy has been restructured over the last ten years. Particularly dramatic has been the improvement in the Government's fiscal position. Public expenditure has been reduced through the abolition of subsidies and the privatization of state-owned companies. Peru has emphasized the importance of linking its prosperity to the global economy. Trade barriers have been cut, all direct subsidies to exporters and domestic producers have been eliminated, and equal treatment has been granted to foreign and domestic investors. As a consequence, Peru now has perhaps the most liberal foreign investment laws in South America. A key strategy of Peru's integration into the global economy was its active approach to regional integration. It is a key member of the Comunidad Andina (Andean Community) and has Free Trade Agreements with Bolivia and Chile. Peru is also an active member of the Asian Pacific Economies (APEC). It has recently achieved together with Colombia, Bolivia, and Ecuador the renewal of the Andean Trade Preference Agreement (ATPA-2002), which provides for a variety of products coming from these countries to get duty-free access to the US market. This Agreement constitutes the biggest achievement obtained by Toledo's government so far, since it will certainly catalyze mining, fish meal, fish oil, canned tuna and clothing production in Peru. Therefore, it may be said that, the political and economic stability in Peru, has certainly been improved during the last ten years.

Meanwhile, Peru has prioritised policy-making tasks regarding environmental protection and biodiversity conservation matters by implementing international standards into its national law; particularly, those related to the marine environment for the importance of the marine ecosystem to its fishing industry and the sustainable economic development of its nation.

4.2.2 Peru's Environmental development

Certainly, Peru has achieved some environmental development over the last 20 years; particularly regarding the protection of the marine environment and its biodiversity. In this

sense, Peru has implemented into its national law a number of environmental instruments adopted by the CPPS, such as the 1981 Lima Convention on the Protection of the Marine Environment of the Coastal Areas of the South East Pacific, which included a regional action plan for the protection of the marine ecosystem; the 1981 Regional Agreement for Combating Oil Pollution Damage or Contamination by Noxious Substances in the South East Pacific, the 1983 Supplementary Protocol to the 1981 Lima Convention for the Protection of the Marine Environment from Land-based Source Pollution, the 1989 Supplementary Protocol to the 1981 Lima Convention for the Conservation and Management of Marine Coastal Protected Areas of the South East Pacific, and the 1992 Protocol to the 1981 Lima Convention for the establishment of a Regional Program to study ENSO in the South East Pacific coast.

As noted above, the CPPS member States have been quite involved in protecting the marine environment on a regional basis, in addition to all the measures implementing international standards in this regard that they, as individual States, may have taken at national level. In this regard, Peru has ratified and implemented into its national law most of the key conventions regarding the protection of the marine environment from pollution damage and contamination at sea, and the protection of the marine biodiversity, as noted in section 2.2.1 of this dissertation. However, Peru has encountered some legal constrains in carrying out proceedings against offenders successfully, because the scope of application of some of these conventions are based on the definitions of TS, EEZ, and HS as provided by UNCLOS. This situation occurs because Peru's national law applies similar standards to the EEZ regime throughout its entire jurisdiction at sea.

On the other hand, the 1992 Convention on Biological Diversity recognizes that, the marine biodiversity is important for the maintenance of life-sustaining systems of the biosphere, human food chain, and other needs of the coastal populations (CBD, 1992). In this sense, Articles 66 to 69 of Peru's 1993 national constitution provide the general framework for the conservation and use of the national biodiversity. Article 68 provides for the general obligation of the State to undertake whatever actions may be necessary to promote the conservation of the national biodiversity and its sustainable development throughout its national territory and its maritime domain. These provisions have led the country to adopt a proactive approach in addressing environmental issues on the basis of the precautionary and holistic principles, resulting in an important environmental development on the protection of its marine ecosystem (CONAM, 2002).

As discussed in section 2.1.1 of this Dissertation, Peru carries out a sustainable management of its marine ecosystem for the preservation and proper exploitation of the marine species as a matter of major importance within its fisheries policy. Peru's Fishing Law has been designed in accordance with the 1995 FAO recommendations for responsible fisheries to maintain the annual take at the maximum sustainable levels, in order to ensure the continued existence of the species. It guarantees a responsible use and conservation of Peru's biologically diverse hydro-biological resources, and is therefore devoted to encouraging a sustainable use of natural hydro-biological resources (MINPES, 2002). However, Peru's fisheries law regulates fishing activities in Peru's territory and maritime domain only, although the ENSO phenomenon affects the availability of its fishery resources; particularly, its straddling fish stocks (anchovy and sardine), making them to migrate to HS or off northern Chile.

On the other hand, Peru has established the National Commission for Biodiversity (*Comision Nacional para la Biodiversidad* [CONADIB]) in 1993. This Commission is in charge of coordinating the activities required in order to implement CBD. CONADIB is a multi-disciplinary and inter-sectoral organism presided by the National Environmental Council (*Comision Nacional del Medio Ambiente* [CONAM]), and integrated by representatives from all sectors concerned. CONADIB's executive committee operates through 4 official working groups and one sub-group: forest biodiversity, genetic resources (with a sub group on bio-safety), agricultural biodiversity, and marine biodiversity. The members of this committee are all government representatives from the sectors concerned.

CONAM was established in December 1994, as the national environmental authority of Peru. Its mission is to articulate sectoral policies into a cross-sectoral unified environmental policy. CONAM seeks to promote sustainable development by fostering a balance between socio-economic development, the use of natural resources and environmental conservation in all areas. CONAM chairs several national commissions in charge of implementing the conventions on Biological Diversity, Climate Changes, Desertification and Droughts, and those related to the related to the protection of the marine environment (CONAM, 2002).

The Peruvian Sea Institute (*Instituto del Mar del Perú* [IMARPE]) is the governmental agency in charge of collecting scientific data and diagnosing the Peruvian marine ecosystem, providing information to CONAM's working group on marine biodiversity, the Ministry of

Fisheries, and the General Directorate of Captaincies and Coast Guard (DICAPI). The latter is the national maritime authority dealing with the actual implementation, compliance and enforcement of all the maritime conventions ratified by Peru, including those related to the protection of the marine biodiversity.

The Law on the Conservation and Sustainable Use of Biodiversity was enacted in 1997. This Law defines the national goals and objectives in accordance with the CBD. It has set the national strategy for the protection of the Peru's biodiversity and its action plan, establishing that each ministry must introduce and implement into its sectoral programs and plans (agriculture, education, health, transport, and defense) the goals and objectives outlined in the national strategy. This law is undoubtedly the best contribution to the development of the legal and political framework for the conservation and sustainable use of biodiversity in Peru.

Finally, Peru's government is aware of the importance of the marine and coastal biodiversity for maintaining fisheries and other biological resources. The oceanic currents do not honor legal boundaries. Rather, oceans, seas, and coastal zones are ecologically linked across wide distances (FAO, 2002). The activities of one nation may harm the seawaters of other nations, and may eventually affect waters at a distance of thousands of kilometers, for which the marine environment and its living resources have been subject of international cooperation over many years. Therefore, the 1982 United Nations Convention on the Law of the Sea is particularly important for international cooperation concerning oceans. In this regard, Article 22(2) of the CBD provides that it should be implemented consistently with rights and obligations under "the law of the sea". While Article 22(2) does not explicitly refer to UNCLOS, most of that agreement is generally understood to embody the customary law of the sea. Today, UNCLOS is internationally recognized as such. The 1995 Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks, and the 1995 Code of Conduct for Responsible Fisheries (FAO) are also important instruments in this regard, since both were developed within the framework of UNCLOS. Therefore, Peru has achieved an important environmental development regarding to the protection of the marine environment and its biodiversity. However, Peru should accede to UNCLOS to consolidate its historical involvement in protecting the marine resources and coastal States' rights, since most of the international instruments regarding the protection of the marine environment are framed under the UNCLOS provisions recognizing its customary character. Then, Peru may be able to comply with and enforce properly all the maritime Conventions to which it is subject to.

Chapter Five

Peru's Accession to the 1982 United Nations Convention on the Law of the Sea

At this point of this dissertation, Peru's role in promoting the recognition of the coastal State's rights over its adjacent seawaters for the socio economic development of its nation, and Peru's permanent concern in protecting the marine ecosystem under its jurisdiction have been discussed in the prior chapters.

As discussed in the last three Chapters of this dissertation, the protection of Peru's marine ecosystem for the socio economic development of its nation has been the overriding objective of the protection of Peru's maritime interests over the last 55 years. In this sense, Peru has taken a number of actions to protect these interests such as preserving the marine ecosystem under its jurisdiction on the basis of the precautionary approach, attending ISA meetings as observer to protect its economic interests in the Area, participating in all of the CPPS cooperative arrangements to protect the marine ecosystem and marine resources in the southeast Pacific, evaluating the way to approach the maritime boundary issue with its neighbours, and recently by promoting cooperative measures for the protection of straddling stocks in areas beyond its national jurisdiction. As a result, Peru has achieved an important marine environmental protection development to date.

In this sense, this Chapter will discuss the benefits that Peru may obtain from acceding to the United Nations Convention on the Law of the Sea 1982, to protect its maritime interests within and beyond 200nm, and establish its maritime boundaries with Chile and Ecuador.

5.1 The Protection of Peru's Maritime Interests within and beyond 200nm

At present, most of the UNCLOS provisions are part of the customary international law binding upon all States, whether they are party or not to the Convention. As a consequence, countries holding unilateral positions in this regard are every day less accepted and supported by the international community. This situation has brought some of the traditional countries supporting the 200nm thesis to become party to the Convention over the last decade, for

instance Argentine (1995), Panama (1996) and Chile (1997). Thus, Peru may be at a disadvantage to fully exercise its legitimate rights and obligations as coastal State bordering the southeast Pacific coast being out of this Convention. Meanwhile, all UNCLOS member States may exercise effectively their rights as coastal States protecting their interests within the different maritime zones recognized by the Convention, and beyond them through the 1994 and 1995 Implementing Agreements. In fact, Peru's national law applies international standards over its entire Maritime Domain, which means that it does not impose stricter regulations on shipping in seawater areas nearby its coastline as it is under the TS regime.

Article 54 of Peru's national constitution provides for "freedom of communication" (freedom of navigation) to all ships over its Maritime Domain. This Article establishes that *"[t]he national jurisdiction is to be exercised without hampering the international freedom of communications and with due regard to international law and the treaties ratified by Peru"* (Constitution Politica del Peru, 1993). In practice, Peru has implemented a maritime traffic control regime over its entire national jurisdiction to ensure safety at sea by tracking vessels navigating within its Maritime Domain and supporting search and rescue operations at sea. This regime only requires ships to comply with the international standards regarding safety of navigation and marine pollution prevention, and provides no stricter regulations regarding ship's construction, design, machinery or manning than those provided by international law. Thus, Peru exercises a *sui generis* jurisdiction over its entire Maritime Domain where international standards are applied through its national law. Therefore, for Peru acceding to UNCLOS may signify the adoption of a more favourable regime over its adjacent seawaters, in light of the different levels of jurisdiction that this Convention provides.

On the other hand, Peru has taken measures to ensure the preservation and proper management of fisheries within its national jurisdiction, through the implementation the 1992 Convention on Biological Diversity and the 1995 FAO Code for Responsible Fisheries into its national fishing and general environmental laws. Additionally, Peru's national law has implemented all the protective measures adopted by the CPPS since its creation. However, Peru's national law has no standing beyond 200nm or areas under its neighbors' jurisdiction, where its straddling fish stocks use to migrate. Thus, Peru cannot protect these species from over-fishing activities in these areas, while they are being protected within its national jurisdiction. Therefore, the availability of Peru's straddling fish stocks (anchovy and sardine) for Peru's fishing industry may be endangered in the short term, affecting Peru's national

economy (MINPES, 2001). In this sense, it should be recalled that Peru's fishing industry accounts on average for 13.4% of the national exports and 23% of the GDP annually. Peru's national GDP is not big enough to absorb major losses of such a large and profitable industry.

In this regard, the CPPS have adopted some measures aspiring to implement the provisions of the 1995 Fish Stocks Agreement and others related to the 1992 Biodiversity Convention at regional level. However, these measures are focused on marine scientific research activities, information exchange, and monitoring of marine biodiversity only, and no regional agreement in this regard has been achieved to date (CPPS, 2002). This suggests that Peru should accede to UNCLOS and the 1995 Fish Stocks Agreement, in order to enhance the measures it has taken to ensure the protection, long-term conservation, and sustainable use of its fisheries to date. It may also be a starting point for Peru to promote negotiations at regional level pursuing a cooperative arrangement in this regard.

As discussed in Chapter Two, a coastal State should be able to exercise its sovereign and exclusive rights for the protection of its marine resources and the regulation of the marine activities within its EEZ and CS. It should also be able to exercise the EEZ freedoms within the jurisdiction of another State according to the Convention. Unfortunately, Peru's national law provides no regulations regarding the exercise of these EEZ freedoms within the jurisdiction of its neighboring States, meaning that Peru may be losing the opportunity to undertake marine scientific research and other activities within their EEZ, under due bilateral agreement with them. In this regard, marine scientific research activities are essential for the preservation of Peru's straddling fish stocks beyond its national jurisdiction. Therefore, for Peru acceding to UNCLOS and to the 1995 Fish Stocks Agreement is an essential matter to ensure the protection of these species (anchovy and sardine) and other economic interests within and beyond its national jurisdiction, including the EEZ of its neighboring countries.

To support Sates in policy-making tasks for the protection of their marine resources and maritime economic interests within and beyond their national jurisdictions, the United Nations Program on the Law of the Sea has established a number of assistance programs on matters regarding marine scientific research, transference of technology, building national capacity, data exchange, marine pollution prevention, ocean governance, and marine resources management. Certainly, these programs would enhance Peru's national efforts in these areas towards the socio economic development of its nation. It suggests that, while Peru

seems to be protecting the marine environment and marine biodiversity under its national jurisdiction according to international law, it is losing the chance of taking part in these assistance programs. Therefore, Peru should accede to UNCLOS in order to consolidate its national efforts for the protection of its maritime interests within and beyond 200nm, which will certainly contribute to its socio-economic development.

On the other hand, after the adoption of the 1994 Implementing Agreement on Part XI of UNCLOS, any ratification or accession to the Convention represents also consent to be bound by the Agreement, and no State or entity can establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention as well (Churchill, 1999). This Agreement embodies sound market oriented principles for administering the Area, enabling member States to participate in the substantive administering decisions on the seabed regime. Non-member States are allowed to participate in the meetings as observers only, and no vote-taking right is conferred to them. ISA has held 6 meetings to date, in which Peru has participated as observer in light of the importance of its mining industry for its national economy. This industry accounts on average for 23% of Peru's annual national exports, and is expected to growth substantively by the end of 2002 as a consequence of the recent foreign investments in the industry, and the economic and political stability existing in the country at the moment (MEF, 2002). Thus, it is essential for Peru to recognize the high development of deep seabed mining technology and its possible economic implications for the world market of land-based mining products. In this sense, Peru should accede to UNCLOS, in order to participate effectively in the decision-making process of ISA and protect its economic interests in the Area as a member State. As well as, to participate in the annual workshops that the Authority organizes on various aspects of seabed exploration, with emphasis on measures to protect the marine environment from any harmful consequences. It should be recalled that, it is through the Authority that States parties to the Convention will ensure that the oceans and seas beyond the limits of national jurisdiction remain as the common heritage of mankind (Arias-Schreiber, 1990).

5.2 The Establishment of Peru's Maritime Boundaries with Chile and Ecuador

Having discussed some of the benefits that Peru may obtain from acceding to UNCLOS to protect its maritime interests within and beyond 200nm, this section will discuss some of the relevant aspects of the maritime boundary issue between Peru and its neighbours to date.

The maritime boundary issue between Peru and its neighbours is based on the assumption of the 1954 Agreement on Maritime Boundary Special Zone as an actual maritime boundary agreement by Chile and Ecuador. This assumption has implied a disadvantageous situation for Peru over the last 48 years.

As noted in section 2.1.2, the 1954 Agreement on Maritime Boundary Special Zone established a special fishing zone between Peru-Chile and Peru-Ecuador, in order to facilitate the control of fishing activities in areas nearby their jurisdictions. This special fishing zone was defined as a strip of 10nm breadth running along either side of the seaward extension of the parallels of latitude delimiting the land borders between Peru and these countries from 12nm up to 200nm from coastline. It was an Agreement for a functional purpose, but not for the establishment of maritime boundaries between them (Arias-Schreiber, 1990).

Despite this fact, the Agreement has been assumed by Chile and Ecuador as an agreement on maritime boundaries with Peru since its adoption in 1954 on the basis of a number of arguments. Additionally, Peru has contributed to this erratic practice by its own conduct and consent over the years (Arias-Schreiber, 1990). However, Peru has filed a Declaration with the Secretary General of the United Nations in 2001, stating its non-recognition of the parallels of latitude defining the special fishing zones established in the 1954 Agreement as maritime boundaries between Peru-Chile and Peru-Ecuador. It also stated that there is no maritime boundary agreement between these countries to date. The Peruvian Government issued this Declaration after several official notes exchanged with these countries in 1983, 1986, and 1993 respectively. Later, the United Nations General Secretary distributed due copies of this Declaration to Chile and Ecuador (Brousset, 1999). Both governments have made comments on this Declaration pointing out they have no boundary issues unsolved with Peru to date; however, they have issued no official notice in this regard. In this context, Peru is expecting to undertake negotiations with these countries in this regard in the near future.

As a consequence of this erratic practice and Peru's northwest and southeast orientation, it cannot exercise consistently its national jurisdiction over its southern adjacent seawaters up to 200nm from its coastline. At the point called "la Concordia-hito 1" located on the land border between Peru and Chile, Peru exercises almost no jurisdiction over its adjacent seawaters (up to 1nm only) (See Map-Annex G). At the same point, Chile can exercise 12nm of TS and 188nm of EEZ jurisdiction, in light of its north-south orientation. In other words, for Chile

assuming a maritime delimitation on the basis of such a parallel of latitude is very convenient, since it can exercise a consistent national jurisdiction over 200nm from its coastline. Meanwhile, Peru's national jurisdiction over its adjacent southern seawaters is limited up to the maximum seaward extension reaching such a parallel of latitude from its coastline, as follows: 20nm from Sama, 40nm from Ilo, 80nm from Mollendo, 100nm from Camamana, and 200nm from San Juan. The latter is a port located 700 km from the Chilean-Peruvian border, which is almost one third of the total length of Peru's coastline (Brousset, 1999). This situation is against Peru's original maritime claim as of 200nm declared in the 1947 Presidential Decree, the 1952 Santiago Declaration, and in its current National Constitution.

This erratic practice has also been performed by Ecuador in the northern special fishing zone; however, its consequences over Peru's national jurisdiction have not been as negative as they were in the case of Chile. In this case the maritime boundary issue is more a mater of negotiating a formal maritime boundary agreement on the basis of the principles of equality and proportionality implied in Articles 15, 74, and 83 of the Convention (Brousset, 1999).

This lack of clarity on maritime boundary delimitation between Peru and these countries has resulted in Peru's inability to claim its legitimate rights as coastal State over rich marine ecosystems located off the northern Chilean coast and off the southern Ecuadorian coast, as discussed in section 2.1.2. The areas off Chile may result from drawing a median line between the parallel of latitude used to define the southern special fishing and a perpendicular line to the Peruvian shoreline, extending seaward up to 200nm from the point called "la Concordia-hito 1". This assumption has been made on the basis of Articles 15, 74 and 83 of UNCLOS, generating two different zones: one of approximately 35.000 sq km (now, under the Chilean jurisdiction) and another of approximately 26.000 sq km (now, under the HS regime), (See Map-Annex F), (Brousset, 1999). These are the areas where Peru's straddling fish stocks use to migrate, when the ENSO phenomenon appears within Peru's national jurisdiction warming up its marine ecosystem (IMARPE, 2002)

The area off Ecuador may result from drawing a median line from a point called "Punta Capones" on Peru's coastline extending seawards between Santa Clara Island (Ecuador) and the parallel of latitude defining the northern special fishing zone with Ecuador. This assumption is also based on Articles 15, 74 and 83 of UNCLOS, and generates an area of 5.390 sq km (now, under the Ecuadorian jurisdiction), which is deemed to produce

approximately 3.5 million tons of pelagic resources per year (Brousset, 1999). This production of fisheries may enhance the food chain of Peru's coastal population and the local economy in northern Peru (MINPES, 2002).

On the other hand, neither the 1947 Peruvian Presidential Decree nor the 1952 Santiago Declaration constituted a Declaration of self-determination of maritime boundaries between Peru and these countries (Arias-Schreiber, 1990) for the reasons discussed in Chapter Three of this Dissertation; however, it is relevant at this point of the discussion to highlight them again. On the one hand, the 1947 Presidential Decree was for extending Peru's national jurisdiction up to 200nm to protect its sovereign rights as a coastal State over its marine resources for the socio economic development of its nation (See Annex A). On the other hand, the 1952 Santiago Declaration was for reaffirming the maritime zone of 200nm before the international community and undertaking an international advocacy campaign to support the 200nm thesis as a priority of the foreign affairs policy of Peru, Chile, and Ecuador (See Annex B). Similarly, and as noted in section 2.1.2, the 1954 Agreement was for defining a special fishing zone to deal with fishing matters only. In fact, the wording of this Agreement focuses on matters dealing with the accidental presence of a national fishing vessel within waters under the national jurisdiction of one of the neighbouring States (See Annex C). Therefore, neither of these Agreements is a specific maritime boundary treaty between Peru and its neighbours, which is essential for the establishment of maritime limits between countries (Arias-Schreiber, 1990).

However, some publicists have argued that the 1947 Peruvian Presidential Decree recognized the parallels of latitude as the limits of Peru's national jurisdiction over its adjacent seawaters, and it should override Peru's position on the issue. In this regard, such a Decree was a Peru's unilateral initiative with no binding power upon other States. Therefore, it should not bind Peru internationally (Perez de Cuellar, 2001). In fact, the ICJ requires that the limits of a State have to be in accordance with the general international law, without specifying its juridical nature (Fernandez, 1994).

It has also been argued that, Article 4 of the 1952 Santiago Declaration stated clearly that the geographical parallels delimiting the land borders between Peru-Chile and Peru-Ecuador were to be used as the maritime limit between these countries (Fernandez, 1994). Similarly, other publicists have argued that the special fishing zones established under the 1954

Agreement were defined on the basis of the existing maritime boundaries between Peru and its neighbours as provided by Article 4 of the 1952 Santiago Declaration. In this regard, Article 4 of the 1952 Santiago Declaration established that (in translation):

> The zone of 200 nautical miles shall extend in every direction from any island or group of islands forming part of the territory of a declarant country. The maritime zone of an island or group of islands belonging to one declarant country and situated less than 200 nautical miles from the general maritime zone of another declarant country shall be bounded by the parallel of latitude drawn from the point at which the land frontier between the two countries reaches the sea (PUCP, 2001, page 270).

It has also been argued that the 1968-1969 Peru-Chile Joint Commission established for the demarcation of the land border between Chile and Peru according to the 1929 Lima Treaty on Land Boundary between them, also defined the referencing point (la Concordia-hito 1) from which the maritime boundary between Peru and Chile was to be drew (Fernadez, 1998). This argument is inaccurate, not only because this joint commission was appointed within the context of the 1929 Lima Agreement, but also because such an Agreement dealt entirely with the establishment of the land boundary between Peru and Chile on the basis of the 1883 Peace Treaty between Peru after Chile after the South Pacific war between these countries. This commission placed the first demarking pillar on the coastline continuing eastwards till the encountering point with the Bolivian border. This first pillar was called "la Concordia-hito 1", where a lighthouse was also set as a reference for aligning the southern fishing zone with Chile. The establishment of this lighthouse was for a functional purpose, which did not mean the recognition of the parallel of latitude as maritime boundary between Peru and Chile. On the contrary, the 1969 joint commission was in fact a joint instrument to implement the 1929 Lima Treaty and carry out the demarcation tasks of the land border only.

As noted earlier in this section, Peru has contributed to the error of assuming those parallels of latitude as its geographical limits at sea by its own conduct and consent, falling within the limitations established in Article 48(2) of the Law of the Treaties. This Article provides that a State cannot invalidate its consent to be bound by a treaty due to an error in the treaty itself, when such a State has contributed to such an error with its own conduct. It means that Peru may not invoke the invalidity of the 1954 Agreement on the basis of the existence of a technical error in the definition of the special fishing zones, which assumed the geographical parallels of latitude as limits of the national jurisdiction between Peru and its neighbouring

countries. As a result, a customary practice has taken place leading to the emergence of a historical right in this regard. This argument may be used by Chile or Ecuador to avoid the usage of Article 15 of UNCLOS in a possible attempt of Peru to negotiate the establishment of its maritime boundaries with these countries.

It is also important to note that the 1954 Agreement on Maritime Boundary Special Zone has been ratified by Chile, Ecuador and Peru and implemented into their respective national laws. Likewise, it has also been deposited with the UN Secretary General in compliance with Article 102 of the UN Charter. Further, it should be recalled that Chile is currently a State party to UNCLOS, and Ecuador is deemed to accede it in the near future, although its national law provides for a 200nm TS from its baselines. Additionally, Chile has deposited a Declaration stating that it will not be subject to the ICJ for the settlement of disputes.

As this point of this discussion, the arguments in favour of the Chilean position seem to be so conclusive against Peru's position that, any attempt of Peru to negotiate an agreement on maritime boundaries with Chile and Ecuador would fail. However, looking at the consequences that such an erratic practice have caused to Peru's jurisdiction, whatever action it may undertake within the principles of the peaceful solution of disputes would not end up in a worse situation than the one in which Peru already is. In this sense, some arguments to support Peru's position before a possible negotiation for the establishment of its maritime boundaries with these countries are to be discussed in the following paragraphs.

It may be argued that Article 4 of the 1952 Santiago Declaration was referred exclusively to a situation, when the maritime zone of 200nm conferred to an island under this Declaration overlaps with the national jurisdiction of a neighbouring State. In this case, the Declaration stated that the seaward extension of the land parallel delimiting the land border between the countries concerned was to be used to define the maritime limit between them (Santiago Declaration, 1952). This situation does not exist in the seawaters nearby Chile; therefore, the argument stating that the 1954 Agreement established the special fishing zones on the basis of the definition of maritime boundaries given by Article 4 of the 1952 Declaration has no fundament at all. Because, such an Article dealt with the particular circumstance described above. It suggests that, the 1954 Agreement was agreed on the basis of inexistent maritime boundaries between these countries, which could question its technical validity.

Likewise, since the 1952 Santiago Declaration was not focused on maritime boundaries between these countries, the signatory countries would not have been able to clearly foresee some of the future technical implications of using the parallels of latitude to establish the maritime limit between two countries under the special circumstance regarding islands described above.

The imperfection of the 1954 Agreement is evident. It is not only because it assumed the existence of maritime boundaries between Peru and its neighbours on the basis of Article 4 of the 1952 Santiago Declaration, but also because it defined its scope of application as to be beyond 12nm. In this sense, it should be recalled that, usually the breadth of sea between the coastline and 12nm is an essential point in a maritime boundary agreement between States with adjacent or opposite seawaters, in light of the significance that such an extension has for a coastal State as TS. Thus, assuming that this Agreement was an actual maritime boundary agreement between Peru and its neighbours, it did not established TS boundaries at all, which is actually a bit odd.

The facts discussed so far, compliment the argument stating that the 1954 Agreement was for the specific purpose of establishing a flexible fishing zone to deal with specific fishing matters between Peru and its neighbours, it means a modal or functional zone, and not for establishing any maritime boundaries between them.

Even if it is assumed that the 1954 Agreement was an actual maritime boundary agreement between these States, which was not the case, the road to argue its invalidity is still open. In this case, it may be argued that the 1954 Agreement has been in contradiction to the "principle of equitability", as provided by general international law, from the moment of its adoption till these days, not only for it was agreed on the basis of inexistent maritime boundaries between Peru and its neighbours, but also for its subsequent practice and consequences as discussed earlier in this section. This principle is widely recognized as the cornerstone in every boundary-making negotiation between States, and binding upon them.

The classical statement of the principles and rules applicable to the establishment of maritime boundaries among States is to be found in the decision held by the ICJ in 1969 in the North Sea Continental Shelf case, which, among other principles, established that:

> [I]n the course of negotiations, the factors to be taken into account are to include: the general configuration of the coasts of the States concerned, as well as the presence of any special or unusual features; so far as known or readily ascertainable, the physical and geological structure, and natural resources of the area involved; the element of reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extend of the continental shelf areas appertaining to the coastal State and the length of its coast measured in the general direction of the coastline, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region (Brownlie, 1998, pages 222, 223).

The ICJ based this judgement on a consistent jurisprudence and the relevant rules of customary law applied by the ICJ and other tribunals to that date (Brownlie, 1998). These equitable principles have a normative character as part of general international law, and their application is to be distinguished from decision *ex aequo et bono* (Bakula, 1995). It means that these equitable principles are to be applied according to what is right and good. Further, these equitable principles are inherent to the general international law, and therefore binding upon all states (Brownlie, 1998).

The ICJ has also applied these equitable principles in the Continental Shelf cases of Tunisia versus Libya (1982), and Malta versus Libya (1985), as well as in cases in which the Court had to fix maritime boundaries, such as in the Gulf of Maine Area (Canada versus the USA, 1984), Guinea-Bissau and Senegal (1991), the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras, with Nicaragua intervening, 1992) and the Area between Greenland and Jan Mayen Island (Denmark versus Norway, 1993) (ICJ Website, 2002).

The principles of equitability and proportionality applied in above cases by the ICJ may also be relevant to the 1954 Agreement, since it dealt with the establishment of special fishing zones on the basis of the existence of maritime boundaries between Peru and its neighbours.

Similarly, the UNCLOS provisions for the delimitation of the EEZ and the CS, Articles 74 and 83 as discussed in Chapter Two of this Dissertation, leave the issue of delimitation to the rules of general international law, within which the principles of equitability and proportionality are implied. Furthermore, these Articles together with Article 15 presume that an "equitable solution" to a boundary issue between States, is an equal division of the area in dispute between them (Brownlie, 1998).

As noted earlier, the principles of equitability, as recognized by the ICJ, are consistent with jurisprudence and the relevant rules of customary law, as well as having a normative character as part of general international law. In other words, it is deemed to be binding upon all States. In this sense, it may be argued that the principle of equitability may fall within the scope of application of the concept of peremptory norm of general international law as defined in Article 53 of the Law of the Treaties, since this principle is accepted and recognized by the international community of States as a whole.

On the contrary, it may also be argued that the principle of equitability may not fall within the scope of such an Article, simply because the concept of *jus cogens* involves peremptory norms of higher status that are to be accepted and recognized as such by the international community of States as a whole. It means that, no State can be in disagreement on its acceptance. However, one can hardly imagine that any State could be in disagreement with the application of the principles of equitability as a general principle of international law to carrying out negotiations for the establishment of maritime boundaries between States, although its lower status with regard to the peremptory norms falling within the scope of the concept of *jus cogens*. Therefore, the application of this argument in future negotiations on maritime boundary between Peru and its neighbours may depend on further studies on the subject.

At this point of the discussion, it is possible to note that there are several elements that may lead one to think about the actual validity of the 1954 Agreement as a "maritime boundary agreement" between Peru and its neighbours. The facts exposed above have shown that, in fact this Agreement was not for such a purpose, but also that there has been a lack of clarity on boundary delimitation between Peru and these countries over the past 47 years. Therefore, it may be incorrect to attribute the status of a maritime boundary treaty to the 1954 Agreement on Maritime Boundary Special Zone between Peru and its neighbours, or to talk about an implied recognition of the existence of maritime boundaries between them on the basis of the 1952 Santiago Declaration.

On the other hand, some publicists have argued that UNCLOS has some weaknesses regarding the issue of boundary-making between countries, for instance: it provides no binding criteria or other guidelines to people who are responsible for the diplomatic and adjudicative tasks of delimitation (judges, arbitrators); States usually denounce the provisions

regarding the settlement of disputes when they become party to the Convention; and it fails to link delimitation settlements with boundary arrangements for coastal governance and marine resources management (Johnston, 1991). However, despite these deficiencies UNCLOS is deemed to be a balanced international instrument for maritime boundary making between States parties (Arias-Schreiber, 1990)

Therefore, for Peru acceding to UNCLOS is essential to be in a better position than now to undertake negotiations with its neighbours seeking to reach a permanent agreement on maritime boundaries with them. Particularly, to negotiate with Chile, which is already party to the Convention, on the basis of equal legal obligations under UNCLOS. These negotiations should be focused on meeting their interests under an approach towards the sustainable socio economic development of their nations, on the basis of the international principles of equitability and proportionality, as implied by Articles 15, 74, and 83 of the Convention.

In this sense, it is important to highlight some additional aspects regarding to the maritime boundary issue between Peru and its neighbours, which should be taken into account for undertaking negotiations in this regard.

Today, the concept of maritime boundaries implies more than just drawing a linear limit between countries with opposite or adjacent seawaters. It should involve cooperative arrangements for ocean governance and marine resource management (Johnston, 1991). This premise suggests that, States that want to negotiate a maritime boundary agreement should evaluate carefully the purposes and limitations of their maritime claims with regard to its neighbouring countries, considering not only the national security and economic aspects, but also the efficiency and equitability of their claims itself.

In this sense, Douglas M. Johnston sustains that there is often a need for some kind of boundary arrangement in every boundary-making negotiation between States to meet their national interests within the scope of the current environmental development (Johnston, 1991). In other words, nowadays the maritime boundary-making issue involves some kind of joint development arrangement rather than the simple settlement of a linear boundary between the States concerned. Furthermore, he suggests that an arrangement for "Joint Ocean Management" is the most suitable way to approach the settlement of a maritime boundary issue, when the area in dispute is characterized by the presence of straddling fish stocks

common to the States concerned (Johnston, 1991). This kind of joint arrangement should provide for specific cooperative management measures among the appropriate agencies of the governments concerned, in order to establish clearly the management functions between them. In this sense, it may be necessary to create a joint commission entrusted with some degree of executive authority to supervise the right implementation of the joint policy for ocean governance and marine resource's management adopted by the States concerned.

In this connection, it is possible to say that the characteristics of this approach suit some of the common interests of Peru and Chile for the establishment of a maritime boundary between them in the near future. This argument is based on the fact that Chile and Peru have been very active in promoting the protection of the marine environment and marine resources within the actions undertaken by the CPPS over the last 50 years, and the importance that the Peruvian straddling fish stocks have for their fishing industries. Some of the relevant aspects in this regard are going to be discussed in the following paragraphs.

As discussed in section 2.1.1, Peru's marine ecosystem is seriously affected when the El Niño Southern Oscillation (ENSO) takes place warming up the surface temperature of the Ecuadorian and Peruvian adjacent seawaters towards southern Peru. This phenomenon causes the disappearance of the rich nutrient condition of Peru's marine ecosystem making its straddling fish stocks to migrate massively to sea areas off the northern Chilean coast or to southern areas on the HS. These straddling stocks are mainly anchovy and sardine, which are the main source for the commercial fishing industry of Chile and Peru. These fish stocks can be found originally off north central Peru, southern Peru, and northern Chile (IMARPE, 2002). As a consequence, the volume of catches of this straddling stock decreases significantly within Peru's national jurisdiction, while it usually increase in northern Chile. The recent ENSOs were in 1982-83, 1986-87, 1990-95, and 1997-98 (IMARPE, 2002).

In this regard, it is important to recall that the Peruvian national economy is quite reliant on the fishing industry, which is mainly based on the production of fish meal and fish oil resulting from anchovy and sardine (MINPES, 2002). It accounts for about 13.4% of the total national exports on average annually, and its major importers are Indonesia, Canada, Lithuania, United Kingdom, Spain, Australia, Russia, India, Vietnam, France, Rumania, South Korea, the United States, and Chile (MINPES, 2001). Therefore, any negative effect in the fishing industry will impact directly on Peru's national GDP and its national exports (CIA

WFB, 2002). For instance, Peru's anchovy catches in 1994 were 12,520,611 million tons, 9,644,576 million tons in 1995, 8,863,714 million tons in 1996, 7,685098 in 1997, and 1,729,064 million tons in 1998 (FAO, 1998). Thus, Peru's anchovy catches were considerably reduced during the last ENSO period (1997-98) although preventive measures were taken by the government to avoid over-fishing activities during these years (IMARPE, 2002). Further, it is important to highlight that Chile has been one of the major importers of Peru's fish meal over the last 20 years.

Meanwhile, the Chilean commercial fishing industry has switched its target species from sardine to anchovy in 1987, benefiting from the strong recruitment of anchovy coming from off north central and southern Peru during the ENSO's period of 1986-1987 (Sharp, 1993). The Chilean fishing industry is oriented mainly around intensive captures of small pelagic species. Presently the captures are mainly taken between its northern and central coast. In total 36 pelagic species are used for fish meal and fish oil production, but only 3 of these species represents 90% of the total Chilean fish capture. These species are: jack mackerel, anchovy, and sardine. Both jack mackerel and anchovy representing 87% of the total Chilean fish captures, are straddling fish stocks (Zuleta y Oliva, 1995). The Chilean fishing production grew from 900,000 tons in 1975 to 7.6 millions tons in 1998 (FAO, 1998). In 1995, fisheries represented Chile's third largest export income, after mining and forestry. At the present, the Chilean fishing industry brings in US$ 1.700 millions annually representing 12% of total annual Chilean export value (CIA WFB, 2002). Furthermore, Chile has reduced its imports of fish meal and fish oil from Peru for almost 100% since 1987 (MINPES, 2002). It suggests that the influence of the ENSO phenomenon over Chile's marine ecosystem and straddling stocks have been important for the enhancement of its fishing industry over the last 15 years, while such an influence has negatively affected Peru's fishing industry and reduced its national income from fish meal and fish oil exports to Chile.

In this context, it is important to know that a joint Declaration on Fisheries Problems in the South Pacific was issued by Peru, Chile and Ecuador, as a result of the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific held in Santiago de Chile on August 18, 1952 (See Annex H). This Declaration is relevant at this point of the Discussion, because it expressed the recognition of these countries of the importance of fisheries as an irreplaceable source for their industrial fishing, including the fact that some of these fishery resources periodically migrate and appear at certain seasons

off the western coast of South America. In other words, these States recognized the importance of straddling fish stocks for their fishing industries. Further, they agreed to coordinate national and international scientific research activities regarding such species, and enact the necessary regulations for the conservation of fishery resources in the maritime zones under their jurisdiction (Declaration on Fishery Problems, 1952). Thus, two aspects are relevant to this discussion, first, the general recognition of the existence of the straddling fish stocks (anchovy and sardine), and the agreement between Peru, Chile and Ecuador to take the necessary national and international measures to ensure the preservation of such fish stocks.

Similarly, it is important to highlight that the 1954 Agreement was part of a package of complimentary agreements adopted at the Second Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific held in Lima-Peru on December 4, 1954. This package of Agreements was to compliment those adopted in the First Conference in 1952. It included agreements on the establishment of measures to regulate fishing licensing and penalize offenses against fishing regulations in the southeast Pacific. All these Agreements, including the 1954 Agreement on the Special Fishing Zone, had a common provision establishing that all these Agreements were to be interpreted as an integral and supplementary part of, and not in any way to abrogate, the Agreements and decisions adopted at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific held in 1952. Thus, two aspects should be noted at this point of the discussion, the fact that Peru, Chile, and Ecuador decided to cooperate for establishing measures to ensure the protection and preservation of their marine resources including straddling fish stocks within their jurisdictions, and the common provision referred above, which has reaffirmed the argument stating that the 1954 Agreement on Maritime Boundary Special Zone was for fishing matters only.

Likewise, Peru, Chile, Ecuador, and Colombia have recently adopted the 2002 Santiago Declaration on August 14, in which they has stated their wish to establish cooperative measures for the protection of straddling stocks and highly migratory species in areas nearby the outer limit of their EEZ, in addition to the preventive measures agreed at the 1952 and 1954 Conferences. Further, this Declaration seeks to compliment the actions that have already been taken by the CPPS, and call upon developed States to participate in marine scientific research activities in the southeast Pacific area (EL COMERCIO, 2002). Similarly, Peru and Chile has recently adopted a bilateral Agreement on the Integrated Management of

the Marine Ecosystem of the Humbolt Marine Current on August 2002, which seeks to integrate their national policies for the preservation of the marine environment and its biodiversity. This is the first attempt taken by these governments on aspects related to the ocean governance and marine resources management issue (IMARPE, 2002).

Thus, Peru, Chile and Ecuador have been engaged in protecting and preserving their marine resources since 1952. They have developed enough foundation for a better international cooperation in this regard. It suggests that they may approach the maritime boundary issue on the basis of a joint ocean management arrangement for the protection of the marine ecosystem and its biodiversity, in light of the common interests they have in their fishing sectors and the increasingly economic integration and political cooperation between them.

In this context, undertaking negotiations towards the establishment of a joint ocean management regime in the areas claimed by Peru off northern Chile and off southern Ecuador from 12nm seawards up to 200nm, would be a viable approach for these countries to negotiate an agreement on maritime boundaries between them (See Annex F). However, the establishment of TS limits between these States should be an overriding aspect to be dealt with in accordance to UNCLOS.

Finally, the author wants to highlight that, discussing the advantages and disadvantages of a possible joint ocean governance regime between Peru and its neighbours or defining the steps that should be taken in this regard is a matter of a careful planning task, which should be undertaken by the Ministry of Foreign Affairs and the CONAM to meet the interests of all the sectors concerned. Unfortunately, a further discussion on this subject is not within the scope of this Dissertation; however, some important aspects that may help the Peruvian government to undertake a further study on this alternative approach have been highlighted. Therefore, the maritime boundary issue between Peru, Chile and Ecuador has to be approached on the basis of the purposes and limitations of their maritime claims with regard to its neighboring countries, considering not only the national security and economic aspects, but also the efficiency and equitability of their claims itself within the scope of the current international environmental development for the protection of the marine ecosystem.

Summary and Conclusions

Having discussed the historical role of Peru in supporting the recognition of the coastal States' rights over the marine resources within and beyond their national jurisdiction, as well as the importance of Peru's accession to UNCLOS for the protection of its maritime interests within and beyond 200nm, including the main aspects of the maritime boundary issue between Peru and its neighboring countries over the prior Chapters. This concluding section will summarize some of the main findings of this dissertation suggesting the reasons why Peru should accede to UNCLOS and the 1995 Fish Stocks Agreement at this point in history.

The adoption of the 1982 United Nations Convention on the Law of the Sea as the unique international instrument governing the uses of the sea, constituted the major political and legal achievement that the International community have ever had to date. At present, 138 States out of 186 UN member States have ratified the Convention being legally bound by this unique international instrument. In this sense, this Convention is considered to be the Constitution of the Oceans binding upon all States, whether they are party or not to the Convention, in light of its wide international acceptance as part of the customary international law. Therefore, countries holding unilateral positions in this regard are every day less accepted and supported by the international community as a whole.

Furthermore, the adoption of UNCLOS in 1982 meant not only the codification of the customary rights of the coastal States regarding the uses of the sea, which were consistently defended by Peru over many years; but also, the incorporation of the principles of the 200nm thesis into its main provisions, resulting from all the efforts displayed by the Peru and its thesis partners. As a consequence, some of the traditional countries supporting the 200nm thesis, such as Panama (1996) and Chile (1997), are now party to the Convention for the benefits and juridical safeguards that UNCLOS provides to its member States for ensuring the protection of their maritime and economic interests within and beyond 200nm. Thus, why should Peru be out of this Convention losing these benefits and juridical safeguards, while complying with most of the obligations that UNCLOS imposes on coastal States? Certainly, there is no reason at all for Peru to be out of this Convention losing the chance to effectively protect its maritime interests within and beyond its maritime domain.

As discussed in sections 2.1.1 and 5.1, the marine ecosystem under Peru's national jurisdiction is essential for the socio economic development of its nation, since Peru's fishing industry is one of the major pillars supporting its national economy. In this sense, Peru has developed sound fishing and environmental laws to ensure the protection of the marine ecosystem and marine biodiversity within its maritime domain over the last 20 years. These laws have been designed according to the current international environmental regime and the initiatives undertaken by the Permanent Commission of the States Bordering the Southeast Pacific coast in this regard. However, Peru encounters some constrains in applying appropriately some of the conventions regarding the protection of the marine environment and the marine biodiversity, because they usually imply the implementation of the different jurisdictional regimes under UNCLOS for the TS, EEZ and CS.

Likewise, as discussed in section 5.1, Peru is still unable to ensure the protection of its maritime interests beyond its maritime domain; particularly, those related to the protection of its straddling fish stocks and its economic interests in the Area. In this sense, the Permanent Commission of the States Bordering the Southeast Pacific coast has established a series of cooperative measures among its member States for enhancing marine scientific research activities to ensure the preservation of the marine resources within the southeast Pacific area, including straddling stocks. These measures have been designed for data collection and information exchange to enable parties to carry out more accurate scientific investigations regarding these species. However, there is no specific agreement for the protection of straddling fish stocks beyond the national jurisdiction of the States party to the CPPS as yet. As a result, over fishing activities in the HS and off northern Chile may deplete these species and affect Peru and Chile's economy in the future, in light of the importance of Peru's straddling fish stocks for the shipping industries of these countries. Similarly, Peru has been attending the meetings of the International Seabed Authority on the administering decisions over the activities in the Area as observer, in light of the importance of the mining industry to its national economy. Unfortunately, Peru could not participate effectively in these administering decisions, because no right to vote is conferred to non-parties States to the Convention and to the 1994 Implementing Agreement. Therefore, for Peru acceding to UNCLOS and the 1994 and 1995 Implementing Agreements is essential for the protection of its maritime interests within and beyond its maritime domain, as well as for consolidating the national efforts it has displayed in ensuring the protection of its maritime interests to date.

On the other hand, the maritime boundary issue between Peru and its neighbours is based on the assumption of the 1954 Agreement on Maritime Boundary Special Zone as an actual maritime boundary agreement by Chile and Ecuador. This assumption has implied a disadvantageous situation for Peru over the last 48 years, as described in section 2.1.2 of this dissertation. In practice, these countries have assumed the parallels of latitude defining the special fishing zones under this Agreement as *de facto* maritime boundaries between them and Peru, generating an inequitable situation that is so disadvantageous to Peru that it cannot exercise its national jurisdiction over its adjacent seawaters consistently up to 200nm. Further, Peru exercises only 1nm of national jurisdiction off its coastline at the point named "la Concordia", which is placed nearby the land border between Peru and Chile. Moreover, this erratic practice has implied the inability of Peru to exercise its legitimate rights as a coastal State over rich marine ecosystems off northern Chile and off southern Ecuador. In this sense, section 5.2 discusses this issue in detail concluding that the imperfection of the 1954 Agreement is evident, not only because it assumed the existence of maritime boundaries between Peru and its neighbours on the basis of an incorrect interpretation of Article 4 of the 1952 Santiago Declaration, but also because it was part of a package of complimentary agreements adopted at the Second Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific area held in 1954, which was expected to compliment the agreements adopted at the First Conference held in 1952. Thus, the 1954 Agreement was not a maritime boundary agreement between Peru and its neighbours as it is pretended by Chile and Ecuador, but it was an agreement for creating a functional zone dealing with specific fishing matters instead. Therefore, it may be incorrect to attribute the status of a boundary-making instrument to the 1954 Agreement between Peru and its neighbouring countries, or to talk about an implied recognition of the existence of maritime boundaries between these countries on the basis of the 1952 Santiago Declaration.

Likewise, the same section has discussed the possibility of approaching the maritime boundary issue between Peru and its neighbors on the basis of a joint ocean management arrangement for the protection of the marine ecosystem and the marine biodiversity of the areas deemed to be in dispute between them. This proposal is based on the common interests in commercial fishing that Peru and Chile have in the southern areas; particularly, wit regard to the preservation of Peru's straddling stocks for their fishing industries and their national economies, as discussed in section 5.2. It is also based on the historical role that these countries have had in protecting and preserving their marine resources since 1952, and the

increasing economic integration and political cooperation between them at present. This proposal has been left open for further analysis and discussion among parties concerned.

On the other hand, Peru has no land-boundary issues unsolved with its neighboring countries at present, which has reduced the economic and political uncertainty that a boundary issue would signify for foreign investors. In this sense, Peru is now focused on building strong bilateral relations with Chile and Ecuador, in order to achieve a strategic association with these countries towards a common economic development on the basis of mutual trust, cooperation, and increasing economic integration among them. In fact, the bilateral relations between Peru and Chile have been strengthened with the recent visit of the Peruvian President Dr. A. Toledo to Chile, in order to conclude a series of agreements regarding technical cooperation and economic integration between these countries. The Presidents of both countries also addressed the maritime boundary issue informally, recognizing the different position of their countries regarding the subject and the need to analyze this issue through the respective specialized national bodies of their countries. Thus, the conditions for a possible negotiation for the settlement of the maritime boundary between Peru and Chile in the near future may be taking place. In this sense, Peru should reassess its negotiating position with regard to its neighbors and accede to UNCLOS, in order to be subject to the same rights and obligations as Chile under this Convention and be in a better negotiating position with regard to Ecuador. These steps will certainly facilitate the process of negotiations between them in this regard.

Likewise, as discussed in section 4.2.1, Peru is now experiencing a very stable political and economic situation, resulting from its increasing integration to the regional and global economies as a key member of the Andean Community and the Asian Pacific Economies. In this sense, the recently adopted Andean Trade Preference Agreement (ATPA-2002) between Colombia, Ecuador, Peru, Bolivia and the USA has strengthened the economic integration between countries parties to the Andean Community and the USA, which will certainly enhance the levels of production in different sectors of the Peruvian economy, such as the mining and fishing industries. Therefore, Peru is experiencing a very stable domestic context, which is favorable for undertaking actions towards its accession to the Convention and the 1994 and 1995 Implementing Agreements, as well as approaching the delimitation of its maritime boundaries with Chile and Ecuador under UNCLOS.

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ANNEXES

Annex A

Presidential Decree No. 781 Concerning Submerged Continental or Insular Shelf August 1, 1947

Source: Pontificia Universidad Catolica del Peru (PUCP, 2001, pages 266, 267)

1. To declare that national sovereignty and jurisdiction can be extended to the submerged continental or insular shelf adjacent to the continental or insular shores of national territory, whatever the depth and extension of this shelf may be.

2. National sovereignty and jurisdiction are to be extended over the sea adjoining the shores of national territory whatever its depth and in the extension necessary to reserve, protect, maintain and utilize natural resources and wealth of any kind which may be found in or below those waters.

3. As a result of previous declarations the State reserves the right to establish the limits of the zones of control and protection of natural resources in continental or insular seas which are controlled by the Peruvian Government and to modify such limits in accordance with future changes which may originate as result of further discoveries, studies or national interests which may arise in the future and at the same time declares that it will exercise the same control and protection on the seas adjacent to the Peruvian coast over the area covered between the coast and an imaginary parallel line to it at a distance of 200 (two hundred) nautical miles measured following the line of the geographical parallels.

4. As regards islands pertaining to the Nation, this demarcation will be traced to include the sea area adjacent to the shores of these islands to a distance of 200 (two hundred) nautical miles, measured from all points on the contour of these islands.

5. The present declaration does not affect the right to free navigation of ships of all nations according to international law

Annex B

The 1952 Santiago Declaration on Maritime Zone

(Source: Internet Guide to International Fisheries Law, 2002)

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

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

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

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

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

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

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

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

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

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

Annex C

The 1954 Agreement on Maritime Boundary Special Zone between Peru, Chile and Ecuador

(Source: Internet Guide to International Fisheries Law, 2002)

AND WHEREAS

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

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

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

NOW THEREFORE THE SAID PLENIPOTENTIARIES HEREBY AGREE AS FOLLOWS:

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

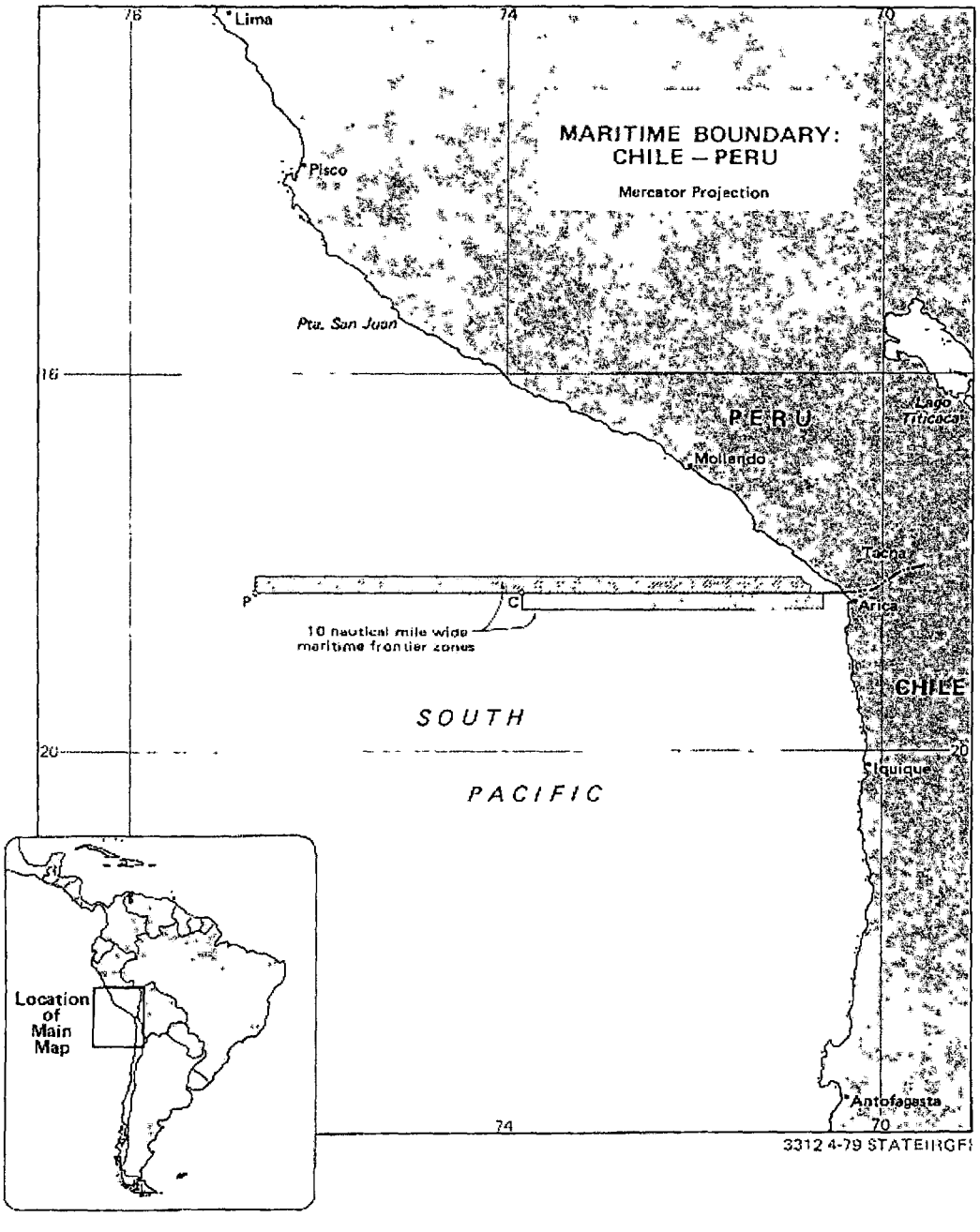
2. The accidental presence in the said zone of a vessel of either of the adjacent countries, which is a vessel of the nature described in the paragraph beginning with the words "Experience has shown" in the preamble hereto, shall not be considered to be a violation of the waters of the maritime zone,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

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

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

Annex D

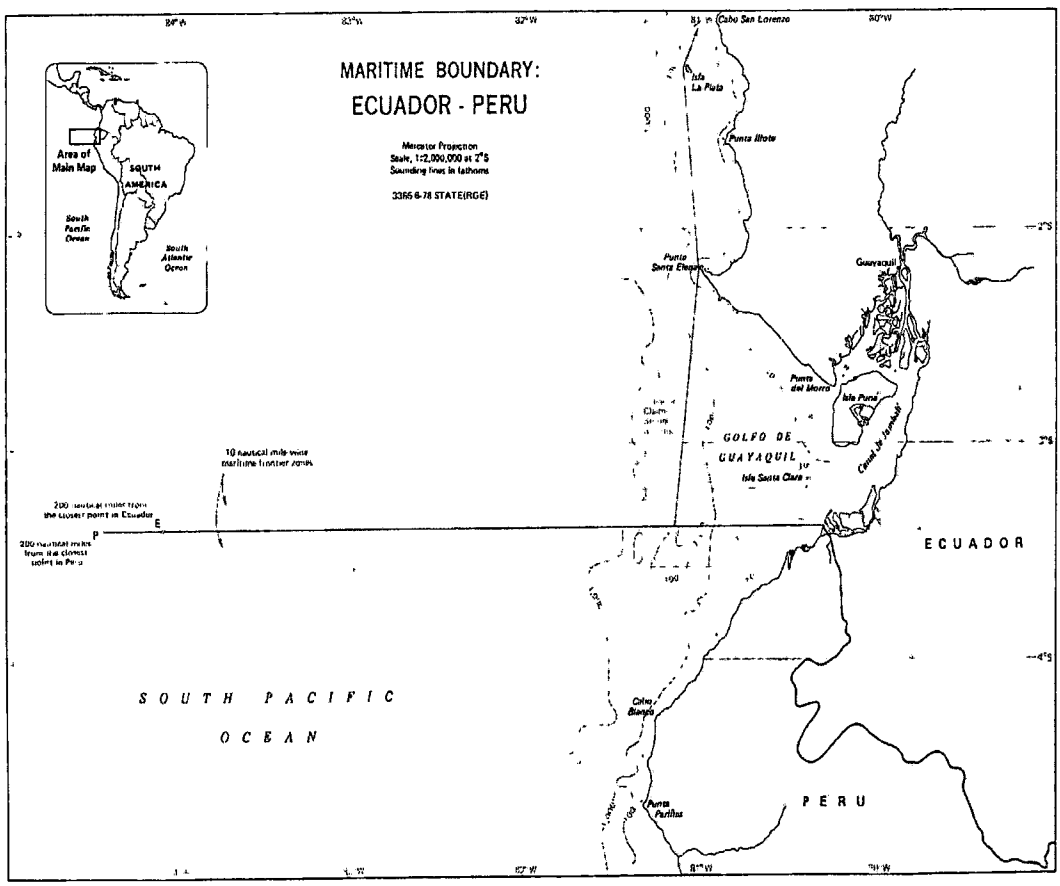
Special Fishing Zone between Peru and Chile according to the 1954 Agreement on Maritime Boundary Special Zone



Source: UNCLOS Website, 2002

Annex E

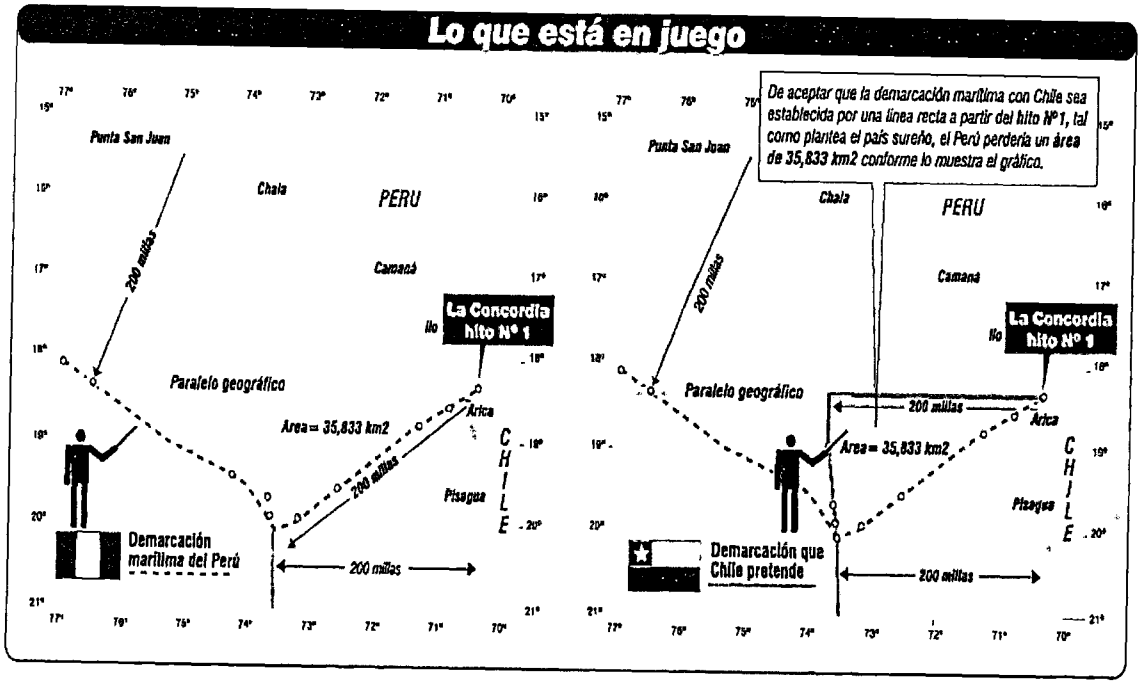
Special Fishing Zone between Peru and Chile according to the 1954 Agreement on Maritime Boundary Special Zone



Source: UNCLOS Website, 2002

Annex F

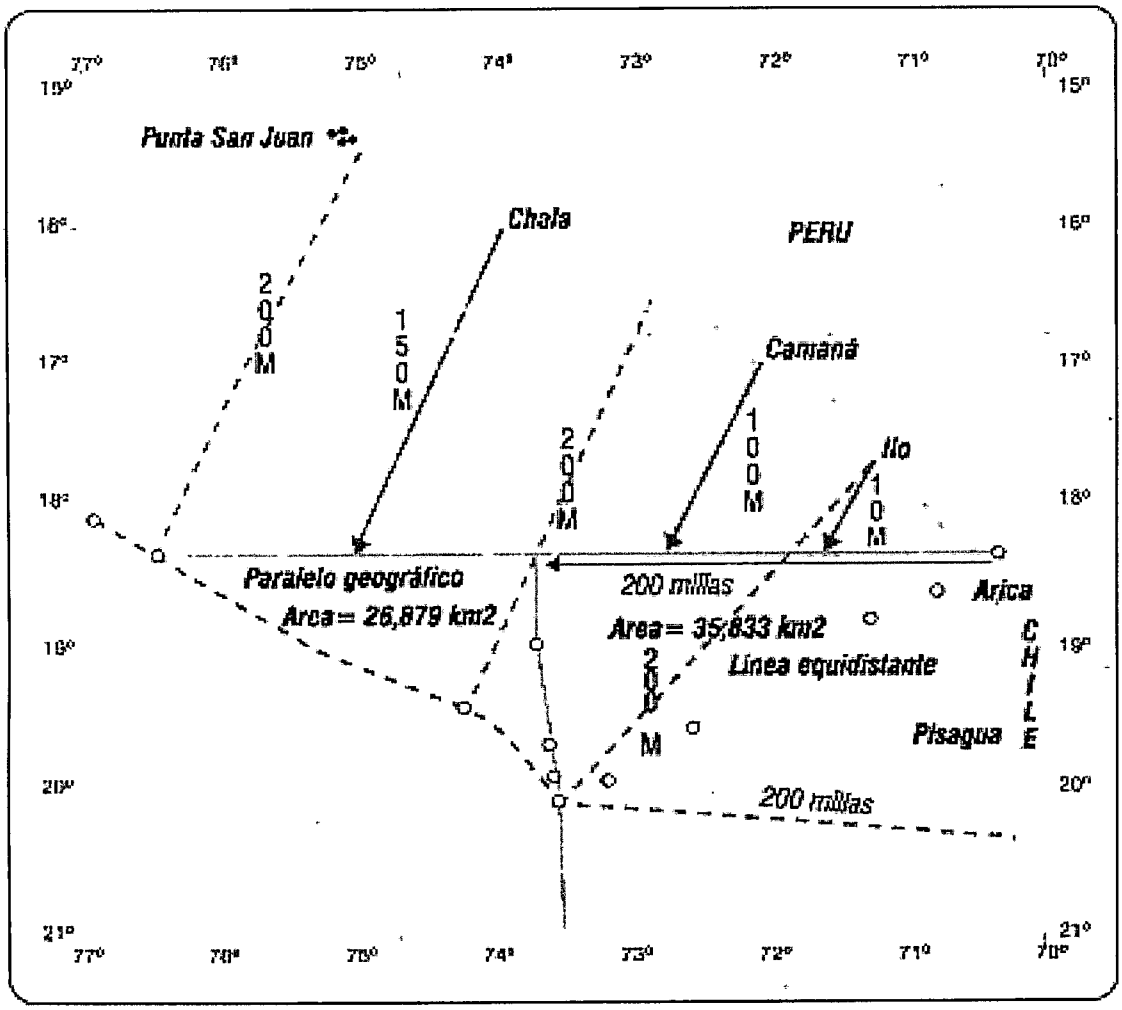
Sea Areas where Peru cannot exercise its National Jurisdiction due to the use of the Parallel of Latitude as a Maritime Boundary with Chile



Source: La Republica Newspaper, Lima-Peru
August 22, 2002

Annex G

Areas within Peru's National Jurisdiction where it cannot exercises a 200nm Jurisdiction due to the use of the Parallel of Latitude as *de facto* Maritime Boundary between Peru and Chile



Source: La Republica Newspaper, Lima-Peru
August 21, 2002

Annex H

The 1952 Joint Declaration on Fishery Problems in the South Pacific

(Source: Internet Guide to International Fisheries Law, 2002)

The representatives of Chile, Ecuador and Peru to the First Conference on the Use and Conservation of the Marine Resources of the South Pacific,

CONSIDERING:

That the Governments of Chile, Ecuador and Peru are concerned at the danger caused by lack of protection to the conservation of fishery resources in the maritime zones under their jurisdiction and sovereignty;

That because of the progressive development of new methods and techniques, large areas of their waters are being fished more intensively, arid that some fishery resources highly important to the food supply and irreplaceable as sources of industrial materials are in serious danger of exhaustion;

That the principal species of South Pacific fauna periodically migrate and appear at certain seasons off the western coast of South America;

That there is a need to establish and apply measures of protection and conservation with a view to the improvement of yield, to the advantage of the national food supply and economies of the signatory States;

That it is necessary to standardize fishery legislation, to regulate or prohibit the use of certain destructive forms and methods of fishing, arid in general to establish practices conducing to the rational use of joint marine resources;

HEREBY AGREE AS FOLLOWS:

(1) To recommend the Governments here represented to establish on their coasts and ocean islands such marine biological stations as may be necessary for the study of the migration and reproduction of the species of greatest nutritive value, in order to prevent reduction of the stocks thereof;

(2) To coordinate national and international scientific research and to enlist the cooperation of fishery organizations with similar objects;

(3) To recommend the enactment of such regulations as may be necessary for the conservation of fishery resources in the maritime zones under their jurisdiction;

(4) To recommend to the signatory Governments that licenses to fish in their maritime zones should be issued only for such fishing as does not impair the conservation of the species covered by the license and is intended to provide fish for domestic consumption or raw materials for domestic industry.