


1984

The Maritime Boundaries of Venezuela

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"THE MARITIME BOUNDARIES OF VENEZUELA"

by

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1984

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"THE MARITIME BOUNDARIES OF VENEZUELA"

Introduction.

Territory is essential for the existence and identity of the states. In this sense the world "boundary" has a specific technical meaning. It refers to the imaginary and precise line which separates the territory from the adjacent and opposite states. Though Europe seems to have enjoyed boundary stability since World War II, "the rest of the world is far less certain of its geographical charts." In America, Africa, and Asia several facts are characterized by a number of conflicts, in which the colonial inheritance plays a significant role. The colonial delimitation did not take into consideration the wishes of the population, sociologic, ethnical, and economical factors, and geographical features, which were little understood at the time. These factors of mankind's evolution have caused the frontier term to change boundary term.

The settlement of boundaries involves three steps: (1) attribute, (2) delimitation, and (3) demarcation. The major disputes about boundaries occur in the delimitation or demarcation of them. Also, differences of interpretation in delimitation acts, and geographic and cartographic errors constitute one of the essential causes of conflicts. Nevertheless, border states always lay the foundations of their claims in "rights", which are considered juridically well (established). Nothing oblige the states to set up juridical settlement in a territory; in fact, there is not any mean in the International Law from which juridical consequences originate.

However, when the Latin American countries obtained their independence, they found the problem how to give validity of their sovereignty over territories that had not been occupied by (colonizers). Under this circumstances was taken a solution form or agreement known as the uti possidetis juris (1) doctrine. This statement means that new republics proclaimed rights over their territories from mother country. The uti possidetis expression appeared for the first time in the Gran Colombia in 1826 in Panama, which was inspired by "El Libertador" Simon Bolivar. Furthermore, it was adopted by bilateral treaty between Brazil and Peru (1841). But, when this (apparent, simple and logic doctrine) were to be applied in real cases, numbers of problems rose. Those problems forced to the Center America Justice Court to adopt a boundary line that responds to real geographic factors such as the case of Honduras and Guatemala on January 23, 1933. Gross Espiel has pointed that uti possidetis has played an important role in the Latin America historic, but, today is almost non-applicable in the American Continent, up to the point of to give priority character- almost unanimous to the principle of autodetermination of the nation. (2)

But Colombia and Venezuela have embodied the uti possidetis principle in their constitutions. (3) In this case, for Venezuela the uti possidetis has a tremendous significative because is considered as "special circumstances" (4), and therefore was the reason that, upon ratification of the Convention, Venezuela entered a reservation to article 12 (1), to which Colombia made no objection. (5)

After this small context of terms. This paper will focus on "the Maritime Boundaries of Venezuela."

Venezuela is one of the nineteen states bordering the Caribbean. According to Professor Lewis M. Alexander, the Caribbean with 556,000 square nautical miles and 86 % of its periphery occupied by land is qualified as "semi-enclosed sea." This classification cause from his concerns on "...The potential threat of treating major bodies of coastal water as somehow different in status from the world ocean, a situation which could in time result in denying international community rights within some of the most important maritime areas of the world. (6) The development of the Exclusive Economic Zone (EEZ) and Continental Shelf concepts closed to others, but coastal states, the access to any economic resource of 21 out of the 25 semi-enclosed seas of the world. (7) At the same time, the sea enclosure movement multiplied the boundaries of the coastal states, while the increasing demand of marine resources and availability of new technology for its exploitation introduced extra caution in delimitation matters. The delimitation issue has become complex, in such cases with very critical consequences.

Geographically, the Venezuela maritime boundaries will be located in two different bodies: Atlantic Ocean and Caribbean Sea. Each boundary delimitation offers a unique situation. Venezuela has maritime boundaries with the following neighbors: two adjacent coastal states, Colombia and Guyana, and six opposite coastal states Trinidad-Tobago, Grenada, San Vincent and the Grenadinas, Sain Lucia, Dominica and Dominican Republic, one United States commonwealth associated states (Puerto Rico) and with dependent islands of the

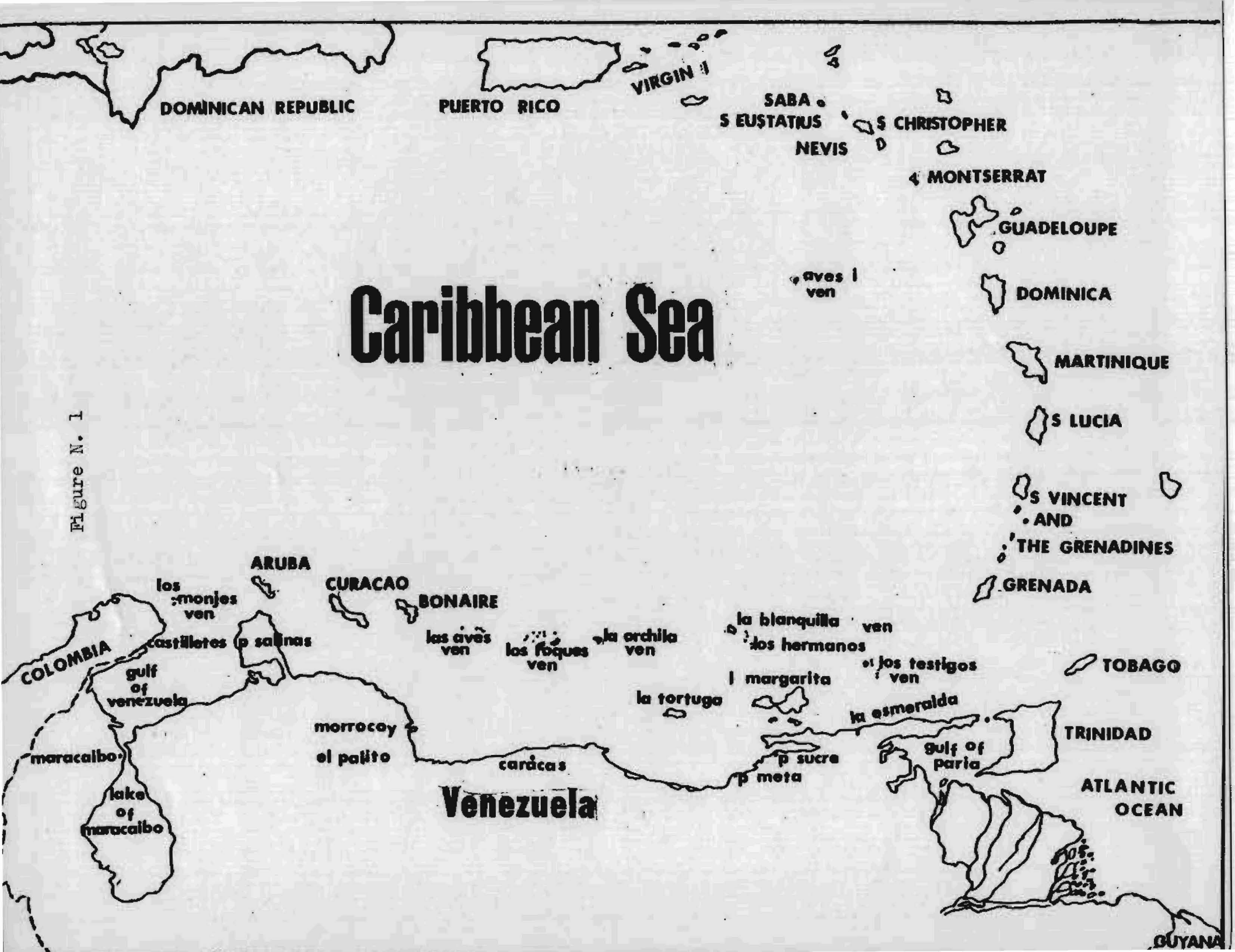


Figure N. 1

United States (Virgin Islands), United Kingdom (Nevis, St Christopher and Montserrat), France (Guadeloupe and Martinique) and Netherland (Curacao, Aruba, Bonaire, Saba and St, Eustatius). (see figure 1)

With the help of maps drawn to show how much has been already delimited, the paper discuss at length three recent Venezuelan agreements: a fishing agreement with Trinidad and Tobago (1977), plus two Exclusive Economic Zone (EEZ) delimitation treaties concluded almost simultaneously in 1978; one with the United States (Puerto Rico and Virgin Islands) and the other with the Netherlands and Dutch Antilles falling with two separates sectors of the Caribbean. Also, an analysis is provided with the aim of assessing the importance of these treaties in the light of a general tendency toward quicker EEZ delimitation in the Caribbean and their probable influence on the old controversy between Colombia and Venezuela, and one of the most critical boundaries to delimited is the maritime area shared with Guyana because of Venezuelan's historic claim to the Essequibo territory.

(Trinidad and Tobago) - Venezuela in the Gulf of Paria.

The concept of a resource-oriented zone extending beyond the territorial sea, like the concept of continental shelf jurisdiction, was first developed in Latin America. One example were Panama and Venezuela, in 1921 and 1935 respectively, (8) enacted laws claiming jurisdiction over pearl fisheries beyond the limits of their territorial seas, and in 1941 Venezuela claimed jurisdiction over the resources of its continental shelf and superjacent waters. (9) Later Venezuela claimed the fishery resources of the continental shelf and epicontinental sea. (10) Subsequently, Venezuela and the United Kingdom concluded a treaty relating to the submarine areas of the Gulf of Paria, dividing between themselves the Gulf seabed and subsoil, on February 26, 1942. (11)

The Gulf of Paria (see figure 2) is a shallow inlet of the Atlantic Ocean between Venezuela and Island of Trinidad. The maximum depth is 150 fathoms in the Boca Grande, which is the northern entrance into the Gulf of Paria. This depth is outside of the area delimited by the agreement dividing the Gulf of Paria, in the middle of the Gulf the depths average from 10 to 20 fathoms.

This agreement relating to the Gulf of Paria was the first international accord reached concerning the division of the continental shelf. Its importance is adequately summarized by Kaldone Nweihed in this way:

"the International Court of Justice process on the North Sea Continental Shelf Cases, 1967-69, as well as the individual opinion of the judges, redeemed the Paria Treaty from relative oblivion

Figure N.2

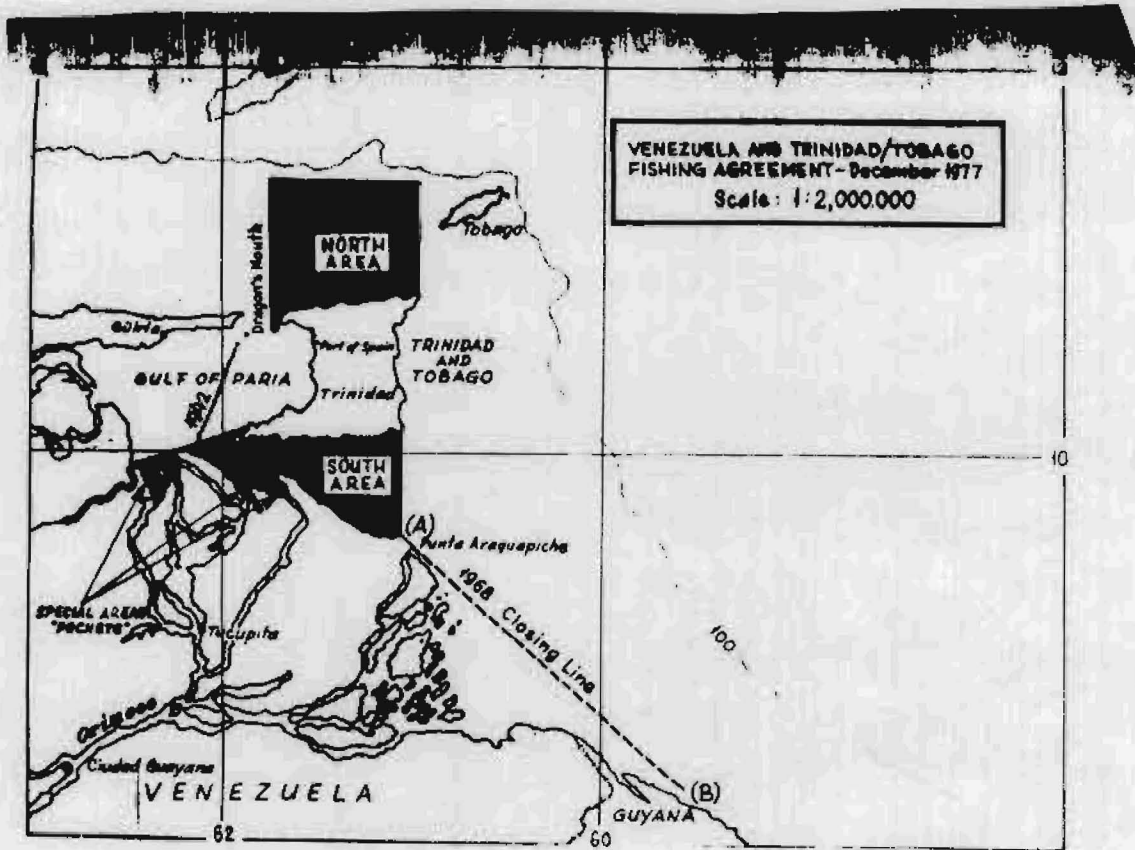


Figure 2

and linked it permanently to the history of the genesis of the new doctrine. To England, it was an instrument of colonial policy to be later bequeathed to the rightful successor; to Venezuela it was an instrument of national policy to be cherished and build upon." (12)

It may be recalled that the Paria Treaty already 42 years old, only divided the seabed and subsoil of the Gulf outside the respective territorial waters. Since this treaty refers only to the submarine areas of the Gulf of Paria, the status of the islands islets or rocks shall not have any effect in this delimitation. (13)

On December 12, 1977, the government of Trinidad/Tobago and Venezuela signed a new agreement limited to fishing activities. Its importance stems from the fact that during the last fifteen years, Trinidad fishermen have quite often been in trouble with the Venezuelan Coats Guard for poaching. (14) The Trinidad press usually presented such incidents in the light of controversy between an oil-rich neighbor and poor fishermen denied access to their means of subsistence and thereby disturbing the otherwise friendly relations between the countries. (15) The Treaty regarded fisheries activities between both nations. In this sense, it could be considered as a goodwill act which furthermore followed by complementary and equitable maritime delimitation agreement.

Article 1, says that the Commission in this Treaty demarcated the lines A - B, B - Y, and Y - X. (see figure 2) Where Venezuela recognizes any rights of sovereignty or control over those parts of the submarines areas of the Gulf of Paria, which lie easterly of the lines B - Y and Y - X respectively. United Kingdom also,

recognized rights of sovereignty or control over those parts of the submarine areas of the Gulf of Paria which lie westerly of the line A - B or southerly of the lines B - Y and Y - X respectively. (16)

The Fishing Agreement grants fishing boats flying the flags of both countries access, for the exclusive purpose of fishing, to the waters of certain areas as follows:

one area north of Trinidad island and west of Tobago island (approximately the size of Trinidad and north of Venezuela covering most of the waters of the Serpent Mouth and out to the Atlantic as far as Punta Araguapiche on the northern tip of the Orinoco Delta, when a previous Venezuelan decree had drawn a straight base line across to the mouth of the mighty river. (17)

Both parties are allowed to fish within the common areas on two conditions: the first, not within two miles from the coast of either country (article VI); the second, not within three smaller "special areas" specified in article III, all of which fall like, pockets within the southern area on the Venezuelan coast, precisely where the two arms of the Delta meet the Gulf.

Article V stipulates the conditions under which Venezuelan fishing boats are to be permitted to fish in the northern area; permits to be granted by the Trinidadian authorities, a percentage of the catch to be sold to Trinidad/Tobago, price and other details to be worked upon by a Fisheries Commission to be established under article XIII. Regarding the southern area, with the exception of the "special areas" or pockets already mentioned, Venezuelan and Trinidad/Tobago boats shall be permitted to fish therein according to conditions to be worked out by the commission, such as

dealing with the number and construction characteristics of boats. In the "special areas," virtual pockets within the southern area, Venezuela's authorities will grant permission for small boats (not exceeding 12 meters in length) with maximum storage capacity of one ton, and a crew not exceeding four. Fifty percent of the catch of the special (pocket) areas will be sold in Venezuela. (see figure 3).

On the treaty of 1942, it is important to point out that looking to the map we can see two different interpretations of the continental shelf boundary (CSB). The reason is that, in applying the agreement to more recent hydrographic charts, the CSB's is the use of the Venezuelan three-mile territorial sea as a segment in the boundary. (18)

Based on U.S. Navy Hydrographic chart N. 5587 (3rd. Ed), 1964 the following comments can be made on locational changes on the original agreement map.

Point A of the original CSB was to be located "at the intersection of the central meridian of the Island Patos with the southern limit of the territorial waters of said island," In this case the point would be 1 rather than point A. Also, the agreement stated point B as the limit of territorial waters of Venezuela. Also the agreement stated point B as the limit of territorial waters of Venezuela. The correct location of this site is point 2. In the agreement it states that the line B - Y "follows the limits of the territorial waters of Venezuela." However, the correct line 2 - 3 - 4 - 5 within this segment of the revised CSB there is a

Figure N.2

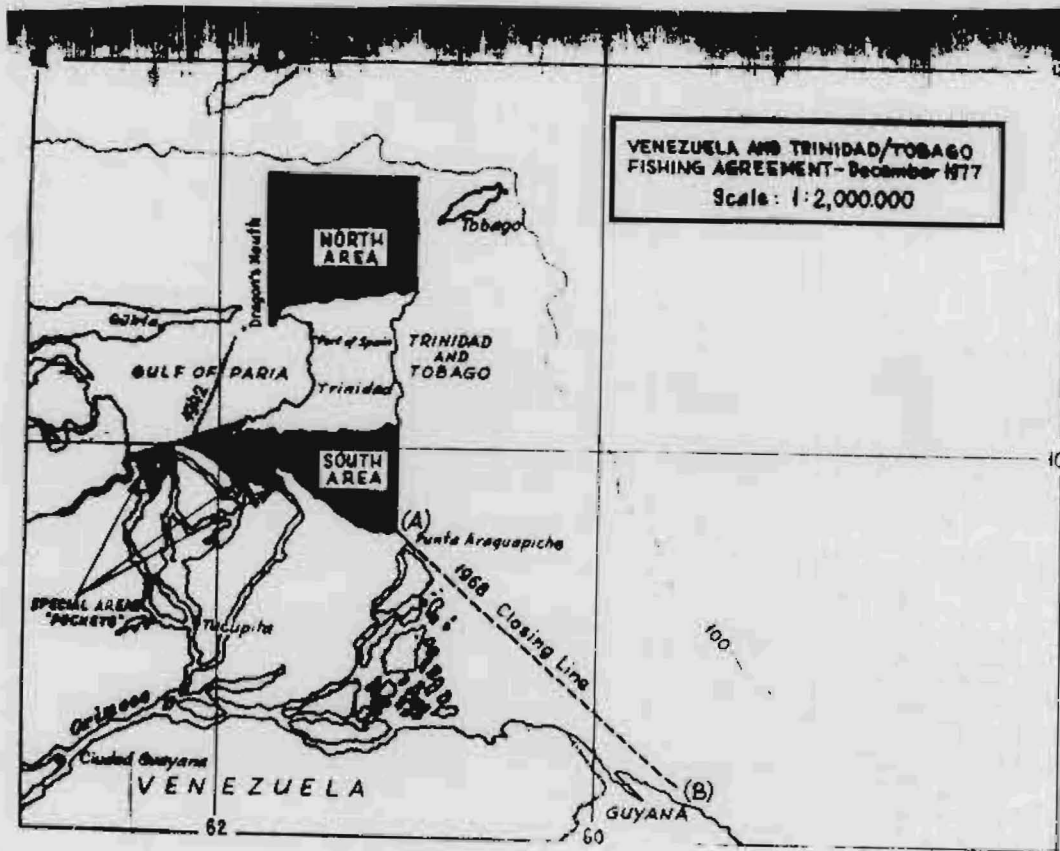


Figure 3

problem of the Territorial seas of Trinidad and Tobago and Venezuela overlapping, i.e., segment 3 - 4. Segment 6 - 7 represents another alteration in the CSB as a result of the location of the Venezuelan territorial sea. (19)

The analysis of the agreement and this revised edition would agree and support the acceptance of the line 1 - 2 - 3 - 4 - 5 - 6 - 7 - X.

The original CSB extends for a distance of 71.5 nautical miles. The water depth at the CSB points ranges from 2 to 22 fathoms, with an average depth of 12 fathoms at the points.

In contrast, the revised CSB extends for a distance of 72 nautical miles with an average distance between the right points of 10.3 nautical miles. The water depth at the CSB points ranges from 3 to 22 fathoms. (20) (see table 1 and 2)

The former treaty does not affect the status of the Gulf of Paria waters (article 6 of the treaty).

"Nothing in this treaty shall be held to affect in any way the status of the waters of the Gulf of Paria or any rights of passage or navigation on the surface of the seas outside the territorial waters of the Contracting Parties, in particular passage or navigation shall no be closed or impeded by any works or installations which may be erected, which shall be so constructed, placed, marked, buoyed, and lighted, as not to constitute a danger or obstruction to shipping."

Likewise, the latter agreement states in article XIV.

"No provision of this agreement is to interpreted in the sense of diminishing or limiting the rights of each Contracting Party, in relation to limits of their internal and territorial waters, continental shelf and exclusive economic zone." (21)

TABLE 1. TREATY LIMITS (ORIGINAL)
PHYSICAL CHARACTERISTICS OF TRINIDAD AND TOBAGO
AND VENEZUELA CONTINENTAL SHELF BOUNDARY

Terminal or Turning Points	Distance between Points (nautical miles)	Depth (fathoms)	Venezuela Territory	Distance, Land CSB Point		Trinidad and Tobago Territory
				n.m.	n.m.	
A	35.25	22	Isla Patos	3.25	8.25	Chacachacare
B		10	Mainland	2.50	4.50	Pelican Rocks
Y	9.75	2	Mainland	2.50	5.75	Trinidad
X	26.50	14	Mainland	5.50	6.75	Trinidad

TABLE 2. TREATY LIMITS (REVISED)
PHYSICAL CHARACTERISTICS OF THE TRINIDAD AND TOBAGO-
VENEZUELA CONTINENTAL SHELF BOUNDARY

Terminal Turning Points	Distance between Points (nautical miles)	Depth (fathoms)	Venezuela Territory	Distance, Land to CSB Point		Trinidad and Tobago Territory
				n.m.	n.m.	
1	35	21	Isla Patos	3	8	Chacachacare
2		10	Mainland	3	4.50	Pelican Rocks
3	2.25	18	Mainland	3	3	Pelican Rocks
4	2.75	22	Mainland	3	3	Pelican Rocks
5	5.75	3	Mainland	3	5.50	Trinidad
6	14.75	20	Mainland	3	6.75	Trinidad
7	5	14	Mainland	3	6.75	Trinidad
X	6.50	14	Mainland	5.50	6.75	Trinidad

Therefore Maritime Boundaries up to 200 nautical miles must be defined by the countries in the Gulf of Paria, Caribbean , and Atlantic area.

According to Gaceta Oficial de la Republica de Venezuela- Caracas; 16 de Junio 1981 NR 32239.

"The government of Trinidad and Tobago considers that the instrument in reference has contributed to the development of friendly relations and cooperation between our peoples and governments, and, in conformity with article XVIII, accepts the proposal to continue the cited agreement for a period of two years from today, May 8, 1981."

The cited resolution has not been fulfilled until now.

Puerto Rico/U.S. Virgin Islands - Venezuela.

This part of the paper will present facts that were followed by the United States and Venezuela in delimitation of the Exclusive Economic Zone between Puerto Rico/U.S. Virgin Islands and Venezuela. This delimitation follows a format, technical provisions that set forth the geographic coordinates of the boundary line and the computational bases for determining the coordinates.

The Exclusive Economic Zone became supported by most of the world's countries which attend the Third Law of the Sea. This is the concept of the 200-mile zone, within which coastal states have sovereign rights to the living and non-living rights as well. During the period of President Carlos A. Perez (1974-1979), Foreign Minister Simon Alberto Consalvi decided to face one of the most delicate and complex issues of modern Venezuelan's international relations, such as the new issue of the EEZ with its neighbors. With regard of the Fisheries Conservation Zone defined in American Legislation refers to the "seaward boundary of each of the coastal states" both Puerto Rico and Virgin Islands are precisely defined as such. (22)

Under the transitional Provision contained at the end of Part II of the Informal Composite Negotiating Text (ICNT), the rights established under the (future) Convention to the (marine)resources of a territory whose people have not attained either full independence or some other self-governing status recognized by the United Nations shall be invested in the inhabitants of that territory and not in the administrating power.

Should the United States ratify the Convention without reservations, Puerto Rico, and not the United States, should be able to exploit its marine resources, but would not be empowered, as it is empowered by virtue of its constitution, to sign delimitation agreements with foreign powers. The safest way apparently decided upon was to negotiate with Venezuela an agreement that would do the job without having to pronounce on the juridical status or even the name of the marine areas actually demarcated. (23)

The EEZ applies to waters adjacent to the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and United States overseas territories and possessions. This confirms the United States sovereign rights to discuss with Venezuela about the EEZ delimitation.

The fact that since 1976 the United States has exercised management and conservation authority over fisheries resources (with exception of highly migratory species of tuna) within 200 Nm of the coasts, under Magnuson Fishery Conservation and Management Act. And in order to confirm the United States sovereign rights over mineral deposits beyond the continental shelf not exceeding 200 Nm, and living resources of the zone. On March 10, 1983 President Ronald Reagan proclaimed the United States Exclusive Economic Zone, by which the U. S. recognize the rights of other states in the waters off their coasts for navigation and overflight, as reflected in the Convention. The U.S. will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a

manner that is consistent with the balance of interests reflected also in the Convention. Also, the United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight, and other related high seas uses. Finally, the U.S.'s EEZ will exercise rights in living and non-living resources within 200 Nm of its coasts.

On the other hand, in Venezuela, the Congress approved the Law establishing an Exclusive Economic Zone off the Continental and Insular Coasts of the Republic of Venezuela, which was promulgated by the president on July 20, 1978. This law established 200 Nm, rights of the Republic of Venezuela for the purposes of exploring, exploiting, conserving and managing. The natural resources, whether renewable or nonrenewable of the seabed, subsoil and the superjacent waters, and conservation and utilization of living resources.

Since the implementation of the 200 miles U.S. fishery zone, the maritime boundary between Puerto Rico and the U.S. Virgin Islands was the first United States boundary that has entered into force.

This treaty was signed by the United States and Venezuela on March 28, 1978, and, following the exchange of instruments of ratification, entered into force on November 24, 1980. This treaty was a typical case of maritime boundary dispute solved by agreement in accordance with "equitable principles" where interests of both parties are balanced. This treaty includes a provisions that esta-

blishes the legal effect of the boundary and a law of the sea disclaimer that makes clear this agreement between the U.S. and Venezuela.

Article 4. of the treaty says :

"it is understood by the two governments that south of the maritime boundary the United States of America shall not, and north of the maritime boundary the Republic of Venezuela shall not, for any purpose claim or exercise sovereign rights or jurisdiction over the waters or seabed and subsoil. The establishment of this maritime boundary does not affect or prejudice in any manner the positions of either government with respect to the sovereign rights or jurisdiction of either state, the rules of international law concerning the exercise of jurisdiction over the waters or seabed and subsoil, or any other matter relating to the law of the sea." (24)

But before that this treaty were reached three issues arose. The first was the fact of the limitation of the fisheries jurisdiction, which was provisionally established by the United States providing equidistance between base points in Puerto Rico and the United States Virgin Islands and certain points in the Netherlands Antilles. This obstacle was removed when Venezuela and Netherlands agreed to create a wedge-shaped area in the Caribbean for the Netherlands Antilles that was no opposite the United States fishery conservation zone. (25) Therefore, south of Puerto Rico and the U.S. Virgin Islands, the United States had to deal only with Venezuela. The second issue, was the presence of small island name Aves Island in the Eastern Caribbean sometimes used as garrison by Venezuelan military authorities and more notable as sea turtle breeding grounds. United States gave full effect to Aves despite of its small size. That settlement which did not treat Aves as a

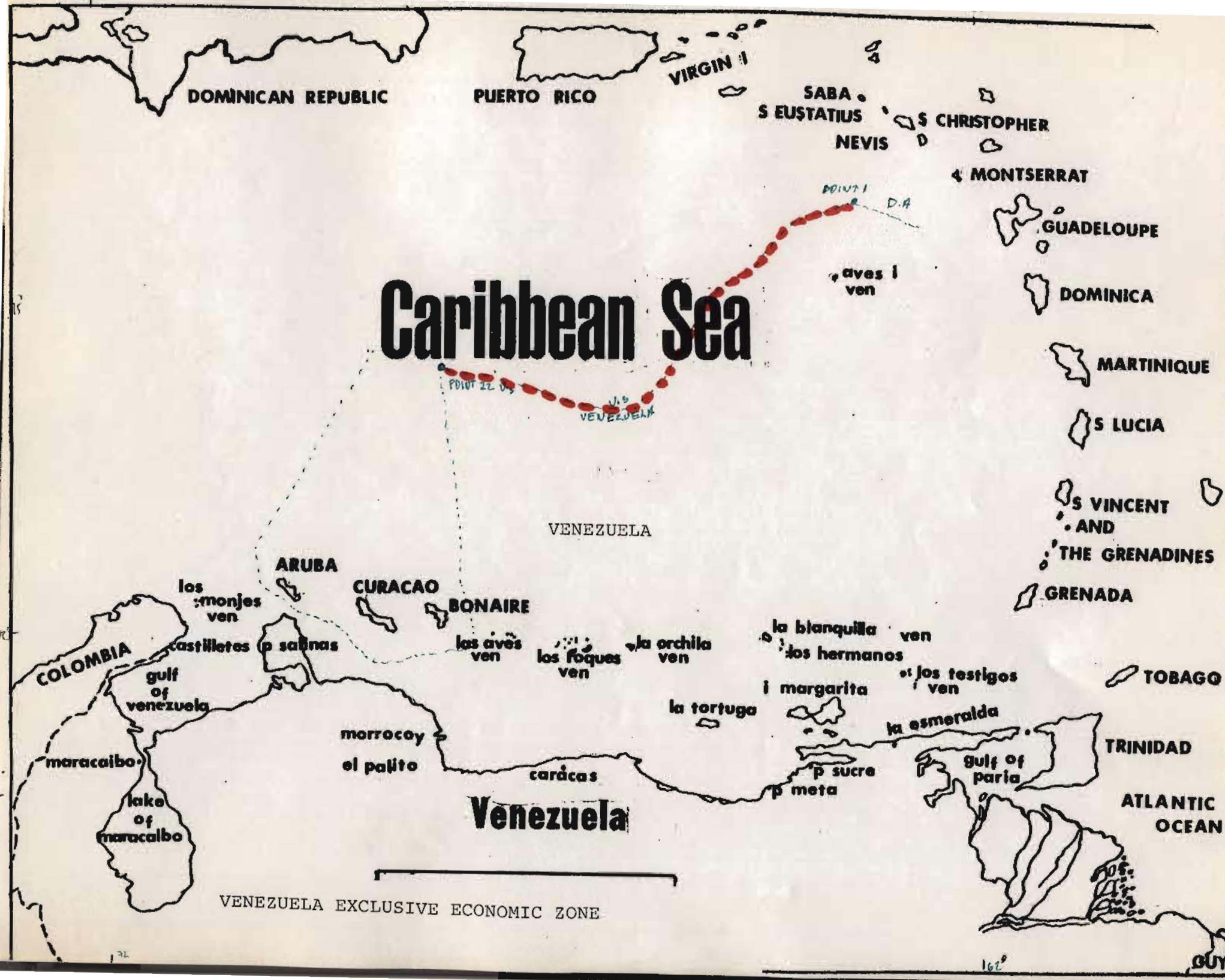
special circumstances could not prejudice U.S. rights and interests with respect to this delimitation. The third issue was the involvement of Dominican Republic. This issue is providing by article 2 in the Venezuelan treaty, that relates that:

"... along any azimuth of 274.23 degrees from point 22, in the event that the maritime boundary of the United States of America extends westward than latitude $15^{\circ} 14' 23''$, longitude $68^{\circ} 51' 44''$." (26)

Therefore, the precise western point of U.S.-Venezuela boundary can not be identified until a U.S.-Dominican Republic reach an agreement in their EEZ boundary dispute.

Despite that the international trial of 200 Nm zone between the United States and the Dominican Republic have not reached an agreement for a variety of reasons, Venezuela and the United States seem not affected at all. Because the exchange of instruments of ratification, the treaty entered into force on November 24, 1980. Also, the fishery enforcement limit was published by the United States in March 7, 1972, Federal Register.

Caribbean Sea



Colombia and Venezuela: Gulf of Venezuela.

Among Latin American nations with common border and other problems, Colombia and Venezuela enjoy relatively amicable relations. This is due partially to historical and cultural affinities. Historical because of links of relationship and fraternity between both nations, which are found in "El Libertador" Simon Bolivar ideals (1783-1830). It is also a result of the efforts of governmental elites in both countries to calm tendencies xenophobic (27) nationalism on the part of the two populaces.

The dispute centers upon the delimitation of the water boundary between the two countries, as the boundary is extended from the Guajira Peninsula. Marine and submarine area problems are involved. The Gulf, which separates the peninsulas of Paraguana and La Guajira in the westernmost part of Venezuela, covers an area of 27,000 square kilometers (10,425 square miles) and links Lake Maracaibo to the sea. (see figure 4)

The difficulties surrounding the delimitation of the Gulf stem historically from the boundaries established between Colombia and Venezuela following the breakup of the Grand Colombia Republic. (28) The Constitution of Colombia (1830) and Venezuela (1831) applied the utis possidetis principle with regard to the frontiers of the new States, accepting as the basis of delimitation the administrative division between the territories under Spanish rule in 1810.

Since the separation of Venezuela and New Granada (Colombia), the Colombian-Venezuelan controversy has been based with distinct features: Geographic, involving the double situation of potential delimitation between adjacent and opposite coasts simultaneously ,

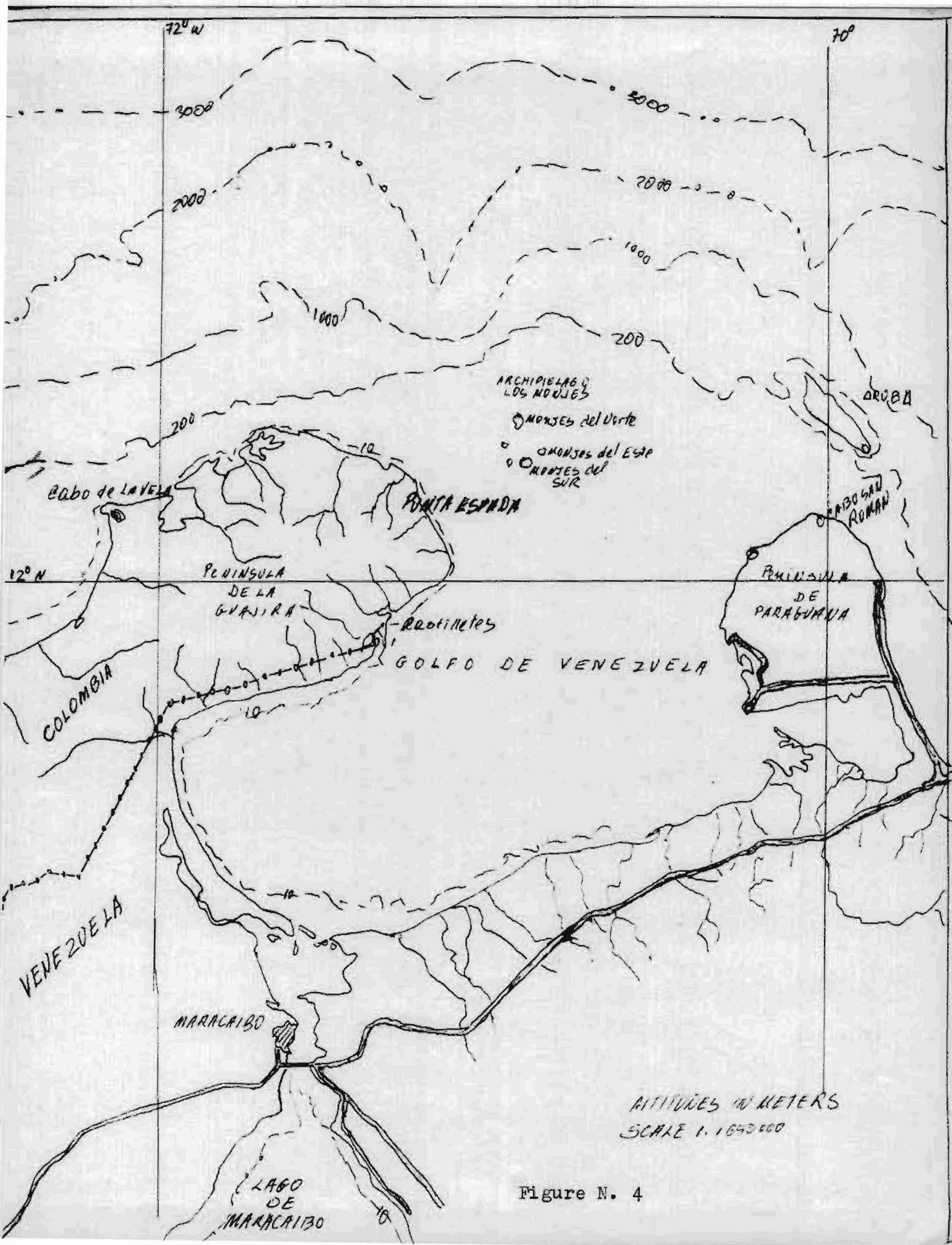


Figure N. 4

plus the existence of special circumstances, the Venezuelan Archipelago of Los Monjes (The Monks) off the continental coasts of Colombia; Geologic, as it is presumed, but not yet proven, that the seabed of the Gulf may conceal considerable wealth in oil and natural gas; Biologic, as it is reputed for its shrimping grounds and demersal species; Naval and Maritime, as all sea-lanes leading to oil-rich lake Maracaibo pass through the Gulf; Historical, because Venezuela has always exercised full sovereignty over the waters of the Gulf in conformity with international law; Political, since Venezuela and Colombia are friendly neighbors, partners within the Andean Subregional Pact, and democratically governed; Sociological, because oil-rich Venezuela absorbs a great deal of Colombia's social problems through illegal immigration and labor competition; and Psychological, because, despite friendship and goodwill, Venezuelan has been the historical loser in land frontier disputes with her neighbor, resulting in the shrinking of her western provinces and, most ironically, in the definite loss in 1922 of the Province of the Guajira Peninsula, a loss which converted Colombia into a riparian of the Gulf of Venezuela and thus a potential claimant of maritime titles therein. (29)

Though that Colombia and Venezuela have embodied the uti possideti principle in their constitutions, the precise limits of the former Vice-Royaute du nouveau Royaume de Granada and of the former Captain-Generale du Venezuela (30) were not clear and the Treaty of Bogota of 14 December 1833, which acknowledge the whole eastern half of the Guajira Peninsula to be Venezuelan, was never *ratified*.

The reason was that the border would have been established at Cabo de Chivacoa, a point which divided the Guajira Peninsula into two equal areas, thus, Venezuelan's territorial claims would have been reduced. Nevertheless, whether the border was established at Cabo de Chivacoa or Cabo de Vela, Venezuela would have remained the only country situated upon the Gulf of Venezuela. (31) (see figure 5).

In 1841, negotiations started again, Venezuela again insisted that the border of the Guajira be established at Cabo de la Vela.

In 1842, Colombia markedly altered its position with respect to the territorial dispute. Rejecting any notion of Venezuelan jurisdiction in the Guajira, Colombia asserted sovereignty over the entire Guajira and over territories as far east as Sinamaica, a town lying at the entrance of the straits to Lake Maracaibo. (32)

In 1844, another attempt was made to settle the borders. Colombia submitted maps discovered after 1833 which purported to Colombia clear title to land in the Guajira Peninsula awarded to Venezuela by the 1833 treaty. (33) Venezuela steadfastly refused to concede any territory to Colombia and the negotiations ended with Colombia proposing and Venezuela rejecting the arbitration, and with a severance of diplomatic relations.

In 1872, Venezuela turned down a new Colombian arbitration suggestion. Numerous border incidents occurred and due in part to the boundary controversy, diplomatic relations were broken off in 1872 and again from 1875 to 1880. (34)

By 1881, Venezuela finally consented to arbitration by Alfonso

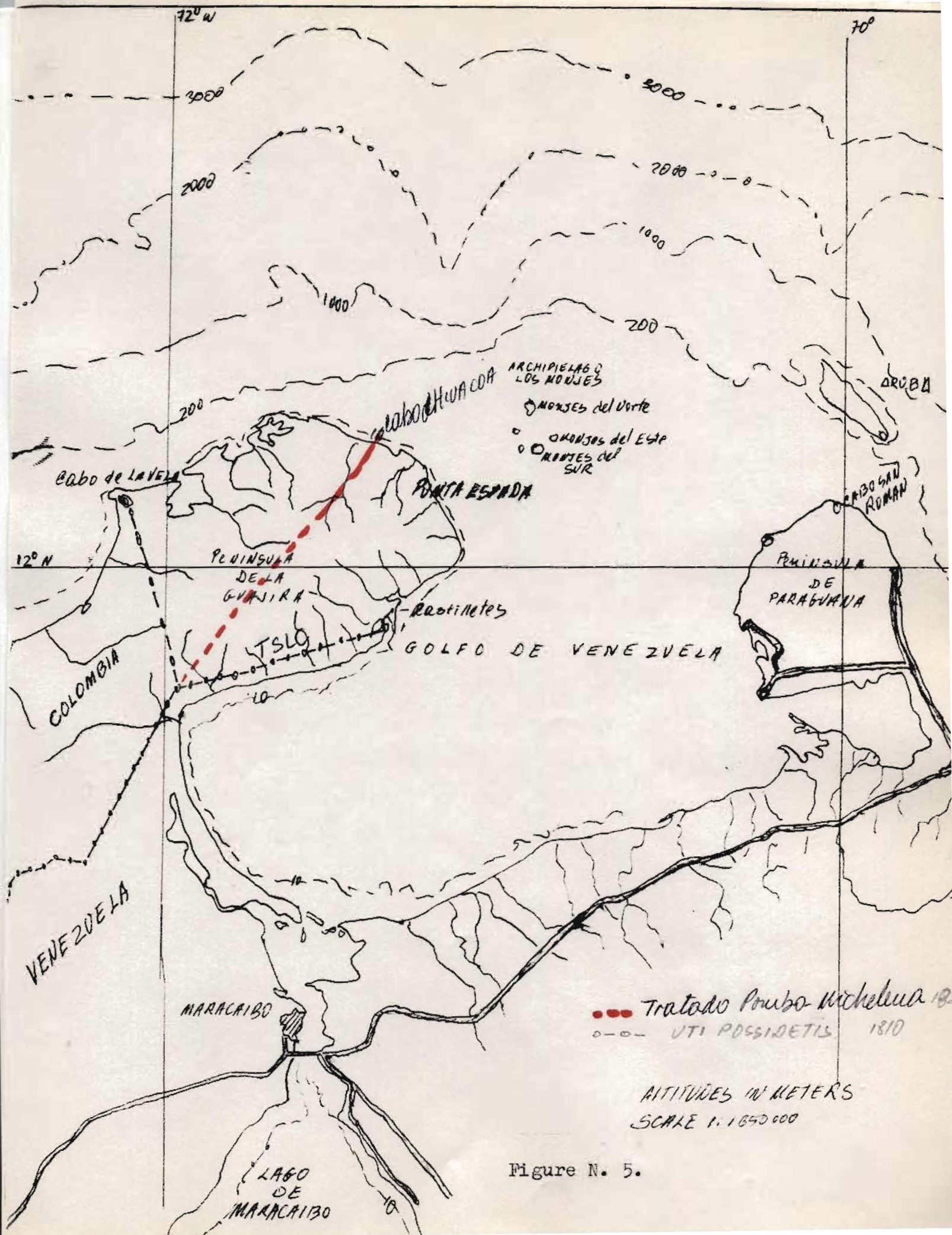


Figure N. 5.

XII, the King of Spain who accepted the request to serve as arbitrator. Upon his death, the two nations agreed that Maria Cristina, the Princess Regent of Spain, should assume the role. (35) Not until 1891 did she render her decision which abandoned both Cabo de Chivacoa and Cabo de la Vela, and instead marked Los Mogotes de los Frailes as the border of the Guajira. Her decision unfortunately produced only confusion since this site could not be precisely identified. The reason for her decision remains unknown, but certainly the result was to transfer more of the peninsula to Colombia. (36)

In 1898, Venezuela and Colombia agreed to establish a Joint Commission (Rico-Briceno Pact) to demarcate the boundary pursuant to the 1891 arbitral decision. The Pact provided that the parties would agree to execute the judgment of the Queen of Spain, and that a joint commission, composed of representatives from both countries, would be named to demarcate the boundaries. With respect to the Guajira, the joint commission immediately was burdened by the problem of identifying Los Mogotes de Los Frailes. Only a general area could be located; a line was proposed based upon recognized points in the as described in the Spanish decision. The Joint Commission also determined that Colombia was entitled to an area of 5000 square kilometers in the Guajira north of the Venezuelan town of Castilletes. However, given the non-commercial character of this arid region, little interest was shown in accurate delimitation, and thus, no formal agreement was reached.

Colombia was not allowed to take formal possession of the

Guajira Peninsula and in 1916 the Swiss Federal Council was asked to arbitration. (37) The President of Switzerland was designated as arbitrator and in 1922, he affirmed the 1891 Spanish Arbitration with respect to the Guajira, he declared that Colombia was entitled to take possession of the area north of Castilletes. (38)

Bitterly disappointed with the Swiss Arbitration, Venezuela waited until 1941 to formally accept decision. So Castilletes will serve as the border on the Gulf. Thus, the official boundary became a line extending to the Gulf, conferring almost all of the Guajira to Colombia, and, more importantly, providing Colombia with coast adjacent to the entrance of the Gulf of Venezuela. (39) was though to be a final settlement of all common boundaries. However, this treaty failed to discuss how to delimit the Gulf of Venezuela, which it settled in 1941, would not now, more than thirty years later, provide a vexing and sensitive problem for the two countries. Rights to the subsoil on the Continental Shelf and extensions of the Territorial sea from three to twelve miles were of little concern in 1941, since the likelihood of petroleum in the Gulf had not been raised, and settlement should have been relatively simple. Thus, the official boundary became a line extending to the Gulf, conferring almost all the Guajira to Colombia, and, more importantly providing Colombia with a coast adjacent to the entrance of the Gulf of Venezuela.

In 1952, Colombia recognized the Venezuelan sovereignty over Los Monjes, three groups of three tiny barren islands per group,

approximately nineteen miles east of the coast of Colombia in the Gulf of Venezuela. (40)

If there were any anticipated boundary problems in the Gulf of Venezuela in 1952, Colombia would not want to take any action that would create new difficulties by recognizing Venezuelan sovereignty over Los Monjes and then find it necessary to worry about the extent of Los Monjes' territorial sea as recently as 1952 then simply was no concern over territorial sea problems in the Gulf.

Positions of the Parties.

The major controversy concerns the delimitation of overlapping claims in the Gulf south of Castilletes. Colombia wants to apply a median or equidistant line for this purpose. Given the geographical configuration of the coast, a median line would extend in a south easterly direction from Castilletes to a point equidistant between Castilletes and the southern coast of the Gulf of Venezuela. From that point, the line would run north between the Guajira and Paraguana peninsula to the Caribbean Sea, dividing the entrance of the Gulf into two equidistant areas. If, however, one followed any latitude intersecting this median line south of Castilletes, one would enter Venezuela. (see figure 6)

Venezuela argues that the Gulf has economically, geographically, and historically been Venezuelan waters since colonial rule. In response to the Colombian proposal, Venezuela insists that the area south of Castilletes is unequivocally Venezuelan territory and thus, non-negotiable. The Venezuelan position calls for an

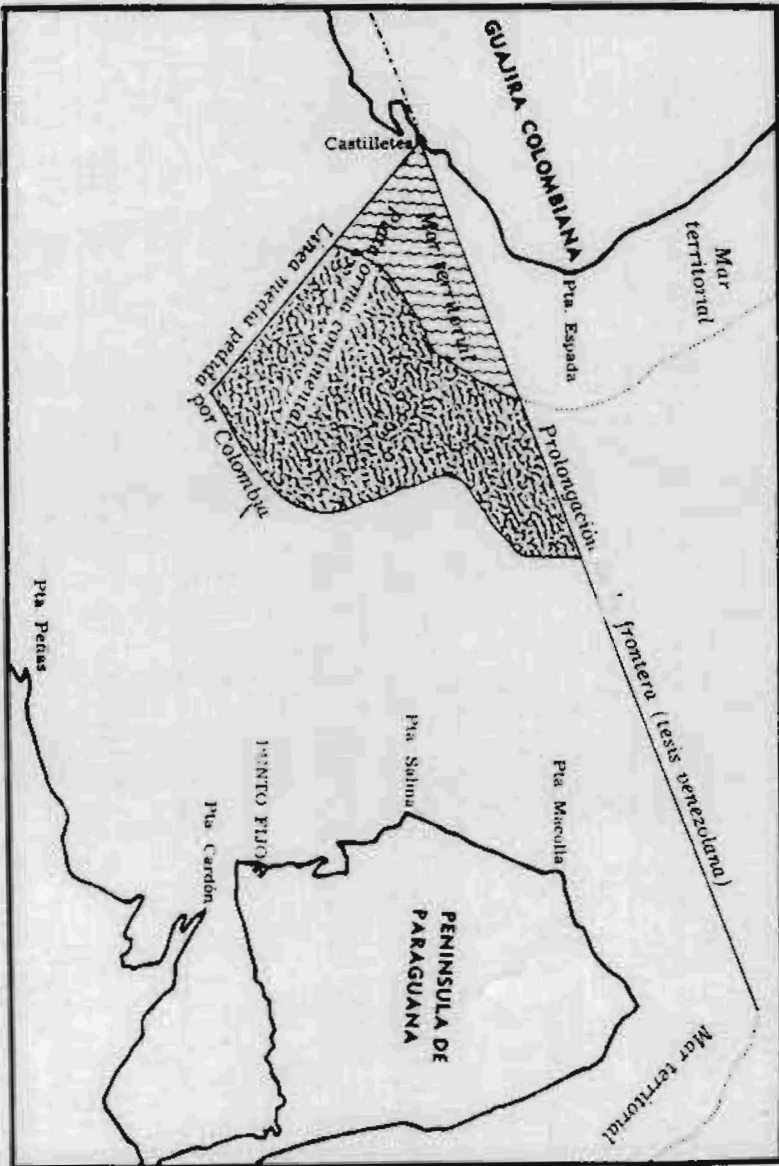


Figure N. 6

Colombians at 50
 made this accusati
 agents broke into
 "Andrea" located in a Maricao shopping center

...comenidos are in fact Colombian army
 reservists they are worried that to expel the hun-
 e these offi-
 : that many

extension of the line from Castilletes across the Gulf in a northeasterly orientation from the international borderline in the Guajira. This method achieves an effect similar to the Colombian position: if one followed any latitude to the west that intersects this "Venezuelan" line, one would enter Colombia (see figure 6)

The other area of controversy is Los Monjes, a group of rocky, uninhabited islands which form an archipelago about nineteen miles east of the northern Colombia Guajira and lie at the entrance to the Gulf. The title to these islands had provoked a heated discord between Colombia and Venezuela, particularly when the 1941 Treaty effected a border change finally placing Los Monjes geographically closer to Colombia than Venezuela. However, Colombia expressly recognized Venezuelan sovereignty over Los Monjes with a diplomatic note of November 22, 1952, from the Colombian Foreign Minister, Juan Uribe Holguin to Luis Geronomo Pietri, Ambassador Plenipotentiary of Venezuela.

"The Government of Colombia declares that it does not object sovereignty of the United States of Venezuela (now called the Republic of Venezuela) over the Archipelago of Los Monjes and that, in consequence, is not apposed nor has any claim to formulate for the exercise of that or any act of dominion on the part of that country over the archipelago in reference." (41)

But, in August 1971, There was a debate on the issue in the Colombian Senate. (42) Many Colombian legal experts contend that it is unconstitutional to change boundaries without the consent of the Congress. Thus, under the Vienna Convention on the Law of Treaties, a treaty opposed to the constitution of a signatory

country can be considered null and void under certain circumstances.

Applicable principles.

Both Colombia and Venezuela claim a 12 mile territorial sea. (43) Within the Gulf they both adopt the low-water mark as base-line.

The territorial sea boundary becomes complicated in two areas. The first is the area immediately off the common frontier at Castilletes, here Colombia contends for a normal equidistance boundary and Venezuela argues for a continuation or projection of the land frontier to a point 12 miles off the coast, continuing in the same direction as the land frontier. The second is the area of los Monjes. The issue is whether they merit a full, 12-mile territorial sea, subsequently to the median line between the islands and the Colombian mainland (The Guajira Peninsula), or whether, as Colombia would contend, they merit some lesser allocation of territorial sea. The Venezuelan proposal for a territorial sea boundary off Castilletes produces a line which actually intersects with the continental shelf area which the equidistance principle would allocate to Los Monjes, so the two areas can not be treated in isolation.

Article 12 (1) of the 1958 Convention on the territorial sea and contiguous zone adopts the median/equidistance line in principle, yet this is subject not only to any agreement on some other boundary but also to variation on the grounds of "historic title or other special circumstances."

There is the further difficulty that, as such, article 12(1) is not a binding between Venezuela and Colombia, (44) though it may be argued that article 12(1) is any event purely declaratory of customary law. Venezuela made reservation to this article because "neither the case of equidistance lines nor their variants are applicable since the Gulf of Venezuela is a bay that presents special circumstances." (45)

It is now in the absence of agreement for territorial sea delimitation between adjacent states or opposite states under customary international law an equidistance/median line boundary is obligatory. But in cases as the North Sea Continental Shelf, Germany did not accept this statement. The likely rule which a Tribunal would apply is that there is a presumption in favour of the equidistance/median line boundary, (46) but this can be rebutted in favour of some other boundary where the equidistance/median line boundary is shown to produce an equitable result. (47) Therefore, it will be for Venezuela to show that the projection of the land frontier off Castilletes is, in the context of delimitation as a whole, more equitable than the normal equidistance boundary. (48)

Colombia supports her position by referring to the 1958 Geneva Convention on the Continental Shelf, article 6(1) deals with continental shelves which are adjacent to the territories of two or more states whose coasts are opposite each other:

In the absence of the agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured. (49)

Article 6(2) applies the principle of equidistance to the delimitation of lateral boundaries between adjacent states. (50)

In the absence of agreement, and unless another line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured. (51)

Using this article for legal support, Colombia contends that the lateral boundary of the Continental Shelf (where Venezuela and Colombia adjoin one another on the Guajira peninsula) should be the so-called Boggs procedure. S. Whittemore Boggs, in 1951 a special advisor on Geography to the United States (U.S) Department of State, wrote that one should:

Lay down any lateral jurisdiction limit or boundary, first through the territorial sea by a single straight line (except where islands make it unfeasible) from the low-water-datum terminous of the land boundary out to the point of intersection of the envelopes of arcs of circle of 3 miles (or territorial sea width) radius from the coasts of the two states.

In extending a lateral jurisdictional limit through a 'contiguous zone' out to any desired distance (beginning at the outer limit of the territorial sea), it may be laid down either on the 'median line' principle (every point being equidistant from the nearest point or points on opposite shores) or as series of straight lines connecting points of intersections of successive envelopes of arcs of radius, increasing by increments of three miles (or any other accepted unit) measured from the nearest points on opposite shores that is, from the intersection of the low-water-datum plane with the coast. (52)

Venezuela, however, while being the only Latin State have signed and ratified all four of the 1958 Geneva Conventions,

excepted to the criteria in article 6 of the Convention on the continental shelf and reserved the right to negotiate for special circumstances. (53)

Following the Venezuela proposal article 6 would have read:

1. Where a continental shelf is adjacent to the territory of two or more states whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such states shall be determined by agreement between them or by other means recognized in international law.
2. Where the same continental shelf is adjacent to the territory of two adjacent states, the boundary shall be determined in the manner prescribed in paragraph 1. of this article. (54)

The Venezuelan representative argued that "bilateral agreements could take account of special conditions obtaining in any given case and would provide a more practical solution." (55)

Certainly the Venezuelan proposal for a boundary is not a usual or normal method of delimitation between adjacent states, (56) but it is a possible method provided it can be shown to be more equitable than equidistance line.

The effect of islands on the Continental Shelf.

Los Monjes belonging to Venezuela lie closer to the shores of Colombia; this prompts the problem of shelf delimitation. The islands themselves are small, but they are certainly islands, well above sea level, and of the four one is used as a Coast Guard or Marine Defense post, being equipped with a wireless-station and a helicopter-landing pad. Los Monjes arise from the continental shelf, are not submerged at high tide, and thus conform to the 1958 Geneva Convention on the Territorial Sea definition of an island as "a naturally-formed area of land, surrounded by water, which is above water at high-tide." (57) Venezuela contends that as islands they

have a continental shelf under the terms of the Geneva Convention on the continental shelf which states;

" (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands." (58)

Colombia denies that Los Monjes have a continental shelf.

Colombia argues that Los Monjes are not islands, but rather rocks or keys, being totally devoid of plant or animal life. (59)

Colombia argues that an equidistant or median line be drawn on the continental platform between the continental coastlines of the two neighbors- i.e., between the Guajira and Paraguana peninsulas- disregarding this way any territorial sea and continental shelf rights for Los Monjes.

Venezuela claims that the equidistant or median line should be drawn between Los Monjes and the Colombian Guajira.

Therefore, a median line would effectively limit total Colombian jurisdiction to a distance of about nine miles from the Guajira peninsula, a proposition unacceptable to Colombia.

In essence, Colombia feels that it would be absurd to recognize continental shelf rights for these uninhabited islands when Colombia's own continental shelf extends beyond Los Monjes.

Proposed Delimitation: Gulf of Venezuela.

1. The Fisheries Case and the North Sea Case demonstrate that the interdependence between the land domain and adjacent territorial waters should be a basic consideration. In this case Venezuela should be allowed to adapt its delimitation to practical needs and local requirements, the reason is that Venezuela has traditionally been a "maritime nation, while Colombia has been a "continental" nation.

Venezuela has its major cities - Caracas, Maracaibo, and Valencia - along or near the coasts. On the other hand, the major cities of Colombia - Bogota, Medellin, and Cali - are located near the center of the Andean Region. In fact the region of the Colombian Guajira is almost uninhabited.

2. With regard to the Fisheries Case (60) issue, that the land confers upon the coastal state a right to the waters off its coasts, it seems somewhat unfair to permit Colombia to apply the median line in its favor. (61), specially when Colombia had ignored these waters until the possibility of oil exploitation was raised.

3. Although Colombian's border abut the western side of the entrance to the Gulf, approximately eighty to ninety percent of the Gulf waters - are uncontested Venezuelan territory. Except for its entrance, the Gulf is surrounded by the Venezuelan coast. Since the Gulf waters are so closely linked with the land domain of Venezuela, it is reasonable to treat them as 'internal waters.

4. Historical usage and local economic interests in the waters are to be considered in delimitation. Since colonial rule, the coast of Venezuela, as far northwest as Cabo de la Vela, was subject to the Captain-General de Venezuela. Venezuela has been always been economically dependent on its coasts and the Gulf. In fact, the major oil deposits in Venezuela are located offshore in Lake Maracaibo, only a few miles inland from the Gulf. Furthermore, discovery and production of oil in the Gulf's continental shelf would be directly tied to commercial activities in nearby Maracaibo. Therefore, by treating all waters south of Castilletes as Venezuelan

internal waters, Venezuela could efficiently develop this Gulf of Venezuela -Lake Maracaibo region as a single economic zone.

Proposed delimitation: Los Monjes.

With respect to Los Monjes, however, a straight baseline with relation to the continental coast is not sought, the coast is not deeply indented, and there are not other archipelagos.

Since the multilateral conventions are not binding on the parties, equitable principle is applicable in this case.

Several factors favor the inclusion of Los Monjes as a territory of Colombia.

1. The Colombian continental shelf projects beyond Los Monjes; this compels Colombia to reject the use of the median line between the Colombian Guajira and Los Monjes.

2. There is the geographical proximity between Los Monjes and Colombia to be considered.

3. Los Monjes is neither inhabited nor adaptable for life.

On the other hand, for Venezuela, the weight of authority is that islands are entitled to territorial rights. In article 10 (1) of the Convention on the territorial sea and the contiguous zone states that an island is a naturally formed area of land, surrounded by water, which is above water at high tide. Los Monjes clearly meets this requirement. In addition, article 10 (2) states that the territorial sea of an island is measured in accordance with the provisions of these articles. Thus, an island, regardless of size and other physical attributes, is entitled to a territorial sea.

Article 1 of the Convention on the continental shelf to the seabed and subsoil adjacent to the coasts of islands. Considering the shallowness of the Gulf, it is apparent that Los Monjes has a legal continental shelf and, by projection, a seabed contiguous to the shelf. (62)

Islands must have the means to effect generally accepted norms such as security, customs, sanitation, policing, and vigilance. Therefore, it is proposed that Los Monjes be limited to total territorial sea and continental shelf rights to a distance of three miles measured from the center of the archipelago. This proposal, partially based on the old three mile territorial sea rule, would recognize not only the uninhabitability of Los Monjes, but also its need for the generally recognized norms mentioned above. Moreover, by limiting Los Monjes to a three mile claim, Colombia can maintain its own continental shelf claim beyond the territorial rights of Los Monjes, subject, of course, to delimitation by the median line as between the Guajira and Paraguana Peninsulas.

The Course of Contemporary Negotiations.

When Carlo Lleras Restrepo visited Caracas in 1966 as Colombia's President-elect (1966-1970), he was greeted by Venezuela President Raul Leoni (1964-1969), who as young political exile had earned his living by running a fruit stand in Barranquilla, with these words: "My friendship with the man who today is president - elect of Colombia began many years ago, when I arrived in Bogota in flight from the persecutions of Gomez, and on the platform of the railroad station of La Sabana was a group of students leaders, among them Carlos."

However, the trouble over the Gulf began during Llera's presidential term as Colombia began negotiating contracts with foreign oil companies for exploration of the offshore along the Guajira coast, which prompted protests by the government in Caracas and initial contacts in 1965 and 1966, exploratory discussions were begun in late 1967 by a Mixed Colombian-Venezuelan Commission. Nevertheless, it was not until January 19, 1971 that President Rafael Caldera made the first public announcement of the official Venezuela position. He clearly stated it to be

"that of dividing line between the Colombian coast of Guajira and the Venezuelan islets of Ios Monjes, combined with a line of demarcation that follows the direction of the terrestrial frontier because the areas understood between the Venezuelan coasts are traditional and historic Venezuelan waters." (63)

The historic waters thesis has been countered by the Colombian contention that international law does not recognize the existence of historic waters in cases where there is a dispute over sovereignty. (64)

After 1967, talks remained relatively unofficial at the technical diplomatic level until the Joint Declaration of Sochagata in August 1969 (65) led to a modus operandi for formal negotiations in March 1970. (66)

Discussions continued at the commission level in Rome until they terminated in early 1973 without progress. The press in both side encouraged emotional nationalism over the dispute with announcements of an arms buildup between the two neighbors. The respective governments attempted to allay fears and dull the thrust of free accusations, yet by October of 1971 there were genuine fears of war. (67)

While Colombia called for arbitration (preferably by the ICJ), Venezuela argued for bilateral negotiations at the foreign minister level. (68)

The August 1974 election of Alfonso Lopez Michelsen to the Colombian presidency was interpreted by many as another auspicious sign since he and President Pérez of Venezuela share a lengthy and warm friendship. However, an approximately group of five hundred retired Venezuelan officers issued a manifesto in October 1974 rejecting any concession by Venezuela in the controversy. (69) Though the action was unanimously denounced by Venezuelan political parties, the document definitely dampened negotiations. Although Venezuela is a functioning democracy with little risk of a coup d'etat, the military still represents a potent force in Venezuelan politics. Also, the armed forces in both countries have taken a particular interest in the border dispute.

On July 20, 1975, President Lopez Michelsen proposed to the Colombian Congress a Joint Condominium over the Gulf of Venezuela, he asked:

"Why not think and declare at once, in the face of the world, that in accord with an old Venezuelan aspiration, the Gulf of Venezuela is an historic bay, condominium of the two riparian states, Colombia and Venezuela? In this way we would substitute the the confrontation between our two countries, while ships of other flags fish in the region, for an affirmation of our common interests, ... the delimitation of the areas, in proportion to our respective perimeters, would come in addition," (70)

He concluded by saying that Colombia's position as a riparian state means that it cannot be excluded from the northern part of the Gulf.

This formula would open the way to possible co-exploitation. (71)

To this point the Venezuela's insistency that the are to the south of the parallel of Castilletes is non-negotiable precludes joint ownership over an area which Colombia claims to be in dispute.

In any case the important initiative of the Colombian President is not directly related to the delimitation in the interior of the Gulf over which the conversations between the two governments will continue. (72)

The negotiations on the Gulf of Venezuela maritime boundaries has been highly controversial at national level. Public opinion (including political opposition and the intellectual sector) is carefully weighed by the government. (73) Despite the risk of wrong orientation or overspeculation, the result is that the population is aware of the issue. The government has not always made known to the public the progress of negotiations, obviously for strategical reasons. (74) In fact it happened during the 1980's round of negotiation, two lawyers and two retired colonels have filed lawsuits before Venezuela's Supreme Court of Justice demanding the annulment of the 1941 treatment. The fact that these movements have been able to stir public opinion against a hasty agreement caught the Venezuelan government by surprise. The reason was that the proposed of the Gulf would be jointly closed from the Monks toward the peninsular coasts of both countries, and its maritime space partitioned as internal waters. Venezuela would conserve sovereignty over the sector south of the 1939 closing line; Colombia would acquire similar rights over one-seventh of the Gulf's

extension. The line would be carried northward toward the central axis of the Caribbean, thus delimiting respective economic zones . (75) (see figure 7). This proposal was rejected by the general Venezuelan public opinion, leading President Luis Herrera Campins to hand over the draft treaty to the press with the promise not to sign it if there was no consensus - a consensus which has been conspicuously absent.

This map has a first section that is a line extending from Castilletes (point A), which follows the corresponding parallel up to the median line (point B) between the Paraguana and Guajira peninsula. Point "B" is at equal distance of the closest coasts of Colombia and Venezuela.

Second section goes from point "B" following the median line between the Paraguana and Guajira peninsula to point "C". This point is called the triple equidistance or triple point, because is here where at same distance the closer coasts of Paraguana, Monje del Sur and Guajira peninsula.

Third section goes from point "C" describing a tangent line to the four miles circumference which has by center Monje del Sur.

Fourth section, from point "D" a line that pass four miles to the west of the Monje del Sur and Monje del Norte and with the same azimuth the line reaches the meridian $71^{\circ} 21'$ west, which it is almost in the center of the Caribbean.

Fifth section, from point "E" following the mentioned meridian up to reach a point where there is jurisdiction of a third state, in this case, the Dominican Republic. (76)

In this project proposed by Colombia and Venezuela it is recognized for Los Monjes all its maritime jurisdictions such as territorial water, continental shelf and exclusive economic zone.

In the case of the Gulf to the north of the line A - B it is recognized territorial sea, contiguous zone and exclusive economic zone, and to the south side of the Gulf only territorial waters. Also, it was recognized that the continental shelf for Colombia was to be inside of the Guajira peninsula and the lines A - B - C - D - E, so Colombia would develop exploration and exploitation activities of oil. (77) As it was mentioned before this project was rejected by the Venezuelan public opinion.

The Venezuelan-Guyanese Dispute.

Venezuela bases its claim to the Guyanese territory established according to the "1810 uti possidetis juris" principle, on the belief that an 1899 arbitration award that established the present border was the result of British duplicity. What is now Guyana was then the colony of British Guyana. (see figure 8). That line, protested by Venezuela, "apparently" disliked by U.K. but, welcomed by its mining companies, raised the actual and present Venezuela-Guyana dispute.


The Venezuelans say memoirs published after World War II prove that there was a secret deal between Moscow and London that led a Russian arbitrator on a five judge panel to cast the deciding vote for the British, (78)

A Spanish explorer first claimed what is now the Republic of Guyana for Spain in 1499 and the area was successively controlled by Spain, the Netherlands and Britain.

After several years of fruitless negotiations on the Guyana Essequibo which covers 53,000 square miles between the Essequibo River in Guyana, Venezuela and Guyana signed an agreement in 1970, the Protocol of Porto Spain which delayed the negotiations for 12 years, this treaty expired June 18, 1982. Following the 1966 Geneva Agreement (article IV paragraph 1), the two parties have resorted to the UN. chapter article 33. However, the same article (paragraph 2) provide only 3 months for selecting the method of settlement. Since these months werenot succesful in order to get the



Figure N. 8

 Zone in reclamation by Venezuela

the appropriated methods by which the issue should be settled, the case will be referred to "... an appropriate international organization agreed by both governments, or to UN General Secretary if agreement on the latter point were not reached." (79)

Venezuela maintain its position on direct negotiation. On the contrary, the Guyanes, feeling themselves secure on legal grounds, want an international court of justice.

For the moment, the Guyanese appear to have the upper hand, with both the 1899 award and their physical occupation of the land in their favor.

Access to Ocean.

A common view here is that what Venezuelan really want is not the whole Essequibo, but a sliver of its northern coast. This would allow it to expand its international waters, currently cut off by Trinidad and Tobago.

On July 9, 1968, by Decree N. 1152 President of Venezuela Raul Leoni and with the ratifying Law of the Convention of the Continental Shelf decree a straight baselines extends 98.9 Nm across the Delta of the Orinoco River. (80) This decree was meant to establish the baselines for Venezuela's territorial sea in a sector enclosed between the dividing line of the Essequibo River and Punta Araguapiche, the northern tip of the Delta. (see figure 8) According to the straight baselines, the territorial sea and contiguous zone would be measured from it.

Article 4, affirms that the "straight baseline at the mouth of the River Essequibo will be in accordance with that of the neighbouring state. (81)

However, maritime boundaries between Guyana and Venezuela will continue pendant until the Essequibo territory reach a solution.

Dominican Republic and Dominica - Venezuela.

On March 3, 1979, Venezuela and the Dominican Republic had an agreement due the claims of exclusive economic zone (September Act 1977) by negotiated boundaries with Colombia on January 13, 1978, and Fisher, Zone of Dominican Republic and the U.S. respectively a common regime for marine pollution control, scientific research, and conservation of resources was included. (82) This agreement, with the U.S. EEZ created a triangular gap of unclaimed ocean space in one area and overlapped the claims in others (83) (see figure 9). With both coasts quite apart and opposite, the median line was applied along a considerable part of the boundary extension with the explicit mention that the basis taken for this agreement would not constitute a precedent for the Dominican Republic's delimitation with third parties (article 7) .

In article 6 it is mentioned that in case of any controversy in its treaty between Dominican in its treaty between Dominican Republic-Venezuela.



DOMINICAN REPUBLIC

PUERTO RICO

VIRGIN I

SABA

S EUSTATIUS

NEVIS

S CHRISTOPHER

MONTSERRAT

GUADELOUPE

DOMINICA

MARTINIQUE

S LUCIA

S VINCENT

AND

THE GRENADINES

GRENADA

TOBAGO

TRINIDAD

ATLANTIC OCEAN

GUYANA

U.S.

Caribbean Sea

NETHERLANDS

ANTILLES

ARUBA

CURACAO

BONAIRE

COLOMBIA

COLOMBIA

DR. VEN

Figure N. 9

los monjes ven

castilletes p salinas

gulf of venezuela

maracaibo

lake of maracaibo

morrocoy

el palito

cardcas

Venezuela

las aves ven

los foques ven

la orchila ven

la blanquilla ven

los hermanos

los testigos ven

l margarita

la tortuga

la esmeralda

p sucre

p meta

Gulf of Paria

Venezuela - Lesser Antilles Maritime Boundary Dispute.

Since Venezuela has declared a 200-mile of Exclusive Economic Zone around Aves Island, it seems that this case presents some difficulties for agreement.

The main legal facts on this issue are the 1978 Venezuela-U.S. Maritime Boundaries Delimitation Treaty and the 1978 Venezuela-Netherlands Treaty on the same subject. Where the first deal with Aves Islands and Virgin Islands and Puerto Rico. And the second with the boundaries between Aruba, Curacao, Bonaire, and Venezuela continental land and Los Monjes Archipelago (sector A), and (sector B) refers to limits between Aves Island and St. Eustatius and Saba Islands. (see figure 10)

Philip Erwin Haring says:

"Aves Islands is a paradigm of the 'special circumstances' warranting a boundary based on equitable principles ..." (84) yet the United States and Netherlands Antilles both agreed to equidistance boundaries without any apparent dispute."

However, Professor Lewis M. Alexander says:

"I believe it was the Venezuelans who pressed the United States for an equidistance line between uninhabited Aves Islands and Puerto Rico. In that case they thought equidistance seemed to be the proper line." (85)

In all case, it was conceded a full effect to Aves Islands and thus, right on EEZ.

However, some author such as Dr. Eric Williams (86) is concerns about a future leadership by Venezuela on the Caribbean Sea and about full rights of maritime spaces to Aves Islands.

In 1980, Venezuela signed an agreement with France, which delimits French islands Martinique and Guadeloupe.

In article 1. states that:

"The line of maritime delimitation between the Republic of Venezuela and Republic of France outward the coasts of Guadaloupe and Martinique by the meridian sixty two degrees, forty eight minutes and fifty seconds. ($62^{\circ}40'50''$). (87)

However, this agreement has found opposition in the congress, the reason is that the cited meridian represents a " three quarters effect of the Aves Islands."

Dr. Isidro Morales Paul, a Venezuelan negotiator, says :

" It is a method perfectly congruent with the traditional Venezuelan thesis of no application, instead that of meridians and parallels put into practice in other countries." (88)

Venezuela and Netherland (Curacao, Aruba, Bonaire, Saba and St. Eustatius) Maritime Boundarry Dispute.

Venezuela is one of the few Latin American Countries to have maintained a fairly conservative position on the question of the breadth of the territorial sea. As far as the Convention on the territorial Sea is concerned, Venezuela has made reservations to article 12 and article 24(2) and (3). Where the coasts of the two States are opposite or adjacent to each other, articles 12 and 24 (3) adopt the median line principle for delimitation of the territorial sea and contiguous zone. The Convention in the case of historic title or other special circumstances. Therefore, Venezuela deemed it necessary to make a formal reservation to protect its historic title to the Gulf of Venezuela and the continental shelf adjacent to the Island of Curacao.

The treaty with Dutch Antilles recognizes the vital and historic importance to Venezuela, the complex of fundamental interests that characterize it, as well as the maritime transit to and from Venezuela. (89)

The Venezuelan - Dutch Antilles is composed of two sectors, one is quite wide apart, in between which Venezuela faces Puerto Rico and the Virgin Islands, Minor Antilles (Saba, St. Eustates, and half St. Marten). Here, Venezuela won full recognition to the maritime jurisdiction of Aves (Birds) Island; with the favorable result of confirming her jurisdiction over 80,000 sq. Km of economic waters that would have probably constituted a disputed issue with several interested parties. Between the Major Antilles (Curacao, Bonaire, and Aruba) and Venezuela the treaty establishes a modus

for transit passage. Also, this treaty regulates other activities such as marine pollution, common geological beds, conservation and exploitation of living resources, and scientific research.

Though that the lateral border of the Antilles zone, the actual boundary favored Venezuela slightly, by the fact that continental masses engender more jurisdiction proportionally than do smaller islands, the Antilles were compensated with a potential oil corner.

The treaty was signed in March 1978 and came into force on 15 December 1978 . (90)

Conclusions.

It is logical and easy to understand that every state of the world try to apply its own policy on the base of its own interests. In order to get the best part in any agreement, we found two bases. one is to discuss our proposal making use of the Law of the Convention of the Sea, that in this case is the equidistant or median line, and the other is that it refers to adopt the equitable principles based on special circumstances. But also, our adoption of position is based on the international customary law. Venezuela has never had a defined Marine Policy (Delimitation of Maritime Boundaries), perhaps the reason of this is the feelings of failure.

This critic come from two specific factors: first, the general public from which it is quite difficult to obtain a concrete objective critic, and second, the excessive political influence with the lack of the appropriate pattern of reference. Analyzing these two issues, it could be find that, the degree of contamination in public opinion can not be measured, which represents a quite critical situation for the Venezuelan negotiators in settling agreements. This is because sometimes the general public reaction can take the government by surprise, such as occurred in 1980 when President Luis Herrera Campins announced a bilateral agreement reached by Colombia-Venezuela on the Gulf of Venezuela. As a result of this, the President didn't take the responsibility to sign it and thus rejected the proposal. At least this reaction of the Venezuelans demonstrated a firm interest to achieve our objectives over the zones under dispute. But I repeat this fact

it is difficult to handle since it is not advisable sometimes to inform people about the procedure until an arrangement has been reached. Also, as happened in 1980, the government didn't explain well the features of the agreement once it was reached.

On the second issue, it can be seen that policy makers have less problem, because at least he is able to evaluate the pattern during discussion of delimitation, whether or not to accept the arguments of critics.

Venezuela government used to adopt continental land dispute under the method of third party arbitration. The result has been unfavorable in all the cases. The reasons of these failure have been the absence of veracity such as in the case of Guyana-Venezuela where Sir Robert Schomburgk, the explorer in 1840 differed markedly from the one presented to the Arbitration panel (91). Also, Venezuela has been affected by absence of sincerity and goodwill of the parties. In the case of Guyana-Venezuela, there is a letter, written by one of the American counsels for Venezuela months before his death in 1944, asserting that the boundary settlement may have been the result of collusion between the British and the Russians. It pointed to pressure on the Americans who represented Venezuela, by the Russian head of the arbitration panel. Although another letter from one of the British representatives indicated that the Russian placed similar pressure on the British side.(92) Presently, Venezuela has decided to choose a direct negotiation in solving controversies rather than a third party or U.N. Secretary General, because it seems obvious

that these are feelings of no confidence about these methods. Some people say in Venezuela that "Venezuela has lived with her back to the sea". Well at this point, now we are confronting maritime matters with several countries, with a better conscience and more preparation. However, the issues of delimitation do not let to be a serious situation specially where much recent facts has occured, for instance the Falkland war effects on negotiations on boundaries between U.K. (Nivis St. Christopher and Montserrat Islands)- Venezuela should be tougher because of Venezuelan support to Argentina. Also this fact would have effect on the former colonies (Trinidad Tobago and Guyana) in relation with Venezuela maritime boundary dispute. In the Venezuela-Trinidad-Tobago Fishing agreeemnt even though that article XVIII(2) Revision clause every two years---seems to lack space and issues. The goodwill should have been used to talk about EEZ, as a consistent action of the 1974-1979 New Maritime delimitation. However, this issue has turned difficult, since the unexpected leadership competence of Trinidad-Tobago against Venezuela, which unavoidably touches the Guyana issue. Thus, throughout the Falklands crisis, the Venezuelans became enraged at Britain for a modern invasion while preparing to revive their rage at Britain for what they believe was a 19th century aggression. Although the boundary disput is with Guyana, a former British colony, the real villian in Venezuelan eyes is the Imperial Britain of the Victorian era.

In the case of Columbia-Venezuela dispute, the median or

equidistance line is not suitable for settling overlapping claims between both nations, it is not always suitable when delimiting between adjacent states. The reason of this is the presence of special circumstances. The Colombian median line proposed "intrusion" into traditional territorial claims of Venezuela. Thus, the division of the area south of Costelletes is non-negotiable to Venezuela. In this point, equitable principles should be taken into account, also, all the relevant circumstances and traditions would make it easier.

Columbia doesn't want to use the median line between the Colombian Guajera and Los Monjes. Perhaps the most viable solution would be limited to total territorial sea rights of 4 miles as was defined in the agreement of 1980 proposed by President Herrera Campins (in Section 4). This way it would be recognized the natural prolongation of the Colombian coast.

Finally, some authors contend that the entrance of the Gulf should be divided by a median line. This last statement was rejected by the Venezuelan public opinion, since they argue that the Gulf has been Venezuelan and should remain as Venezuelan.

It has been a good beginning for me to try to understand a little bit more about Venezuela in relation with the rest of the world. Actually, to be a student of Marine Affairs has been the major source of knowledge which has formed part of my little experience and learning that would complete part of my destiny as one of the protectors of all the maritime interest of Venezuela.

To be an officer of the Venezuelan Army has been helpful because of the military's traditional firm defense of national

sovereignty form part of one of the reasons Venezuela has not pressed the several maritime boundary dispute.

To be a Venezuelan, like in any other country, the feelings of patriotism has been a factor of encouragement to maintain my conviction that Venezuelan claims have to be protected.

NOTES:

1. Uti possidetis: a phrase used to signify the parties to a treaty are to retain possession of what they have acquire by force during the war. Int'l L. Black's Law Dictionary. Fourth Edition.
2. J. Dutheil de la Rochiere. "Las procedures de Reglament des differendo frontaliers." La frontiere Soc. F.D.I. edit. A. Perdore. Paris. p.175.
3. "The legal Regime of Islands in International Law" by Derek W. Bowett Q.C. Gulf of Venezuela, p.313.
4. The Convention permits an exemption in the case of historic title or other special circumstances. Venezuela deemed it necessary to make a formal reservation to protect its historic title of the Gulf of Venezuela and the continental shelf adjacent to the Island of Curacao. Venezuela. The Country in the Carribean. Indro Morales Paul. The Changing Law of the Sea. p.126.
5. Supra Note 3.p.317.
6. Lewis M. Alexander. "Jurisdictional Arrangements for Semi-Enclosed Seas." Information paper for Geography students. U.R.I.
7. Ibid.,p.4.
8. Law N. 120 concerning deposits of hydrocarbons, Art 38(1919) reprinted in National Legislation and Treaties Relating to the Territorial Sea, the Contiguous Zone, the Continental Shelf, the High Seas and the Fishing and Conservation of the Living Resources of the Sea. Reprinted in U.N. Doc. ST/LEG/SER.B/15 at 58(1970) and in I.A. Szekely, Latin America and Development of the Law of the Sea 39(1976). The U.N. legislative series, each volume of

which has a slightly different title, is hereinafter cited by U.N. Document only, with no title.

9. Kneger and Nordquist, " The Evolution of the 200-mile Exclusive Economic Zone: State Practice in the Pacific Basin," 19 VA.J.Int'l L. 321-326 (1979).
10. Venezuelan Act of 22 July 1941, Arts 7-8 reprinted in 1A Szekely, *supra* note 8. at 39.
11. Treaty relating to the submarine areas of the Gulf of Paria, Feb 26,1942. United Kingdom-Venezuela, (1942) Gr. Brit. T.S. No. 10 (Cmd 6400) reprinted in UN Doc. ST/LEG/SER.B/1 at 44 (1951).
12. Kaldone, Nweibed, "Venezuela's Contribution to the Contemporary Law of Sea." San Diego Law Review, 11NR3 (May 1973), p.612.
13. International Boundary Study Series A: Limits in the Seas. Continental Shelf Boundary. Trinidad and Tobago-Venezuela N°11. March 6, 1970. Art.5.
14. Kaldore, op.cit.,p.16.
15. Ibid.
16. *Supra* Note 13, Art. 1.p.1.
17. U.S. Department of State, Limits in the Seas, N.21 June 11, 1970.
18. Ibid
19. Ibid.
20. Ibid.
21. Gaceta Oficial de la Republica de Venezuela. NR 2342 Extraordinario Caracas 14 Diciembre 1978.
22. Public Law 94-265, 94th Congress, H.R. 200, April 13, 1976.

23. On Puerto Rico and the Economic Zone, see Passalacque Christian, Luis A., "Carribean International Politics and the Law of the Sea Proposals."
24. New Directions in the Law of the Sea. Vol. III p.86.
25. Venezuela-Netherlands Antilles Maritime Boundary Treaty, signed March 31, 1978. The outcome of the Venezuelan-Netherlands negotiations was of course known when the U.S.-Venezuelan Maritime Boundary Treaty was signed on March 28, 1978.
26. Supra Note 24.
27. Xenophobic: hatred to foreigners.
28. A historical process that dates from separation of Venezuela and New Granada (Columbia) in 1830.
29. Mary Jeanne Reid Martz, "Delimitation of Marine and Submarine Areas: The Gulf of Venezuela", 9 Lawyer of the Americas 301-17 (1977). See also Kaldore G. Nweihed, La Delimitacion Maritima al Noroeste del Golfo de Venezuela (1975).
30. Until 1550, Colombia and Venezuela were under the jurisdiction of the Audiencia de Santo Domingo. Spain thus established the Audiencia of Santa Fe de Bogota with jurisdiction over that are now Columbia and Venezuela, these collectively called New Granada. The rigime became a Vice royalty of New Granada in 1718, and this arrangement continued until 1777 when Venezuela was made a separate Captain-General directly under the Crown. Isolated from both Bogota and Spain, Venezuela exercised a great deal of local autonomy throughout the colonial period.

Viceroy and captain-generals had essentially the same functions, differing only in the importance and the extent of the

territory assigned to the jurisdiction of the power. Each was the supreme civil and military officer of his territory. In 1700, then were two great American viceroyalties: the viceroyalty of New Spain, with its capital of Mexico City, included all Spanish possessions north of the Isthmus of Panama; that of Peru, with its capital of Lima, embraced all of Spanish America except the coast of Venezuela. Captain-generals were theoretically subordinate to the Viceroy but in practice were virtually independent of them and governed large subdivisions of these vast jurisdictions.

31. Treaty of Alliance, Friendship, Commerce, Navigation, and Boundaries (also known as Pombo-Micheln Treaty), Dec. 14. 1833, Colombia-Venezuela at Lima, embraced all of Spanish America except the coast of Venezuela.

32. See P. Villa, *Nueva Geografía de Colombia* 6 1945.

33. *El Espectador* (Bogota), 18 Dec 1970 , translated by Joint Publication Research Service.

34. Ireland, *Boundaries, Possessions and Conflicts in South America*, 206 (1938).

35. Declaration of Paris, Feb 15, 1886, Colombia-Venezuela, reprinted in *Ministerio de Relaciones Exteriores*.

36. Boundary Dispute (Colombia v. Venezuela) sec 1, reprinted in *Ministerio de Relaciones Exteriores*.

37. Convention between Colombia and the United States of Venezuela, reprinted in *Ministerio de Relaciones Exteriores*, Nov, 1916.

38. Boundary Dispute (Colombia v. Venezuela), 1 R. Intl Arb. awards. 223 (1922).

39. Signed, Cucuta April 5, 1941. Ratifications exchanged, Caracas September 12, 1941.
40. New York Times, 26 Nov-1970.
41. For the complete text of the note see, Cesar Moyana Bonilla y Ernesto Vasquez Rocha, *Los Monjes y las Bahias Historicas Ante el Derecho International* (1971), at 84-87.
42. See Hernando Holguin Pelaez, *Los Monjes: Enjuiciamiento de una Traicion. 1499-1975* (1975), at 303-342.
43. See I.B.S., Limits in the Seas, N. 36 "National Claims to Maritime Jurisdictions;"
44. This for the reason that, upon ratification of the Convention, Venezuela entered a reservation to article 12 (1), to which made no objection.
45. Venezuela, Ministerio de Relaciones Exteriores Libro Amarillo, separata 1969 (1970), at XLII.
46. In the Channel Arbitration 1976, the Court of Arbitration assumed that the territorial sea boundary between France and the Channel Islands would be a median line: I.C.J. Reports, 1969, Pleadings, reply of Germany, para 38 and annex B p. 192.
47. See. Shalowitz, *Shore and Sea Boundary* (1964) p. 384 "... the objective is to apportion the sea area in such a manner as will be equitable to both states."
48. Or, alternatively, Venezuela might show that the waters of the Gulf are "historic".

49. 499 U.N.T.S. 311.
50. The term "lateral" was the first used by the International Court of Justice, in the North Sea Case. (1969) ICJ.18
51. 499 U.N.T.S. 311
52. Boggs, Delimitation of Seaward Areas Under National Jurisdiction, XIV Am. Int'l L. 265 (1951).
53. Venezuela Ministerio de Relaciones Exteriores, Libro Amarillo, separata, 1969, at XLII.
54. UN Doc. A/CONF 13/C. 4/L. 42, at 138.
55. UN Doc. A/CONF 13/42. para 25, at 21.
56. See, Grisel, the Lateral Boundaries of the Continental Shelf and the judgement of International Court of Justice in the North Sea Continental Shelf Cases, LXIV Am. J. Int'l L. 574 (1970).
57. 516 U.N.T.S. 205.
58. 499 U.N.T.S. 311.
59. El Universal (Caracas), July 10, 1975, at I/6.
60. Fisheries Case (United Kingdom v. Norway), (1951) I.C.J. 116.
61. Carpio Castillo, Fronteras Maritimas de Venezuela 93/119. (1974)
62. See, generally J. Gamble & G. Pontecorvo, Law of the Sea: The Emerging Regime of the Oceans. 137, 149 (1973).
- 63 See article by Daniel Samper Pizano in El Tiempo (Bogota), February 14, 1971, at 6.
- 64 UN Doc. A/CONF. 13/39, para 37, at 23.
65. Venezuela, Ministerio de Relaciones Exteriores, Libro Amarillo, 1969, at 36-37.
66. Venezuela, Presidencia, El Segundo Mensaje De Caldera, 1971 at 279.

67. Text of the Communique in el Universal, December 20, 1971, at I-10.
68. El Tiempo (Bogota), February 12, 1971, at 1.
- 69 Resumen, October 27, 1975, V, at 42.
70. El Universal, July 21, 1975, at I-6.
71. El Universal, July 23, 1975, at I-6.
72. Resumen, August 3, 1975, VIII, at 3.
73. Main issues of Venezuelan Marine Policy: A review Under an Integral Model, by Pedro Leon. University of Rhode Island. 1982. p. 28
74. Pedro, Nikken. La Costa Seca favorecea Colombia. (Caracas: Ministerio de Informacion y Turismo, Imprenta Nacional 1980) p. 18.
75. Kaldone G, Nweided. Delimitation Principles and Problems. Florida International University. 1981. p .37
76. Ministerio de Relaciones Exteriores, Caracas, 20 de Octubre de 1980. El Universal, 22 de Octubre de 1980. p. 1-13.
77. Ibid.
78. The New York Times, September 8, 1982, p. 8A.
79. Ministerio de Relaciones Exteriores. Reclamacion de Guyana. Documentos 1962-1981. (Caracas 1981) p. 74.
- 80 International Boundary study Series A. Limits in the Seas. N. 21 Straight Baselines: Venezuela p.2.
81. Ibid. at 1.
82. Gaceta Oficial de la Republica de Venezuela N. 2240 Extraordinario, 21 July 1978.
83. "Isla de Aves genera una adecuada zona economica y mar territorial" El Nacional, 02 Junio 1981.

84. Phillip Erwin Harin. Maritime Boundary Disputes as a Constraint to the Commercialization of Ocean Thermal Energy Conversion in the Caribbean Sea. (Kingston, University of Rhode Island Thesis Requirement for degree of Masters of Arts in Marine Affairs 1981) p73.
85. Maritime Issues in the Caribbean. ed by Farrokh Jhabvala. Coment by Lewis M. Alexander. 13 April 1981. p. 59.
86. Supra, note 84, at 75.
87. Pedro J. Guzman Q. La Autoridad Maritima. Capitania de Puertos de la Republica. (Caracas: talleres de Gremeica Editores C.A. 1982) Vol I, p. 185.
88. "Isla de Aves Genera una adecuada Zona Economica y Mar Territorial" El Nacional, 02 Junio 1981.
- 89 Supra note 75 at 42.
90. Gaceta Oficial de la Republica de Venezuela, N. 2240, Extraordinario, 21 July 1978.
91. Guayana Outback a Lure to Mines and Venezuela, by Richard J. Meilin. The New York Times, tuesday, September 28, 1982.
92. Ibid.