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LAW ON MARITIME ZONES

**A Drafting Project submitted in partial fulfillment of the
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(LL.M.) in
International Maritime Law**

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To Ambassador Alfonso Arias-Schreiber
In memoriam

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STATEMENT

When in 1947 Peru issued the Supreme Decree No. 781 asserting rights over a 200-nautical-mile zone of the adjacent sea to limit the access of distant-water fishing fleets, it was hardly possible to foresee that the Peruvian claim would be part of the first chapters of the history of the exclusive economic zone. In the domestic arena, it was also difficult to envisage that, ironically, different interpretations given afterwards to this historic instrument were going to prevent Peru from becoming a party to the “Constitution for the Oceans”¹, which recognizes the right of all coastal States to an exclusive economic zone up to 200 nautical miles and sets forth rules of universal application for the appropriate management and conservation of the marine resources.

The national debate on maritime affairs throughout the past half century has been mainly focused on the nature of the 200-nautical-mile zone established by Peru in 1947 and on the characteristics attributed to that zone in the 1979 and 1993 Political Constitutions. Meanwhile, the consideration of substantive matters concerning directly or indirectly the Peruvian national interests² has been set aside.

As a result, Peru has not yet decided its accession to the 1982 United Nations Convention on the Law of the Sea (hereinafter “1982 Convention”), nor has it established the maritime zones over which the 1982 Convention and State practice recognize sovereignty or sovereign rights and jurisdiction to the coastal State. Instead, Peru claims a single maritime zone of 200 nautical miles which is referred to by the national legislation as the

¹ This expression, referring to the 1982 United Nations Convention on the Law of the Sea, was coined by Tommy T. B. Koh, President of the Third United Nations Conference on the Law of the Sea. “A Constitution for the Oceans”, Remarks by Tommy T. B. Koh, of Singapore. The Law of the Sea, United Nations Convention on the Law of the Sea, United Nations, New York, 1983, p. xxxiii.

² Fisheries are among the most important interests of Peru in maritime affairs. In the sea adjacent to the Peruvian coast more than 700 marine fish species can be found. This fact explains in part why this economic sector is, after mining, the second highest generator of foreign currency for Peru. See “Fishery Country Profile”, Food and Agriculture Organization of the United Nations, FID/CP/PER, Rev. 2, November 2003, <<http://www.fao.org/fi/fcp/en/PER/profile.htm>>.

“maritime domain”³. The nature of this zone is unclear⁴ and its limits have not been drawn⁵.

It is important to note that the Peruvian claim over the 200-nautical-mile single zone gives rise to negative consequences, both in the national and in the international planes. In the domestic arena, since the nature of the maritime domain of Peru is subject to interpretation, it has often been construed by national tribunals as a claim over a 200-nautical-mile territorial sea. According to that interpretation, important pieces of national legislation dealing with the exercise of the State’s sovereignty and jurisdiction have been considered as being enforceable over the sea adjacent to the Peruvian coast up to 200 nautical miles⁶. This certainly contravenes the law of the sea as stated in the 1982 Convention⁷ and the general practice of States.

In the international arena, the lack of universally recognized maritime zones has precluded Peru from getting more actively involved in the contemporary development of the law of the sea. It has also prevented Peru from fully participating in the negotiation of numerous multilateral treaties drafted on the basis of the different regimes applicable to the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf, as well as from becoming a party to those treaties⁸.

³ Political Constitution of Peru, 1993, article 54.

⁴ Peruvian scholars almost unanimously consider that the concept of “maritime domain” is wide enough to embody all the maritime zones over which the coastal State exercises sovereignty or sovereign rights and jurisdiction according to the 1982 Convention. Nevertheless, some branches of the Public Sector, the media, and the public opinion, consider that “maritime domain” is synonymous of “territorial sea”. See Ferrero Costa, Eduardo (Ed.); *El Perú Frente a la Convención sobre el Derecho del Mar*, Serie: Documentos de Trabajo No. 5, Centro Peruano de Estudios Internacionales, Lima, 1985. See also *infra* footnote 9.

⁵ Although the Peruvian Maritime Domain Baselines Law establishes that “the outer limit of the maritime domain of Peru is traced in such a way that every point of that limit shall be two hundred nautical miles from the nearest point of the baselines”, the aforementioned limit has still not been drawn. Law No. 28621, 3 November 2005, article 4.

⁶ This is the case, for example, of the 1984 Criminal Code.

⁷ The 1982 Convention sets forth rules on civil and criminal jurisdiction, as well as on customs, fiscal, immigration and sanitary matters, which are enforceable only within the specific maritime zones regulated by it.

⁸ The referred treaties include those negotiated within the International Maritime Organization (IMO), among other international organizations.

The *sui generis* 200-nautical-mile maritime zone claimed by Peru is hardly understood in the international sphere as a concept compatible with the provisions of the 1982 Convention⁹. To overcome this situation and to allow Peru to regain its active participation in the development of the law of the sea, several attempts to accede to the 1982 Convention have been made by the Ministry of Foreign Affairs. Unfortunately, until now all attempts have been unsuccessful. The main reason has been the prevalent thought in the Peruvian public opinion that Peru has a 200-nautical-mile territorial sea and that, before renouncing to this traditional maritime zone by acceding to a comprehensive international Convention on the law of the sea, the Congress should analyze, in public debates, each provision of the 1982 Convention together with the whole spectrum of possible consequences of its application. The task appears to be overwhelming and has never been undertaken.

This drafting project has been conceived from a realistic approach to this matter. It is, therefore, not another attempt to accede to the 1982 Convention. Instead, it is exclusively aimed at providing Peru with the universally recognized maritime zones and at stating unambiguous provisions dealing with the State's exercise of sovereignty, sovereign rights and jurisdiction according to the 1982 Convention and the general practice of States. The Law on Maritime Zones would allow Peru to greatly improve its participation in the negotiation of multilateral treaties on maritime affairs and would make easier for Peru to become a party to them. It is important to note that such law would certainly pave the way for the accession of Peru to the 1982 Convention.

For the Law on Maritime Zones to become a part of the laws of Peru specific legislative procedures need to be followed. The process will normally begin with an initiative of the Ministry of Foreign Affairs of Peru¹⁰. The Minister of Foreign Affairs would then have to address a motivated petition to the President of the Congress, who would forward it to

⁹ In the international sphere the prevailing thought is that Peru claims a 200-nautical-mile territorial sea. See "Table of Claims to Maritime Jurisdiction", United Nations, <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/claims_2005.pdf>.

¹⁰ The President of the Republic and Members of the Congress, as well as other branches of the Government, among other institutions, have the right of initiative in drafting laws. Political Constitution of Peru, 1993, article 107.

the Constitutional Affairs Commission and to the International Affairs Commission. After the evaluation of the proposal, each of these Commissions would have to submit its respective opinion to the Plenary of the Congress. The former Commission would determine if a constitutional reform is necessary and the latter would express its view on the convenience of such law for the national interests of Peru.

After the Plenary of the Congress approves the law, it would be sent on to the President of the Republic for promulgation¹¹. Once promulgated it would take effect after a number of days set forth by the law, to be counted after its publication in “El Peruano”, the official gazette of Peru¹².

Should the Constitutional Affairs Commission of the Congress determine that a constitutional reform is necessary, the Law on Maritime Zones would have to be approved by the special procedure regulating this matter¹³.

In the light of the foregoing, the following document aims at providing a consistent motivation and a coherent set of provisions establishing a territorial sea, a contiguous zone, an exclusive economic zone, and a continental shelf, to be submitted for consideration of the Congress.

¹¹ The law can also be promulgated by the President of the Congress or the Chairman of the Standing Committee. If the President of the Republic has observations to make concerning the law approved by the Congress, he submits them to the latter within the period of two weeks. Once the law has been reconsidered by the Congress, the President of this body promulgates it with the vote of the majority of the legal number of the members of the Congress. *Ibid.*, article 108.

¹² *Ibid.*, article 109.

¹³ Any constitutional reform must be approved by the Congress with the absolute majority of the legal number of its members and ratified by a referendum. The referendum may be omitted when the consent of Congress is obtained in two successive ordinary sessions with the favorable vote of more than two-thirds of the legal number of the members of the Congress. The right to initiate a constitutional reform procedure belongs to the President of the Republic with the Cabinet’s approval, as well as to the members of the Congress, and to a number of citizens equivalent to 0.3 percent of the voting population. *Ibid.*, article 206.

LAW ON MARITIME ZONES

MOTIVATION

Summary of the Proposal

The Law on Maritime Zones will establish a territorial sea, a contiguous zone, an exclusive economic zone, and a continental shelf according to the law of the sea and the general practice of States. Currently, Peru claims a “maritime domain”, which is a single 200-nautical-mile maritime zone adjacent to its coast. Since its establishment in 1947, the nature of this zone has remained unclear and its limits have not yet been drawn. This situation of ambiguity and imprecision is inconvenient for the national interests. In the domestic arena, it restrains Peru from setting forth coherent and enforceable pieces of legislation regulating its sovereignty and its sovereign rights and jurisdiction over the sea adjacent to its coast up to 200 nautical miles. In the international plane, it prevents Peru from fully participating in the negotiation of international agreements drafted on the basis of the different regimes applicable to the aforementioned zones, as well as from becoming a party to those agreements. The Law on Maritime Zones will allow Peru to improve its participation in the development of the law of the sea and will strengthen the defence and promotion of the national interests in maritime affairs.

1. Nature of the Maritime Domain Claimed by Peru

1.1. Background

The first domestic legal instrument referring to the sea adjacent to the coast of Peru is the Supreme Decree of 13th November 1934, “Regulations on Visits of Foreign Warships and War Aircrafts to the Ports and to the Territorial Sea of Peru in Peace Time”. The Regulations set forth that “the territorial waters

extend up to 3 miles from the low-water line along the Peruvian coast and islands”¹⁴. Two years later the Civil Code included among the assets of the State the beaches along its coast, the territorial sea and the annexed zone established by law¹⁵.

The breadth of the territorial sea was later confirmed by the General Order of the Navy No. 10 of 9th April 1940, “Captaincies and National Merchant Navy Regulations”, according to which “the territorial sea of Peru extends up to 3 miles from the coast and islands, measured from the low-water line”¹⁶.

1.2. Supreme Decree No. 781 of 1947

At the time the historic Supreme Decree No. 781 (S.D. 781) was issued, the freedom-of-the-seas doctrine was still in force. According to this doctrine the rights and jurisdiction of coastal States over the oceans were limited to a narrow belt of sea surrounding their coastlines. The remainder of the seas was free to all and belonging to no nation.

The first challenge to the doctrine was the 1945 Truman Proclamation on the Continental Shelf¹⁷ through which President Harry Truman unilaterally claimed United States jurisdiction over all natural resources on its continental shelf. In 1946 Argentina claimed rights over its continental shelf and the epicontinental sea above it¹⁸ and in 1947 Chile asserted sovereign rights over a 200-nautical-mile zone¹⁹. The claims of both Latin American countries were aimed at

¹⁴ As cited by Bákula, Juan Miguel; *El Dominio Marítimo del Perú*, Fundación Juan Bustamante de la Fuente, Lima, 1985, p. 236. (*Unfortunately, the specific reference to the article's number is not cited by the author*).

¹⁵ Civil Code of 1936, article 822(2).

¹⁶ General Order of the Navy No. 10 of 9th April 1940, article 4. Bákula, *op. cit.*, p. 241.

¹⁷ Presidential Proclamation No. 2667 of 28th September 1945, “Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf”.

¹⁸ Decree No. 14.708 of 9th October 1946.

¹⁹ Presidential Declaration of 23rd June 1947.

limiting the access of distant-water fishing fleets and at avoiding the depletion of fish stocks in their adjacent seas.

In this context, on 1st August 1947 President Jose Luis Bustamante y Rivero issued the S.D. 781, proclaiming national sovereignty and jurisdiction over Peru's continental shelf²⁰ and over the sea adjacent to the Peruvian coast, its bed and subsoil, in the extension necessary to reserve, protect, conserve and use the natural resources found in or under the sea²¹. The area was limited by a line parallel to the national coast at a distance of 200 nautical miles therefrom, measured following the line of the geographic parallels²². The S.D. 781 also set forth that it did not affect the right of freedom of navigation of ships of all nations, according to international law²³.

The S.D. 781 has frequently been construed as extending the territorial sea of Peru to 200 nautical miles and the Political Constitutions of 1979 and 1993 have been interpreted accordingly.

In order to clarify whether the S.D. 781 extended the territorial sea of Peru to 200 nautical miles the following considerations need to be taken into account:

- the S.D. 781 does not contain any provision concerning the extension of the territorial sea from 3 to 200 nautical miles. If such extension had been the intention of the legislator, an express provision setting it forth would have been necessary due to its implied limitations to the freedoms of navigation, overflight and other uses of the sea within the area;

²⁰ Supreme Decree No. 781 of 1st August 1947, article 1.

²¹ *Ibid.*, article 2.

²² *Ibid.*, article 3. The method of the geographic parallels was abandoned in 1955 due to its inadequacy for the coast of Peru. A mathematical constant line of 200 nautical miles from each point of the coast was instead adopted. Nevertheless, it has to be pointed out that since the establishment of the 200-nautical-mile zone in 1947 no official drawing of its outer limit has been done. Agüero Colunga, Marisol; Consideraciones para la Delimitación Marítima del Perú, Fondo Editorial del Congreso de la República, Lima, 2000.

²³ *Ibid.*, article 4.

- accordingly, the S.D. 781 does not include any provision derogating the “Captaincies and National Merchant Navy Regulations” that, as mentioned above, confirmed the 3-nautical-mile limit of the Peruvian territorial sea;
- the S.D. 781 did not make any reference to article 822(2) of the 1936 Civil Code, which included the territorial sea among the assets of the State. On the contrary, it refers to article 37 of the 1933 Political Constitution, referred to the income-generating natural resources;
- the S.D. 781 established a 200-nautical-mile maritime area of Peruvian sovereignty and jurisdiction expressly aimed at reserving, protecting, conserving and using the natural resources within it. Thus, this instrument responded to economic and social interests of the State and not to the interests on national security that characterizes the territorial sea;
- the S.D. 781 did not establish sovereignty over the air space, which is another characteristic element of the territorial sea;
- the freedom of navigation, which is an institution pertaining to the high seas, was not affected. If the S.D. 781 had extended the territorial sea, the respect to the right of innocent passage would have been declared instead;
- in the 1947 Council of Ministers’ Book of Acts there is no record of any debate among the members of the Presidential Cabinet related to an extension of the territorial sea²⁴.

²⁴ García Belaúnde, Domingo; *Mar y Constitución, Las 200 Millas en la Constitución de 1979*, Facultad de Derecho y Ciencias Políticas de la Universidad de Lima, Lima, 1984, pp. 45-46.

In the words of President Bustamante y Rivero, who issued the S.D. 781,

the Peruvian proclamation of sovereignty over the waters of the new territorial sea or coastal belt of 200 miles does not imply any purport of absolute appropriation of the area or the creation of an exclusive dominion over it. The S.D. 781 sets forth that its provisions do not affect the freedom of navigation. Additionally, it implies, if the rules of the juridical hermeneutic are correctly applied, that the sovereign acts of the Peruvian State within the area will be limited to the purposes of the proclamation. This means that they will be circumscribed to the protection, conservation and defence of the natural resources of the area and, accordingly, to the vigilance and regulation of those national economic interests²⁵.

The reference to a “new territorial sea” in the statement cited above is understandable since at the time the S.D. 781 was issued no other area existed in international law other than the territorial sea and the high seas.

The S.D. 781 was proposed to President Bustamante y Rivero for signature by his Minister of Foreign Affairs, Mr. Enrique García Sayán. Referring to the fact that Peru had not extended its territorial sea, this former Minister expressed that

such notion was inadequate to express the nature of a sovereignty and exclusive jurisdiction for the protection and use of the marine resources up to a distance of 200 miles. That is the reason why the prevalent opinion was that Peru had established a *sui generis* institution²⁶.

It may, therefore, be concluded that the S.D. 781 was not intended to extend the 3-nautical-mile Peruvian territorial sea. It created, instead, a new area expressly aimed at protecting the natural resources of the sea adjacent to the coast of Peru up to 200 nautical miles.

²⁵ Bustamante y Rivero, José Luis; “Las Nuevas Concepciones Jurídicas sobre Dominio Territorial del Estado y Soberanía Marítima”, Revista del Foro No. 3, year XLI, Set.-Dec., 1954, p. 476.

²⁶ García Sayán, Enrique; Derecho del Mar, Las 200 Millas y la Posición Peruana, Lima, 1985, p. 70.

1.3. Santiago Declaration of 1952

The Declaration on Maritime Zone or “Santiago Declaration” was signed *ad-referendum* by Chile, Ecuador, and Peru on 18th August 1952²⁷. Its motivation basically reproduces the arguments that supported the maritime claims over the 200-nautical-mile zone made by Chile and Peru in 1947. It emphasizes the Governments’ duty to provide their nations the means for their economic development and, accordingly, to care for the conservation and protection of their natural resources.

Considering the above and taking into account “the geological and biological factors which shape the existence, conservation and development of the marine fauna and flora in the waters adjacent to the coasts of the declaring States”²⁸, the three Governments declared that the former extension of the territorial sea and the contiguous zone was insufficient for the conservation, development and utilization of the marine resources, in respect of which the coastal States have rights²⁹.

As a result, Chile, Ecuador, and Peru declared each State’s exclusive sovereignty and jurisdiction over the sea adjacent to their respective coasts, up to a minimum distance of 200 nautical miles from such coasts, as part of their international maritime policy³⁰. Exclusive sovereignty and jurisdiction over the

²⁷ Declaration on Maritime Zone of 18th August 1952. It was ratified by Chile on 23rd September 1954 (Supreme Decree No. 432, published in the Official Gazette on 22nd November 1954); Ecuador on 7th February 1955 (Supreme Decree No. 275, published in the Official Registry No. 1029 on 24th January 1956); and Peru on 6th May 1955 (Legislative Resolution No. 12.305, published in El Peruano on 12th May 1955). Colombia acceded to this treaty by depositing its instrument of accession on 16th April 1980 in the Ministry of Foreign Affairs of Ecuador (Law No. 7, 4th February 1980). The Declaration on Maritime Zone was registered by the Secretariat of the United Nations on 12th May 1976, Certification of Registry No. 21404, 1st May 1979 - Agreement UU.NN. No. 14758.

²⁸ *Ibid.*, article I.

²⁹ *Ibid.*

³⁰ *Ibid.*, article II.

aforementioned maritime area included exclusive sovereignty and jurisdiction over their respective bed and subsoil³¹.

The Declaration points out that it is without prejudice of the necessary limitations to the exercise of sovereignty and jurisdiction established by international law in favour of innocent and harmless passage through the area for vessels from every nation³².

It is true that the Declaration employs the terms “exclusive sovereignty and jurisdiction” and “innocent passage”, both belonging to the concept of territorial sea; nevertheless, its motivation makes it clear that the Declaration was inspired by the economic and social needs of the three countries and aimed at allowing them to manage the marine resources of the adjacent seas in favour of their respective peoples. It has to be noted, also, that the use of the term “innocent passage” in the Declaration contrasts with the term “freedom of navigation” employed in the 1947 national claims of Chile and Peru. Bearing in mind that the “200-mile thesis” was in process of development at the time the Declaration was issued, these inconsistencies are understandable.

Denmark, Holland, Norway, Sweden, United Kingdom, and United States made protests to the Santiago Declaration. Those countries construed the Declaration as extending the territorial seas of Chile, Ecuador, and Peru up to 200 nautical miles and alleged that extension was “not allowed by international law”³³.

Chile, Ecuador and Peru answered the protests of United Kingdom and United States expressing that

³¹ *Ibid.*, article III.

³² *Ibid.*, article V.

³³ Instrumentos Nacionales e Internacionales sobre Derecho del Mar, Ministerio de Relaciones Exteriores del Perú, Lima, 1971, pp. 210-239.

The maritime zone established by the Declaration does not have the characteristics that the Government of [United Kingdom, United States] seems to attribute to it. On the contrary, the zone is inspired in the conservation and prudent utilization of the natural resources³⁴.

Setting aside the inconsistencies of Peru's national claim and the Santiago Declaration, what remains irrefutable is the fact that neither of the instruments contains any provision expressly extending the territorial sea up to 200 nautical miles. Their motivations, by contrast, only refer to concerns of economic and social nature.

1.4. Political Constitution of 1979

The Political Constitution of 1979 included in its Title II, Chapter III, "Territory", three articles relating to the 200-nautical-mile maritime zone of Peru:

Article 97

The territory of the Republic is inviolable. It includes the soil, the subsoil, the maritime domain and the air space over them.

Article 98

The maritime domain of the State includes the sea adjacent to its coast, as well as its bed and subsoil up to a distance of 200 nautical miles, measured from the baselines established by law. Within its maritime domain Peru exercises sovereignty and jurisdiction without prejudice to the freedoms of international communications, according to the law and the international treaties ratified by the Republic.

Article 99

The State's sovereignty and jurisdiction extend to the air space over its territory and adjacent sea up to the limit of 200 nautical miles, according to the law and the international treaties ratified by the Republic.

³⁴ Following an initiative of the Peruvian Government, Chile, Ecuador, and Peru agreed on the wording of this answer, which could be used as a model for the respective Diplomatic Notes to be forwarded to either United Kingdom or United States. Acta de Lima, 12th April 1955. *Ibid.*, p. 226.

In a very well documented research on the drafting process of these constitutional articles, Dr. García Belaúnde arrives at some enlightening conclusions concerning their aims. Starting from the most evident, it has to be noted that the draft approved by the Constitutional Congress does not make any express mention of a territorial sea. García Belaúnde explains that the omission did not occur by chance; it was the result of a heavy debate in which it was pointed out that “territorial sea as a term defining the sea adjacent to the Peruvian territory would be prejudicial to the interests of Peru”³⁵.

This statement was made bearing in mind that the Informal Composite Negotiating Text, in which a territorial sea up to 12 nautical miles, an exclusive economic zone and a continental shelf up to 200 nautical miles had been recently approved within the Third United Nations Conference on the Law of the Sea³⁶.

The expression “maritime domain” was adopted by the Constitutional Congress as a legal formula that did not appear as incompatible neither with the maritime zone claimed by Peru nor with the wording of the Informal Composite Negotiating Text.

The participation of the Peruvian Delegation within the Third United Nations Conference on the Law of the Sea had been remarkable³⁷ and it was particularly

³⁵ Ambassador Juan Miguel Bákula’s declaration within the Fifth Session of the Principal Constitutional Commission held on 5th October 1978. García Belaúnde, *op. cit.*, p. 15.

³⁶ The Informal Composite Negotiating Text was approved on the Sixth Session, held in New York in 1977. “Law of the Sea Conference: a Chronology”, The Law of the Sea, United Nations Convention on the Law of the Sea, United Nations, New York, 1983, p. 191.

³⁷ The Delegation of Peru to the Third United Nations Conference on the Law of the Sea made important contributions, especially as regards: a) the drafting of the provisions on the exclusive economic zone. The Head of the Peruvian Delegation, Ambassador Alfonso Arias Schreiber, was one of the coordinators of the substantive position of the Latin American region in this matter; and b) the legal regime of the sea-bed and its subsoil beyond the limits of national jurisdiction. On this issue, among others, Peruvian Ambassador Alvaro de Soto was Chairman and negotiator of the Group of 77. See “Statement of His Excellency Milos Alcalay, Representative of Venezuela, on behalf of the Latin American and Caribbean States”, Proceedings of the Twentieth Anniversary Commemoration of the Opening for Signature of the United Nations Convention on the Law of the Sea, New York, 9-10 December 2002, International Sea-Bed Authority, <http://www.isa.org.jm/en/publications/CommRep_web.pdf>, pp. 26-30.

important for Peru to draft constitutional provisions consistent with the Informal Composite Negotiating Text to which it had made substantial contributions. Consequently, and bearing in mind that the aforementioned text would later evolve into the United Nations Convention on the Law of the Sea³⁸, the Constitutional Congress sought to guarantee the compatibility of article 98 with it. This was achieved by setting forth that “... Peru exercises sovereignty and jurisdiction ... according to the law and the international treaties ratified by the Republic”.

As it can be noticed, article 98 does not refer to “innocent passage”, which is a term pertaining to the concept of territorial sea. Instead, reference is made to the respect of the “freedoms of international communications”, which is a generic expression and, again, compatible with the Informal Composite Negotiating Text.

Article 99 relates to the air space. It sets forth that the sovereignty and jurisdiction of Peru “extend to the air space over its territory and adjacent sea up to the limit of 200 nautical miles, according to the law and the international treaties ratified by the Republic”.

However, it is surprising that in this article the phrase “without prejudice to the freedoms of international communications” was not included, as it was in article 98. This made it possible to argue that article 99 had to be construed *contrario sensu* in relation to the preceding article, as not recognizing those freedoms. As a result, the phrase “according to the law and the international treaties ratified by the Republic” did not produce in article 99 the same effect than in article 98.

³⁸ The Informal Composite Negotiating Text, with some changes, would become the 1982 United Nations Convention on the Law of the Sea, which established a new legal order for the ocean space. Among other fundamental provisions of the Convention, it recognizes sovereign rights and jurisdiction to all coastal States over a zone of the adjacent sea up to 200 nautical miles. See United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982; in force 16 November 1994, 149 ratifications, Part V.

1.5. Political Constitution of 1993

In its Title II, Chapter I, “State, Nation and Territory”, the Political Constitution of 1993 includes one article related to the 200-nautical-mile maritime zone of Peru.

Article 54

The territory of the State is inviolable. It includes the soil, the subsoil, the maritime domain and the air space over them.

The maritime domain of the State includes the sea adjacent to its coast, as well as its bed and subsoil up to a distance of 200 nautical miles, measured from the baselines established by law. Within its maritime domain the State exercises sovereignty and jurisdiction without prejudice to the freedoms of international communications, according to the law and the international treaties ratified by the State.

The State’s sovereignty and jurisdiction extends to the air space over its territory and adjacent sea up to the limit of 200 nautical miles, without prejudice to the freedoms of international communications, according to the law and the international treaties ratified by the Republic.

This article practically reproduces the wording of articles 97, 98 and 99 of the Political Constitution of 1979. Nevertheless, the wording of the 1993 Constitution is more appropriate than that of the 1979 Constitution and, what is more important, it amends the omission of the latter concerning the respect of the freedoms of international communications in the air space³⁹. In that way, the difficulty in the interpretation of article 99 of the Political Constitution of 1979 concerning the Peruvian regime on the air space was overcome⁴⁰.

2. Sovereignty and Jurisdiction of the State over the Maritime Domain

As it has been explained, it was not the intention of Peru to establish a 200-nautical-mile territorial sea. Nevertheless, since the nature of the maritime domain of Peru is

³⁹ See *supra* p. 10.

⁴⁰ *Idem*.

subject to interpretation, it has been often construed by national tribunals as a claim over a 200-nautical-mile territorial sea.

According to that interpretation, important pieces of national legislation dealing with the exercise of the State's sovereignty and jurisdiction which scope of application is the "territory" of the Republic, have been considered as being enforceable over the sea adjacent to the coast of Peru up to 200 nautical miles⁴¹. This certainly contravenes the law of the sea as stated in important international conventions⁴² and the general practice of States.

3. Limits of the Maritime Domain

Law 28621 of 3rd November 2005, "Peruvian Maritime Domain Baselines Law", establishes the baselines from which the 200-nautical-mile breadth of the maritime domain claimed by Peru is measured⁴³. The waters comprised within those baselines are part of the internal waters of the State⁴⁴.

According to the law, the outer limit of the maritime domain shall be drawn "in such a way that every point of that limit shall be two hundred nautical miles from the nearest point of the baselines"⁴⁵. The Executive Power is in charge of elaborating the cartography corresponding to the outer limit of the maritime domain⁴⁶.

The aforementioned limit has still not been drawn. It has to be noted that this law confirms the maritime domain claimed by Peru as a single maritime zone, and therefore, as a zone over which a uniform legal regime is applicable.

⁴¹ This is the case, for example, of the 1984 Criminal Code.

⁴² This is the case of the 1982 United Nations Convention on the Law of the Sea, which sets forth rules on civil and criminal jurisdiction, as well as on customs, fiscal, immigration and sanitary matters, enforceable only within the specific maritime zones regulated by it.

⁴³ Law 28621 of 3rd November 2005, Peruvian Maritime Domain Baselines Law, article 1. The list of geographical co-ordinates of points specifying the geodetic datum, as well as the charts ascertaining their position are included, respectively, in Annex 1 and Annex 2 of the law.

⁴⁴ *Ibid.*, article 3.

⁴⁵ *Ibid.*, article 4.

⁴⁶ *Ibid.*, article 5.

4. Evaluation of the Convenience of the Maritime Domain for the National Interests

Although the national experts in international law are almost unanimous in considering the maritime domain claimed by Peru as a concept wide enough to embody all the maritime zones over which the coastal State exercises sovereignty or sovereign rights and jurisdiction according to the 1982 United Nations Convention on the Law of the Sea⁴⁷, some branches of the Public Sector, the media and the public opinion consider the maritime domain claimed by Peru as being a territorial sea. Due to the existence of these mutually excluding interpretations on the nature of the maritime domain the national debate on maritime affairs during the last 59 years has been mainly focused on this matter. Meantime, the consideration of substantive matters concerning directly or indirectly the Peruvian national interests has been set aside⁴⁸.

In the national plane, the scope of application of the domestic legislation is the “territory” of the Republic, which, according to the wording of the 1993 Political Constitution, includes the maritime domain⁴⁹. From this circumstance, together with the fact that the nature of the maritime domain is unclear, important pieces of national legislation which set forth the “territory” as the scope of its application have been construed by the Judicial Power as being enforceable over the sea adjacent to the coast of Peru up to 200 nautical miles⁵⁰. This contravenes the law of the sea as stated in important international conventions⁵¹ and the general practice of States.

⁴⁷ Arias Schreiber, Alfonso; *Retos del Derecho del Mar, Hacia una Agenda Nacional de Política Exterior*, Centro Peruano de Estudios Internacionales, Lima, 1995; Bákula, *op. cit.*; Ferrero, Eduardo; “Estado, Nación, Territorio y Tratados”, *Análisis Internacional* No. 4, Centro Peruano de Estudios Internacionales, Lima, 1994; García Belaúnde; *op. cit.*; García Sayán, Diego; *Constitución Peruana y Política Exterior, La Constitución Diez Años Después*, Fundación Friedrich Neumann, Lima, 1989.

⁴⁸ *Inter alia*, the conservation and management of the straddling fish stocks and highly migratory fish stocks, ocean mining, and the protection of the underwater cultural heritage.

⁴⁹ Political Constitution of Peru, 1993, article 54.

⁵⁰ See *supra* footnote 28.

⁵¹ See *supra* footnote 29.

In the international arena, the Peruvian maritime domain has been widely interpreted as a claim over a 200-nautical-mile territorial sea⁵², which is 188 miles wider than the maximum extension universally recognized for this zone⁵³. Ironically, it seems that Peru ignores that the exclusive economic zone, created some decades ago, is the zone established by States in order to protect their national interests over the natural resources of the sea adjacent to their coasts⁵⁴. What is worse, Peru appears as challenging the contemporary international maritime legal order as reflected in the 1982 United Nations Convention on the Law of the Sea and the general practice of States⁵⁵. Consequently, Peru has lost the leadership it had in maritime affairs⁵⁶.

Additionally, the lack of the universally recognized maritime zones has prevented Peru from participating actively in the negotiation of several international agreements drafted on the basis of the different regimes applicable to the maritime zones under sovereignty or sovereign rights and jurisdiction of the coastal State. Therefore, Peru remains apart from the development of the law of the sea⁵⁷.

Peru drew its baselines in November 2005. This means that only 53 years after the historic Supreme Decree No. 781 was issued Peru was able to determine the outer limit of the 200-nautical-mile maritime zone. Nevertheless, drawing it up would not

⁵² See “Table of Claims to Maritime Jurisdiction”, United Nations, <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/claims_2005.pdf>.

⁵³ 1982 United Nations Convention on the Law of the Sea, article 3.

⁵⁴ As it is broadly recognized, “the true parents of the exclusive economic zone concept were certain Latin American states. In 1947, the declaration made by the President of Chile on 23 June and Decree 781 of 1 August by the Government of Peru established maritime zones of 200 miles.” Nandan, Satya; “The Exclusive Economic Zone: a Historical Perspective”, Food and Agriculture Organization of the United Nations, <<http://www.fao.org/docrep/s5280t/s5280t0p.htm>>.

⁵⁵ At the moment this draft law is submitted, 149 States are parties to the 1982 United Nations Convention on the Law of the Sea. For an updated Chronological List of States parties see <http://www.un.org/Depts/los/reference_files/status2005.pdf>. It has also to be taken into account that other States which are not parties to the Convention have to some extent adapted their laws to the provisions of the Convention concerning the maritime zones; such is the case, for example, of United States.

⁵⁶ See *supra* footnotes 24 and 41.

⁵⁷ In several occasions Peru has even refrained itself from participating in the negotiation of multilateral agreements carried out within the International Maritime Organization (IMO), among other international organizations. Peru is unable to become a party to numerous international agreements on maritime affairs due to the difficulties that would entail the implementation and enforcement of all or some of their provisions within the single maritime zone claimed by Peru.

change very much the situation of Peru, since what it is going to be established is the outer limit of a *sui generis* single maritime zone deemed to be, from the international community's point of view, a claim over a territorial sea up to that extension.

From the aforementioned considerations it can be concluded that the concept of maritime domain is inadequate to protect the national interests of Peru.

National legislation should be precise and unambiguous enough not to allow contradictory interpretations, in the national and in the international planes, regarding the nature of the rights claimed by Peru over the sea adjacent to its coast up to 200 nautical miles. It has to be also in conformity with the contemporary law of the sea and the general practice of States.

The Law on Maritime Zones will allow Peru to greatly improve its participation in negotiations of international agreements on maritime affairs and will enable the State to become a party to them with no restrictions. In that sense, Peru will also be able to continue making contributions to the development of the law of the sea.

5. The Law on Maritime Zones

The Law on Maritime Zones will provide Peru with a territorial sea of 12 nautical miles, a contiguous zone extending up to 24 nautical miles, an exclusive economic zone and a continental shelf extending up to 200 nautical miles; all the zones being measured from the baselines established by Law 28621 of 3rd November 2005.

The Law on Maritime Zones will also establish the legal framework for the exercise of the State's sovereignty as well as for the exercise of its sovereign rights and jurisdiction over the aforementioned maritime zones, in accordance with the law of the sea and the general practice of States.

6. Conclusion

The concept of maritime domain is inadequate to protect the national interests of Peru. It is ambiguous and *sui generis*. For these reasons, Peru has been precluded from having a legal framework on the exercise of the State's sovereignty and jurisdiction consistent with the law of the sea and has been prevented from fully participating in the negotiation of several international agreements and becoming a party to them. As a result, Peru has remained aside from the evolution of the law of the sea in the last decades.

The Law on Maritime Zones is necessary for the appropriate protection of the national interests. Through it Peru will adequate its domestic legislation concerning the exercise of the State's sovereignty and sovereign rights and jurisdiction to the law of the sea and the general practice of States. The Law on Maritime Zones will also enable Peru to negotiate international agreements on maritime affairs with no restrictions and to become a party to them. Peru will regain its active participation in the development of the law of the sea and will be able to continue making important contributions to it.

The approval of the draft Law on Maritime Zones is, thus, recommended.

THE CONGRESS OF THE REPUBLIC

Has issued the following Law

LAW ON MARITIME ZONES

PART I GENERAL PROVISIONS

Article 1

Use of terms

In this Law:

- (a) “baselines” means the baselines of Peru as defined in Law 28621 of 3rd November 2005;
- (b) “contiguous zone” means the contiguous zone of Peru as defined in Part IV;
- (c) “continental shelf” means the continental shelf of Peru as defined in Part VI;
- (d) “exclusive economic zone” means the exclusive economic zone of Peru as defined in Part V;
- (e) “foreign vessel” means a vessel the nationality or registration of which is not Peruvian;
- (f) “internal waters” means the internal waters of Peru as defined in Part III;
- (g) “national law” means any law or regulation issued by a Peruvian authority and which is, at any time, in force;
- (h) “National Maritime Authority” means the General Directorate of Captaincies and Coastguard of the Peruvian Navy;
- (i) “nautical mile” means the International Nautical Mile of 1,852 meters;
- (j) “territorial sea” means the territorial sea of Peru as defined in Part III;
- (k) “the State” means the Peruvian State;
- (l) “vessel” means every description of vessel used in navigation, whether self-propelled or not, including barges, pontoons and oils rigs and other similar vessels, but not including vessels propelled by oars; and

- (m) “warship” means a vessel belonging to the armed forces of a foreign State bearing the external marks distinguishing such vessels of its nationality, under the command of an officer duly commissioned by the government of that State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

Article 2

Scope of the Law

This Law establishes and governs the maritime zones under the State’s sovereignty and the maritime zones where the State exercises sovereign rights and jurisdiction in accordance with international law.

Article 3

Principle of reciprocity

1. Foreign States and their nationals, when carrying out activities in the maritime zones of Peru listed in article 4, shall respect the provisions of this Law and of any other applicable national law, with the attendant rights and obligations.

2. The Ministry of Foreign Affairs shall ensure that maritime relations with other States are based on the principle of reciprocity, as it applies both to Peruvian maritime zones and to those established by such other States.

PART II MARITIME ZONES

Article 4

Maritime zones

The maritime zones of Peru are:

- (a) the internal waters;
- (b) the territorial sea;
- (c) the contiguous zone;
- (d) the exclusive economic zone;
- (e) the continental shelf; and
- (f) any other zone permitted by international law and established as such by national law.

Article 5

Maritime delimitation with the neighboring States

The State may negotiate agreements with the neighboring States on the delimitation, in accordance with international law, between the maritime zones of Peru and the corresponding maritime zones of the neighboring States in cases where such zones overlap.

PART III TERRITORIAL SEA AND INTERNAL WATERS

Article 6 Limits of the territorial sea

The territorial sea is a belt of sea adjacent to the State's land territory and internal waters having as its outer limit a line every point of which is at a distance of 12 nautical miles from the nearest point of the baselines.

Article 7 Sovereignty in the territorial sea

1. The sovereignty of the State extends, beyond its land territory and internal waters, to the territorial sea, to the air space over the territorial sea and to its bed and subsoil.

2. The State shall exercise its sovereignty over the territorial sea subject to this Law, to any other applicable national law and to the relevant rules of international law.

Article 8 Internal waters

1. Waters on the landward side of the baselines of the territorial sea form part of the internal waters of the State.

2. Subject to the provisions of this Law, vessels of all States, whether coastal or land-locked, enjoy the right of innocent passage through those areas of the internal waters which were not considered as such before being enclosed by straight baselines.

Article 9 Innocent passage

1. Vessels of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.
2. Passage means navigation through the territorial sea for the purpose of:
 - (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
 - (b) proceeding to or from internal waters or a call at such roadstead or port facility.
3. Passage shall be continuous and expeditious. However, it includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, vessels or aircraft in danger or distress.
4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the State.
5. Foreign vessels exercising the right of innocent passage shall comply with this Law, with any other applicable national law and with all generally accepted international regulations relating to the prevention of collisions at sea.
6. Submarines and other underwater vehicles exercising the right of innocent passage shall navigate on the surface and show their flag.
7. In the interest of safety of navigation, vessels exercising the right of innocent passage may be required by the National Maritime Authority to use such sea lanes and traffic separation schemes as may be designated or prescribed by the State and to which due publicity shall be given.
8. Foreign nuclear-powered vessels and vessels carrying nuclear or other inherently dangerous or noxious substances shall, when exercising the right of innocent passage, carry documents and observe special precautionary measures established for such vessels by international agreements.
9. No charge may be levied by the State upon foreign vessels by reason only of their passage through the territorial sea.

Article 10

Non-innocent passage

1. Passage of a foreign vessel shall be considered to be prejudicial to the peace, good order or security of the State if in the territorial sea it engages in any of the following activities:
 - (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
 - (b) any exercise or practice with weapons of any kind;
 - (c) any act aimed at collecting information to the prejudice of the defence or security of the State;
 - (d) any act of propaganda aimed at affecting the defence or security of the State;
 - (e) the launching, landing or taking on board of any aircraft;
 - (f) the launching, landing or taking on board of any military device;

- (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the State;
- (h) any act of willful and serious pollution contrary to international law;
- (i) any fishing activities;
- (j) the carrying out of research or survey activities;
- (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the State;
- (l) any other activity not having a direct bearing on passage.

2. The State may take the necessary steps in the territorial sea to prevent passage which is not innocent.

3. In the case of vessels proceeding to internal waters or a call at a port facility outside internal waters, the State has the right to take the necessary steps to prevent any breach of the conditions to which admission of those vessels to internal waters or such a call is subject.

4. The State may, without discrimination in form or in fact among foreign vessels, suspend temporarily in specified areas of the territorial sea the innocent passage of foreign vessels if such suspension is essential for the protection of the security of the State, including weapons exercises. Such suspension shall take effect only after it has been published in the Official Gazette, El Peruano, and notified to the Secretary-General of United Nations.

Article 11

Criminal jurisdiction on board foreign merchant vessels and foreign government vessels operated for commercial purposes

1. No person shall be arrested on board a foreign vessel passing through the territorial sea nor shall any investigation be conducted in connection with any crime committed on board the vessel during its passage, save only in the following cases:

- (a) if the consequences of the crime extend to the State;
- (b) if the crime is of a kind to disturb the peace of the State or the good order of the territorial sea;
- (c) if the assistance of the Peruvian authorities has been requested by the master of the vessel or by a diplomatic agent or consular officer of the flag State; or
- (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

2. The National Maritime Authority shall take any steps authorized by the national law for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2, the Peruvian authorities shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or in what manner an arrest should be made, the Peruvian local authorities shall have due regard to the interests of navigation.

5. Except as provided in Part VII or with respect to violations of any national law adopted in accordance with Part V, no person shall be arrested on board a foreign vessel passing through the territorial sea nor shall any investigation be conducted in connection with any crime committed before the vessel entered the territorial sea, if the vessel, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 12

Civil jurisdiction in relation to foreign vessels

1. The State shall not stop or divert a foreign vessel passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the vessel.

2. The State shall not levy execution against or arrest the vessel for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the vessel itself in the course or for the purpose of its voyage through the waters of the State.

3. Paragraph 2 is without prejudice to the right of the State, in accordance with national law, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign vessel lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

Article 13

Warships and other foreign government vessels operated for non-commercial purposes

1. If any warship does not comply with the national law concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, the State may require it to leave the territorial sea immediately.

2. The flag State shall bear international responsibility for any loss or damage to the State resulting from the non-compliance by a warship or other government vessel operated for non-commercial purposes with this Law or any other national law concerning passage through the territorial sea or with international law.

3. The provisions of this Law or any other national law shall not affect the immunities of warships and other government vessel operated for non-commercial purposes.

PART IV

CONTIGUOUS ZONE

Article 14 Limits of the contiguous zone

The contiguous zone is an area beyond and adjacent to the territorial sea, having as its outer limit a line every point of which is at a distance of 24 nautical miles from the nearest point of the baselines.

Article 15 Jurisdiction

1. The State may take in the contiguous zone such measures as are necessary to prevent and punish any infringement, by any person or vessel, of national laws relating to customs, fiscal, immigration and sanitary matters, and for the protection of objects of an archaeological and historical nature within the Peruvian territory and territorial sea.

2. Any unauthorized removal of objects of an archaeological and historical nature from the sea-bed of the contiguous zone shall be considered as an unauthorized removal from the territorial sea.

PART V EXCLUSIVE ECONOMIC ZONE

Article 16 Limits of the exclusive economic zone

The exclusive economic zone is an area beyond and adjacent to the territorial sea, having as its outer limit a line every point of which is at a distance of 200 nautical miles from the nearest point of the baselines.

Article 17 Rights, jurisdiction and duties of the State

1. In the exclusive economic zone the State shall exercise:
 - (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
 - (b) jurisdiction with regard to:
 - (i) the establishment and use of artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration matters;
 - (ii) the conduct of marine scientific research;
 - (iii) the protection and preservation of the marine environment; and

(c) other rights and duties provided for in this Law, any other applicable national law and international law.

2. In exercising its rights and performing its duties in the exclusive economic zone, the State shall have due regard to the rights and duties of other States, ensure safety of navigation and act in a manner compatible with international law.

3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI.

Article 18 **Rights and duties of other States**

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy the freedoms of navigation, overflight, laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of vessels, aircraft and submarine cables and pipelines, compatible with international law.

2. The National Maritime Authority shall ensure that, in exercising their rights and performing their duties in the exclusive economic zone, foreign States have due regard to the rights and duties of the State and comply with this Law, any other applicable national law and international law.

Article 19 **Artificial islands, installations and structures**

1. In the exclusive economic zone the State shall exercise the exclusive right to construct and to authorize and regulate the construction, operation and use of:

- (a) artificial islands;
- (b) installations and structures for the purposes provided for in article 17 and other economic purposes;
- (c) installations and structures which may interfere with the exercise of the rights of the State in the zone.

2. The State have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

3. Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.

4. The State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate

measures to ensure the safety both of navigation and of the artificial islands, installations and structures.

5. The breadth of the safety zones shall be determined by the State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.

6. All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.

7. Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

8. For the purposes of paragraphs 3 and 5 due notice shall be deemed to have been given after publication of the relevant information in the Official Gazette, El Peruano, and notification to the International Maritime Organization.

Article 20

Conservation and optimum utilization of the living resources

1. The Ministry of the Production, Sub-sector of Fisheries, taking into account the scientific and technical reports submitted to it by the Peruvian Maritime Research Institute, shall:

- (a) ensure through proper conservation and management measures the optimum sustainable utilization of the living resources in the exclusive economic zone. Due regard shall be given to the effect of such measures on species associated with or dependent upon harvested species and to the particular characteristics of the straddling fish stocks, the highly migratory fish stocks, the anadromous and catadromous fish stocks and the marine mammals;
- (b) determine the allowable catch of the living resources in the exclusive economic zone; and
- (c) determine the capacity of national vessels to harvest the living resources of the exclusive economic zone.

2. The State may give foreign States, through agreements negotiated by the Ministry of Foreign Affairs, access to part of the surplus of the allowable catch where national vessels do not have the capacity to harvest the entire allowable catch.

3. Nationals of foreign States fishing in the exclusive economic zone shall comply with this Law and any other national law concerning the conservation and management of the living resources in the exclusive economic zone.

4. The State shall give due notice of the national law referred to in paragraph 3 of this article. Due notice shall be deemed to have been given after publication in the Official Gazette, El Peruano, and notification to the Food and Agriculture Organization of the United Nations.

Article 21
Enforcement of national law

1. The State may take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance of foreign vessels with this Law and any other national law concerning exploration, exploitation, conservation and management of the living resources in the exclusive economic zone.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. The penalties for violations of this Law or any other national law referred to in paragraph 1 may not include imprisonment, in the absence of agreements to the contrary with the flag State, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the State shall promptly notify the flag State of the action taken and of any penalties subsequently imposed.

PART VI
CONTINENTAL SHELF

Article 22
Limits of the continental shelf

The continental shelf comprises the sea-bed and subsoil of the submarine areas that extend beyond the territorial sea, having as its outer limit a line every point of which is at a distance of 200 nautical miles from the nearest point of the baselines.

Article 23
Rights, jurisdiction and duties of the State

1. The State shall exercise over the continental shelf:
 - (a) sovereign rights for the purpose of exploring it and exploiting its natural resources. The exercise of these rights must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Law, in any other applicable national law or in international law; and
 - (b) jurisdiction with regard to the establishment and use of artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration matters.

2. The natural resources referred to in paragraph 1 consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species.

3. The rights of the State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.

Article 24
Submarine cables and pipelines on the continental shelf

1. All States are entitled to lay and give maintenance to submarine cables and pipelines on the continental shelf, in accordance with the provisions of this Law and any other national law relating to the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines.

2. The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the State.

3. Nothing in this Part affects the right of the State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.

4. When laying submarine cables or pipelines, foreign States shall have due regard to cables or pipelines already in position on the continental shelf. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 25

Artificial islands, installations and structures on the continental shelf

Article 19 applies *mutatis mutandis* to artificial islands, installations and structures on the continental shelf.

Article 26

Drilling on the continental shelf

The State shall exercise its exclusive right to authorize and regulate drilling on the continental shelf for all purposes.

PART VII

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

Article 27

Sovereign right of the State to exploit its natural resources

The State shall exercise its sovereign right to exploit its natural resources pursuant to its environmental policy and in accordance with its duty to protect and preserve the marine environment.

Article 28

Measures to prevent, reduce and control pollution of the marine environment

1. The State shall take all measures consistent with international law that are necessary to:

- (a) prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at its disposal;
- (b) ensure that activities under its jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment,

- and that pollution arising from incidents or activities under its jurisdiction or control does not spread beyond the areas where it exercises sovereign rights in accordance with this Law and international law;
- (c) prevent, reduce and control pollution of the marine environment resulting from the use of technologies under its jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto;
 - (d) protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life;
2. In taking measures to prevent, reduce or control pollution of the marine environment, the State shall:
- (a) refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Law and international law;
 - (b) act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

Article 29
Enforcement of measures to prevent, reduce and control pollution
of the marine environment

1. When a foreign vessel is voluntarily within a port or at an off-shore terminal of the State, the State may, subject to articles 30 to 37, institute proceedings in respect of any violation of the national law adopted in accordance with this Law and the applicable international rules and standards for the prevention, reduction and control of pollution from vessels when the violation has occurred within the territorial sea or the exclusive economic zone.

2. Where there are clear grounds for believing that a foreign vessel navigating in the territorial sea has, during its passage therein, violated the national law adopted in accordance with this Law and the applicable international rules and standards for the prevention, reduction and control of pollution from vessels, the State, without prejudice to the application of articles 9 to 13 of this Law, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with national law and international law.

3. Where there are clear grounds for believing that a foreign vessel navigating in the exclusive economic zone or the territorial sea has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or the national law conforming and giving effect to such rules and standards, the State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

4. Where there are clear grounds for believing that a foreign vessel navigating in the exclusive economic zone or the territorial sea has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge

causing or threatening significant pollution of the marine environment, the State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

5. Where there is clear objective evidence that a foreign vessel navigating in the exclusive economic zone or the territorial sea has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the State, or to any resources of the territorial sea or exclusive economic zone, the State may, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with national law.

6. Notwithstanding the provisions of paragraph 5, whenever appropriate procedures have been established, either through the competent international organization or as otherwise agreed, whereby compliance with requirements for bonding or other appropriate financial security has been assured, the State if bound by such procedures shall allow the vessel to proceed.

Article 30

Measures to facilitate proceedings

In proceedings instituted pursuant to this Part, the State shall take measures to facilitate the hearing of witnesses and the admission of evidence submitted by authorities of a foreign State, or by the competent international organization, and shall facilitate the attendance at such proceedings of official representatives of the competent international organization, the flag State and any State affected by pollution arising out of any violation. The official representatives attending such proceedings shall have such rights and duties as may be provided under national law or international law.

Article 31

Exercise of powers of enforcement

The powers of enforcement against foreign vessels under this Part may only be exercised by officials or by warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article 32

Duty to avoid adverse consequences in the exercise of the powers of enforcement

In the exercise under this Law of its powers of enforcement against foreign vessels, the State shall not endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk.

Article 33

Investigation of foreign vessels

1. The State shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in article 29. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates, records or other documents as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying; further physical inspection of the vessel may be undertaken only after such an examination and only when:

- (a) there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;
- (b) the contents of such documents are not sufficient to confirm or verify a suspected violation; or
- (c) the vessel is not carrying valid certificates and records.

2. If the investigation indicates a violation of applicable national law or international rules and standards for the protection and preservation of the marine environment, release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security.

3. Without prejudice to applicable international rules and standards relating to the seaworthiness of vessels, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. Where release has been refused or made conditional, the flag State of the vessel must be promptly notified.

Article 34

Non-discrimination with respect to foreign vessels

In exercising its rights and performing its duties under this Part, the State shall not discriminate in form or in fact against vessels of any other State.

Article 35

Suspension and restrictions on institution of proceedings

1. Proceedings to impose penalties in respect of any violation of applicable national law or international rules and standards relating to the prevention, reduction and control of pollution from vessels committed by a foreign vessel beyond the territorial sea of the State shall be suspended upon the taking of proceedings to impose penalties in respect of corresponding charges by the flag State within six months of the date on which proceedings were first instituted, unless those proceedings relate to a case of major damage to the State or the flag State in question has repeatedly disregarded its obligation to enforce effectively the applicable international rules and standards in respect of violations committed by its vessels. The flag State shall in due course make available to the State a full dossier of the case and the records of the proceedings, whenever the flag State has requested the suspension of proceedings in accordance with this article. When proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings shall be terminated. Upon payment of costs incurred in respect of such

proceedings, any bond posted or other financial security provided in connection with the suspended proceedings shall be released by the State.

2. Proceedings to impose penalties on foreign vessels shall not be instituted after the expiry of three years from the date on which the violation was committed, and shall not be taken by any State in the event of proceedings having been instituted by another State subject to the provisions set out in paragraph 1.

3. The provisions of this article are without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws irrespective of prior proceedings by another State.

Article 36

Monetary penalties and the observance of recognized rights of the accused

1. Monetary penalties only may be imposed with respect to violations of national law or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels:

(a) beyond the territorial sea;

(b) in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.

2. In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.

Article 37

Notification to the flag State and other States concerned

The State shall promptly notify the flag State and any other foreign State concerned of any measures taken pursuant to article 29 against foreign vessels, and shall submit to the flag State all official reports concerning such measures. However, with respect to violations committed in the territorial sea, the foregoing obligations of the State apply only to such measures as are taken in proceedings. The diplomatic agents or consular officers and where possible the maritime authority of the flag State, shall be immediately informed of any such measures taken pursuant to article 29 against foreign vessels.

PART VIII

MARINE SCIENTIFIC RESEARCH

Article 38

General principles for the conduct of marine scientific research

In the conduct of marine scientific research within the maritime zones of Peru the following principles shall apply:

- (a) marine scientific research shall be conducted exclusively for peaceful purposes;
- (b) marine scientific research shall be conducted with appropriate scientific methods and means compatible with this Law and international law;
- (c) marine scientific research shall not unjustifiably interfere with other legitimate uses of the sea compatible with this Law and international law and shall be duly respected in the course of such uses;
- (d) marine scientific research shall be conducted in compliance with relevant national law adopted in conformity with this Law and international law relating to the protection and preservation of the marine environment;
- (e) marine scientific research activities shall not constitute a legal basis for any claim to any part of the marine environment or its resources;
- (f) the greatest possible degree of national participation shall be ensured in marine scientific research carried out within the maritime zones of Peru.

Article 39

Marine scientific research in the territorial sea

The State, in the exercise of its sovereignty, has the exclusive right to regulate, authorize and conduct marine scientific research in the territorial sea. Marine scientific research therein shall be conducted only with the express consent of, and under the conditions set forth by, the State.

Article 40

Marine scientific research in the exclusive economic zone and on the continental shelf

1. The State, in the exercise of its jurisdiction, has the right to regulate, authorize and conduct marine scientific research in the exclusive economic zone and on the continental shelf in accordance with this Law and international law.

2. Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted only with the express consent of the State and under the conditions set forth in this Law and any other applicable national law.

3. The State in its discretion may withhold its consent to the conduct of a marine scientific research project of a foreign State or international organization in the exclusive economic zone or on the continental shelf if that project:

- (a) is of direct significance for the exploration and exploitation of natural resources, whether living or non-living;
- (b) involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;
- (c) involves the construction, operation or use of artificial islands, installations and structures referred to in articles 19 and 25;
- (d) contains information communicated pursuant to article 41 regarding the nature and objectives of the project which is inaccurate or if the foreign

State or international organization has outstanding obligations to the State from a prior research project.

4. Marine scientific research activities referred to in this article shall not unjustifiably interfere with activities undertaken by the State in the exercise of its sovereign rights and jurisdiction.

Article 41

Duty to provide information to the State

Foreign States and competent international organizations which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of the State shall, not less than six months in advance of the expected starting date of the marine scientific research project, provide the State with a full description of:

- (a) the nature and objectives of the project;
- (b) the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment;
- (c) the precise geographical areas in which the project is to be conducted;
- (d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;
- (e) the name of the sponsoring institution, its director, and the person in charge of the project; and
- (f) the extent to which it is considered that the State should be able to participate or to be represented in the project.

Article 42

Duty to comply with certain conditions

1. Foreign States and competent international organizations when undertaking marine scientific research in the exclusive economic zone or on the continental shelf of the State shall comply with the following conditions:

- (a) ensure the right of the State, if it so desires, to participate or be represented in the marine scientific research project, especially on board research vessels and other craft or scientific research installations, when practicable, without payment of any remuneration to the scientists of the State and without obligation to contribute towards the costs of the project;
- (b) provide the State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;
- (c) undertake to provide access for the State, at its request, to all data and samples derived from the marine scientific research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;
- (d) if requested, provide the State with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;

- (e) ensure, subject to paragraph 2, that the research results are made internationally available through appropriate national or international channels, as soon as practicable;
- (f) inform the State immediately of any major change in the research programme;
- (g) unless otherwise agreed, remove the scientific research installations or equipment once the research is completed.

2. This article is without prejudice to the conditions established by the national law for the exercise of the discretion of the State to grant or withhold consent pursuant to article 40, paragraph 3, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources.

Article 43 **Implied consent**

Foreign States or competent international organizations may proceed with a marine scientific research project six months after the date upon which the information required pursuant to article 41 was provided to the State unless within four months of the receipt of the communication containing such information the State has informed the foreign State or organization conducting the research that:

- (a) it has withheld its consent under the provisions of article 40; or
- (b) the information given by the foreign State or competent international organization regarding the nature or objectives of the project does not conform to the manifestly evident facts; or
- (c) it requires supplementary information relevant to conditions and the information provided for under articles 41 and 42; or
- (d) outstanding obligations exist with respect to a previous marine scientific research project carried out by the foreign State or organization, with regard to conditions established in article 42.

Article 44 **Suspension or cessation of marine scientific research activities**

1. The State may require the suspension of any maritime scientific research activities in progress within the exclusive economic zone or on the continental shelf if:

- (a) the research activities are not being conducted in accordance with the information communicated as provided under article 41 upon which the State was based; or
- (b) the foreign State or international organization fails to comply with the provisions of article 42 concerning the rights of the State with respect to the marine scientific research project.

2. Upon notification to the foreign State or international organization, the State may require the cessation of any marine scientific research activities if:

- (a) any major change in the research project or the research activities has been undertaken; or
- (b) any of the situations contemplated in paragraph 1 has not been rectified within a reasonable period of time.

**PART IX
FINAL PROVISIONS**

**Article 45
Charts**

1. The National Geographic Institute shall elaborate the cartography showing the limits of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf.

2. The lines of delimitation drawn in accordance with articles 6, 14, 16 and 22 shall be shown on charts of a scale or scales adequate for ascertaining its position.

3. A copy of each such chart shall be deposited with the Secretary-General of the United Nations for purposes of due publicity.

**Article 46
Entry into force**

1. This Law shall enter into force thirty days after its publication in the Official Gazette, El Peruano.

2. This Law shall supersede all contrary provisions of the national law which may be in force at the time of its entry into force and which are contrary or incompatible with it.

3. Matters not provided for in this Law that are related to its scope of application shall be governed by other regulations of national law adopted in accordance to international law.

4. The Presidency of the Council of Ministers shall be responsible for coordinating the implementation of this Law through the various branches of the national Administration.

Let it be handed to the President of the Republic for its promulgation.

In the city of Lima, the day of the month of in the year

