

**LAW RELATING TO THE MARITIME DOMINION  
OF PERU**

**A MARITIME LEGISLATION DRAFTING PROJECT SUBMITTED IN PARTIAL  
FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF  
MASTER OF LAWS (LL.M.) AT THE IMO INTERNATIONAL MARITIME LAW  
INSTITUTE (IMLI) MALTA**

**MAY 1996**

**SUPERVISOR: PROFESSOR P.K. MUKHERJEE**

**CARLOS GIOVANI ARIAS LAZARTE  
PERU**

## DRAFTING INSTRUCTIONS

### BACKGROUND:

I. The maritime dominion of Peru is the sea area adjacent to its coasts, in respect of which the State has made the following jurisdictional claims:

- a) By Supreme Decree Nro. 781 of 1 August 1947, the President of the Republic declared national sovereignty and jurisdiction over the submerged continental or insular shelf adjacent to the continental or insular shores of national territory whatever its depth and in the extension of this shelf may be.

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

At the same time, it was declared that, it will exercise the same control and protection on the seas adjacent to the Peruvian coast over the area covered between the coast and an imaginary parallel line to it at a distance of 200 nautical miles measured following the lines of the geographical parallels. As regards the islands pertaining to the nation, it was said, that demarcation will be traced to include the sea area adjacent to the shores of these islands to a distance of 200 nautical miles measured from all points on the contour of these islands.

It was quite clear, the declaration does not affect the right to free navigation of all nations according to international law.

- b) By the Declaration on the Maritime Zone adopted on August 18, 1952, in Santiago, by Chile, Ecuador and Peru, it was proclaimed as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast, and including the sea floor and subsoil thereof.

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

- c) The latest maritime claim of Peru was made through its Political Constitution of 1993, article 54, in which it is stated as follows:

"The territory of the State is inalienable and inviolable. It comprises the soil, sub-soil, the maritime dominion, and the air space which it covers.

The maritime dominion of the State comprises the sea adjacent to its coasts as well as the bed and subsoil thereof, up to a distance of 200 nautical miles measured from the baselines determined by the law. In its maritime dominion the State exercises sovereignty and jurisdiction without prejudice to the freedoms of international communication, in accordance with the law and with the treaties ratified by the State.

The State exercises in the air space over its territory and the adjacent sea up to a limit of 200 miles, without prejudice to the freedoms of international communication, in accordance with the law and the treaties ratified by the State".

- II. The Convention on the Law of the Sea, which is in force, became a universal treaty which established a new order of the oceans and it is considered a fundamental source of national policy and legislation in this subject.

One of the most important consequences of the adoption for the international community of the United Nations Convention on the Law of the Sea was the acceleration of the process of revision of national laws undertaken by States; in particular, those laws regulating the nature and the breadth of maritime areas subject to sovereignty or jurisdiction. Many States have already amended their maritime legislation in order to reflect the new trends and concepts that were emerging during the Third United Nations conference on the Law of the Sea and now contained in that Convention.

In fact, that trend is present in Latin American and Caribbean States, particularly States parties to the regional agreements in matters relating to the Sea of which Peru is a party, have incorporated substantial parts of that Convention in their national legislation.

The Convention on the Law of the Sea distinguishes the following maritime zones:

- a) Internal waters: It is defined in the sense that waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State within which the right of innocent passage does not exist as a general rule as well as any freedoms of international communication.
- b) Territorial Sea: It is defined as the adjacent belt of sea beyond the land territory and internal waters of the coastal state and comprises the air space over it as well as its bed and subsoil, within which the State exercise sovereignty.

It is expressly recognized that the State has the right to establish the breadth of the territorial sea up to a limit not exceeding 12 nautical miles, measured from the baselines. Within this zone ships of all States, whether coastal or land-locked, enjoy the right of innocent passage subject to the relevant provisions of the Convention.

- c) Contiguous zone: It is described as the sea area beyond the territorial sea but not exceeding 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. In this zone the coastal state may exercise control necessary to (1) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; and, (2) punish infringement of the above laws and regulations committed within its territory or territorial sea.
- d) Exclusive economic zone: It is defined as an area beyond and adjacent to the territorial sea, under which the State has: (1) 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; (2) jurisdiction with regard to (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; and, (iii) the protection and preservation of the marine environment; (3) other rights and duties provided for in the Convention.

This zone shall not extend beyond the 200 nautical miles, within which, all states enjoy, subject to the relevant provisions of the Convention, the freedoms of international communication.

- e) Continental Shelf: It comprises the sea-bed and subsoil of the submarine areas that extend beyond the territorial sea of the coastal state throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Within the Continental shelf the State exercises sovereign rights for the purpose of exploring it and exploiting its natural resources. These rights are exclusive in the sense that if the State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal state.

The Government of Peru intends, in the near future, to accede to the United Nations Convention on the Law of the Sea, 1982. But, for the moment it has not been decided. Although, whether or not Peru accedes to that Convention, at least, the Ministers in Council have decided to enact regulatory legislation in article 54 of the Political Constitution of 1993, on the basis that the state practice in the world in relation to the Law of the Sea has been widely accepted, and the Latin American States have become more and more inclined to both ratifying the Convention and enacting national legislation according to that Convention.

Consequently, Peru cannot remain separate from this development, on the contrary, it must continue, as a leading state in the region, this trend in order to protect and ensure the powers, rights, jurisdiction and competences within the new international legal order of the oceans and to promote actively the unanimous regional criteria of application.

In that sense, it is convenient to delimitate the scope, meaning, content of the so called "Maritime Dominion", as well as precisely stating the powers, jurisdiction, competence, rights of the State within that sea area.

#### **INSTRUCTIONS:**

For the above mentioned reasons, you are asked to draft legislation in those aspects, providing for the establishment of maritime zones, and the regulation of activities in the maritime dominion and for matters connected therewith.

The following are policies which the Peruvian Government intends to implement relating to the maritime dominion and which should serve as guidelines for the drafting of the legislation:

- a) The provisions regulating the maritime dominion and its different maritime zones, should be in conformity with article 54 of the Political Constitution of 1993, and should introduce the terminology as well as the new issues provided for in the 1982 Convention on the Law of the Sea. It is important to find a legislative basis that without prejudice to the constitutional text could be enacted.
- b) The sea adjacent to the coast of the State up to 200 nautical miles shall continue as now with the historic name "Maritime Dominion".
- c) Within the maritime dominion shall be established five identifiable maritime zones, namely, internal waters; territorial sea; contiguous zone; continental shelf; and, exclusive economic zone.
- d) The general reference for the purpose of delimitating each maritime zone shall be the "baseline from which the territorial sea is measured" rather than the "imaginary parallel line" or "the coast" as the Supreme Decree 781 or the Santiago Declaration, respectively, had considered.
- e) It shall be considered that the natural resources, living and non-living, existing in the maritime dominion are the patrimony of the nation.
- f) Besides, the exercise of the freedoms of international communications within the maritime dominion shall be only and exclusively for peaceful uses.
- g) It must be precisely, minutely and expressly the duties of the foreign states and their nationals when carrying out activities in the different maritime zones that comprises the maritime dominion.
- h) It is important to establish that the foreign states and their nationals shall enjoy their rights granted by law in accordance to the principle of reciprocity.
- i) The sovereignty of the State and its sovereign and exclusive rights and jurisdictions within the limits of the relevant maritime areas, shall be exercised in a variety of maritime issues, but in particular in respect of :

- (1) marine works, artificial islands, installations and structures;
- (2) the regime applicable to living marine resources, including their conservation and utilization;
- (3) the regime applicable to non-living marine resources, including their conservation and utilization;
- (4) the economic development of the sea;
- (5) protection and preservation of the marine environment; and
- (6) marine scientific research activities.

# LAW RELATING TO THE MARITIME DOMINION OF PERU

## TITLE I

### General Provisions

#### CHAPTER I

#### Scope of application

**Article 1.- Geographical scope of application.-** This Law establishes regulations relating to the maritime dominion of the State as provided for in article 54 of the Political Constitution of Peru.

**Article 2.- Definition.-** The maritime dominion of the State includes the sea adjacent to its coasts as well as bed and subsoil thereof up to a distance of two hundred nautical miles measured from the baselines and is divided into maritime zones established by this law within which the State exercises the powers, rights, jurisdiction and duties in conformity with the Constitution, this law and treaties ratified or acceded to by the State.

**Article 3.- Content.-** The Peruvian maritime zones are:

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

**Article 4.- Principle of peaceful uses of the sea.-** The exercise of the freedom of international communications within the maritime dominion does not authorize, without express consent of the state, any non-peaceful use of the sea, of the superjacent air space, and the seabed, in accordance with the relevant provisions of the Political Constitution, this Law and treaties ratified, or acceded to by the State, such as the realization of military exercises or maneuvers, particularly if the use of arms or explosives are involved, nor other activities that entail resorting to threat or the use of force against the territorial integrity, the political independence, peace or security of the State.

**Article 5.- Duties of foreign States and their nationals.-** Foreign States and their nationals, when carrying out activities in the maritime zones listed in article 3, shall respect the provisions established for each zone by this law, with the attendant rights and obligations.



**Article 6.- Sovereignty, rights and jurisdiction of the State.-** The sovereignty of the State and its sovereign and exclusive rights and jurisdiction within the limits of the relevant maritime zones, in accordance with this law, shall be exercised pursuant to the provisions of the Political Constitution, International Law and applicable national legislation, in respect of:

- I. Marine works, artificial islands, installations and structures;
- II. The regime applicable to living marine resources, including their conservation and utilization;
- III. The regime applicable to non-living marine resources, including their conservation and utilization;
- IV. Economic development of the sea, including the utilization of minerals dissolved in its waters, the production of electrical and thermal energy from its waters and from currents and winds, the harnessing of solar energy at sea, the development of the coastal zone, marine aquaculture, the establishment of national marine parks, the promotion of recreation and tourism and the establishment of fishing communities;
- V. Protection and preservation of the marine environment, including the prevention of pollution;
- VI. Marine scientific research activities.

**Article 6.- Principle of reciprocity.-** The enjoyment of the rights that this law grants to foreign ships shall depend upon reciprocal treatment of national ships by the flag State, subject to the provisions of the Political Constitution and international law.

**Article 7.- Right of recognition acts of delimitation of maritime zones of other States.-** The State shall recognize acts of delimitation of the maritime zones of other States strictly in accordance with the rules of international law and on the basis of reciprocity.

## CHAPTER II

### Marine installations

**Article 8.- Nature of marine installations.-** Artificial islands, installations and structures shall have no territorial sea of their own, and their presence shall not affect the delimitation of the maritime zones provided in article 3 of this law.

**Article 9.- Jurisdiction of the State.-** The State shall have exclusive jurisdiction over artificial islands, installations and structures in the exclusive economic zone and on the continental shelf and island shelves, including jurisdiction with regard to customs, fiscal, health, safety and immigration regulations.

**Article 10.- Exclusive right of the State.-** The State shall have the exclusive right in the Peruvian maritime zones to construct and to authorize and regulate the construction, operation, conservation, maintenance, repair, demolition and use of artificial islands, installations and structures, in accordance with this law and other applicable provisions in force.

### CHAPTER III

#### Resources and economic development of the sea

**Article 11.- Nature of the resources.-** The natural resources, living and non-living, are the patrimony of the nation. The State is sovereign in their exploration, exploitation, conservation and management.

**Article 11.- Legal regime of living resources.-** This law shall be applied in strict observance of the legislation concerning fishing, the provisions emanating from such legislation and other applicable provisions relating to measures for the conservation and utilization by nationals or foreigners of the living resources in the Peruvian maritime zones.

**Article 12.- Legal regime of non-living resources.-** The exploration, exploitation, processing, development, refining, transportation, storage, distribution and sale of submarine hydrocarbons and minerals in the Peruvian maritime zones shall be governed by the regulatory norms of article 54 of the Constitution, under the category of petroleum and mineral materials and the respective regulations, and by the applicable provisions of this materials and the respective regulations, and by the applicable provisions of this law.

**Article 13.- General legal regime of any activity in Peruvian maritime zones.-** Any activity that involves the exploitation, use and economic development of the Peruvian maritime zones, other than those provided for in the preceding articles of this chapter, shall be governed by the regulatory provisions of article 54 of the Political Constitution, and by this law and other applicable laws and regulations.

## CHAPTER IV

### Protection and preservation of the marine environment and marine scientific research.

**Article 14.- Legal regime.-** In the exercise of the powers, rights and jurisdiction of the State within the Peruvian maritime zones, the following shall be applied in order to prevent, reduce, and control pollution of the marine environment; namely, The Environment Code, the General Health Law and their respective regulations, the General Water Law, and other applicable laws and regulations in force or to be adopted and the relevant rules of international law.

**Article 15.- Principles.-** In the conduct of scientific research activities in the Peruvian maritime zones, the following principles shall be applied:

- I. They shall be carried out exclusively for peaceful purposes;
- II. They shall be carried out with appropriate scientific methods and means which are compatible with this law, other applicable provisions and international law;
- III. They shall not interfere unjustifiably with other lawful uses of the sea that are compatible with this law and with international law;
- IV. All laws and regulations relevant to the protection and preservation of the marine environment shall be respected;
- V. The activities shall not constitute a legal basis for any claim to any part of the marine environment or its resources;
- VI. Where in accordance with this law foreigners are allowed to carry out such activities, the greatest possible degree of national participation shall be ensured;
- VII. In the case referred to in the preceding paragraph, the State shall ensure that it will receive the results of the research and, if it so requests, the necessary assistance for the interpretation and evaluation thereof.

## TITLE II

### Peruvian maritime zones

#### CHAPTER I

##### Internal waters

**Article 16.- Definition.-** Internal waters are considered to be those enclosed between the coast and the baselines, from which the territorial sea is measured; they include:

- I. The waters of internal bays;
- II. The waters of ports;
- III. The internal waters of reefs;
- IV. The waters of the mouths or deltas of rivers, lagoons and estuaries permanently or intermittently connected with the sea.

**Article 17.- Right of the State.-** The State shall exercise sovereignty in the internal waters, extending from the coasts of the Peru's mainland and island to the Peruvian territorial sea as well as in its airspace, its bed and subsoil thereof.

**Article 18.- Inner limit.-** The inner limit of the internal waters shall coincide with the low-water line along the coast, where this line is not taken as a basis for measuring the territorial sea in accordance with the provisions of the regulations of this law, as marked on large-scale charts officially recognized by the State.

For the purpose of the inner limit of the internal maritime waters, the low-water line shall be the line of greatest ebb and flow reached by the maritime waters at a given time along the coasts of the State's mainland and islands.

**Article 20.- Outer limit.-** The outer limit of the internal waters shall coincide exactly with the baselines from which the territorial sea is measured, as marked on large-scale charts officially recognized by the State.

#### CHAPTER II

##### Territorial sea

**Article 21.- Definition.-** The territorial sea established by this law is a belt of sea both to the coasts of the States's mainland and islands, and to the internal waters.

**Article 22.- Right of the State.-** The State shall exercise sovereignty over the territorial sea which comprises its air space as well as to its bed and subsoil.

**Article 23.- The breadth.-** The breadth of the Peruvian territorial sea shall be 12 nautical miles, measured from the baselines as marked on charts officially recognized by the State.

**Article 24.- Inner and outer limits.-** The outer limit of the territorial sea is the line every point of which is at a distance of 12 nautical miles from the nearest point of the baselines, that constitute its inner limit, equal to the breadth of the territorial sea.

**Article 25.- Right of innocent passage.-** Ships of all States, whether coastal or land-locked, shall enjoy the right of innocent passage through the Peruvian territorial sea.

### CHAPTER III

#### Contiguous zone

**Article 26.- Definition and breadth.-** The contiguous zone of Peru shall extend 24 nautical miles from the baselines from which, the breadth of the Peruvian territorial sea is measured.

**Article 27.- Rights of the State.-** The State shall have in the contiguous zone, competence to exercise the control necessary:

- I. To prevent infringement of the applicable rules of this law, its regulations and the customs, fiscal, immigration or sanitary laws and regulations within the territory, internal waters or territorial sea; and
- II. To punish infringement of the said applicable rules of this law, its regulations and the said laws and regulations committed within the territory, internal waters or territorial sea.

**Article 28.- Inner limit.-** The inner limit of the contiguous zone shall coincide exactly with the outer limit of the territorial sea, as established in accordance with article 24 of this law, and as marked on charts officially recognized by Peru.

**Article 29.- Outer limit.-** The outer limit of the Peruvian contiguous zone shall be the line every point of which is at a distance of 24 nautical miles from the nearest point on the baselines of the territorial sea.

## CHAPTER IV

### Exclusive Economic Zone

**Article 30.- Definition and breadth.-** The State establishes an exclusive economic zone situated beyond and adjacent to the territorial sea which shall extend 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

**Article 31.- The inner limit.-** The inner limit of the exclusive economic zone shall coincide exactly with the outer limit of the territorial sea, as established in accordance with article 24 of this Law, and as marked on charts officially recognized by the State.

**Article 32.- The outer limit.-** The outer limit of the <sup>P</sup>peruvian exclusive economic zone shall be the line every point of which is at a distance of 200 nautical miles from the nearest point on the baselines of the territorial sea, as established in article 23 of this Law, and as marked on charts officially recognized by the State.

**Article 33.- Rights of the State.-** Within its exclusive economic zone, the State shall have:

- I. Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living and whether renewable or non-renewable, 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;
- II. Jurisdiction, with regard to:
  1. The establishment and use of artificial islands, installations and structures;
  2. Marine scientific research;
  3. The protection and preservation of the marine environment;
- III. Other rights and duties provided for in the Political Constitution, this Law, its regulations and international law.

**Article 34.- Freedoms of International Communication.-** In the exclusive economic zone the State shall respect the freedoms of international communications, in accordance with the Political Constitution, this law and treaties ratified or acceded to by the State.

**Article 35.- Islands.-** Islands shall have an exclusive economic zone; however, rocks that cannot sustain human habitation or economic life of their own shall not.

**Article 36.-** In order to promote the optimum utilization of the living resources in the exclusive economic zone, the State, through the conclusion of appropriate agreements, shall give other States access to the surplus of the allowable catch of the species concerned, in accordance with the arrangements, conditions and regulations in force.

## CHAPTER V

### The continental shelf or island shelves

**Article 37.- Definition and breadth.-** The continental shelf and island shelves of Peru shall comprise the seabed and its subsoil of the submarine areas beyond the territorial sea to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

**Article 38.- Rights of the State.-** The State shall exercise sovereign and exclusive rights over the continental shelf and island shelves with regard to the exploration and exploitation of the natural resources of the sea-bed and its subsoil, whether they be living or non living.

**Article 39.- The inner limit.-** The inner limit of the Peruvian continental shelf and island shelves shall coincide exactly with the outer limit of the subsoil of the territorial sea, as established in accordance with article 24 of this law and the relevant provisions of its regulations, and as marked on charts officially recognized by the State.

**Article 40.- The outer limit.-** The outer limit of the continental shelf and island shelves shall coincide exactly with the outer limit of the subsoil of the exclusive economic zone, as established in accordance with article 32 of this law, and as marked on charts officially recognized by the State.