

6-1-1977

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## Recommended Citation

Mary Jeanne Reid Martz, *Delimitation of Marine and Submarine Areas: The Gulf of Venezuela*, 9 U. Miami Inter-Am. L. Rev. 301 (2015)  
Available at: <http://repository.law.miami.edu/umialr/vol9/iss2/3>

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## DELIMITATION OF MARINE AND SUBMARINE AREAS: THE GULF OF VENEZUELA

MARY JEANNE REID MARTZ\*

### INTRODUCTION

Among Latin American nations with common border and other problems, Venezuela and Colombia enjoy relatively amicable relations. This is due partially to historical and cultural affinities. It is, however, also a result of the efforts of governmental elites in both countries to calm tendencies toward xenophobic nationalism on the part of the two populaces. Nevertheless, the border dispute in the Gulf of Venezuela represents only one of the potentially hypersensitive areas in Venezuelan-Colombian relations. Of almost commensurate importance is the question of Colombians illegally crossing the border into economically more productive Venezuela. Without the proper documentation, they are classified as *indocumentados*. Of lesser import is the flourishing contraband industry whose goods (primarily cattle) make their way clandestinely from Colombia to Venezuela. The purpose of this article is to explore the arena of legal issues surrounding the Colombia-Venezuela boundary controversy. After scrutinizing the details of the dispute, I will briefly probe the negotiations which, since 1967, have failed to produce a mutually acceptable and equitable settlement.

### THE EMERGENCE OF THE BASES TO THE DISPUTE

The Gulf of Venezuela has a shoreline almost entirely within Venezuela. The Gulf stretches between the Guajira and Paraganá peninsulas, varying between fifty and one hundred miles at its entrance and reach-

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ing a maximum width of one hundred and twenty miles. What is at issue is not the land frontier of the Gulf but rather the ownership of the marine and submarine areas. The points at issue have become shrouded in the cloak of secrecy which has surrounded the Colombia-Venezuela negotiations in the last ten years.<sup>1</sup> Most of the citizens in both countries have little knowledge of the nature of the dispute and of the negotiations. Many politicians outside of the major party elites are similarly lacking in understanding. As a result, the press of the two neighbors has accused both governments of incompetence.

The Venezuelan claim to the Gulf of Venezuela is founded upon numerous historical, geographic and economic factors. Venezuelan politicians, historians, and geographers all base their country's ownership on continuous sovereignty exercised for four hundred years.<sup>2</sup> They contend that prior to 1833 the entire Gulf was surrounded by Venezuelan territory, and that the Gulf itself virtually constituted an historical inland sea. Moreover, Venezuelans have contended that, historically, Colombia had paid scant attention to the arid and sparsely inhabited peninsula of Guajira. It was only in the 1960's, when possibilities for oil exploitation were raised, that Colombia became interested in the region.

Geographically, the Gulf of Venezuela has been considered vital to Venezuelan national interests. The Gulf is traversed by the navigational channel which connects Venezuela's second largest city, Maracaibo, to the Caribbean. It is also a part of a hydrographic communications route extending to the edge of the Andes. It is of essential strategic economic importance, representing the only navigational means by which petroleum from oil-rich Lake Maracaibo can be cheaply carried by tanker to the exterior. Moreover, the Gulf contains Venezuela's most important petroleum and natural gas deposits. For no other country, including Colombia, is the Gulf such an important transit area.

Obviously the crux of the matter is economics. Venezuela needs unimpeded access from Lake Maracaibo to the Caribbean to keep down oil transportation costs and, though there may be no danger of Colombia deliberately closing off the number one pilotage channel, there remains the possibility that oil exploitation and the erection of installations in the area might result in sedimentation and obstruction of the channel. Com-

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<sup>1</sup>Four years ago, when the Venezuelan Caldera administration briefed the Senate Foreign Relations Committee on the dispute, it was done in total secrecy. Interview with a former member of the Committee (July 5, 1975).

<sup>2</sup>See e.g., M. Paul, *Caso del Golfo de Venezuela*.

plicating this conflict is the fact that there appear to be significant oil deposits in the continental platform. Studies dating from 1968 by the Corporación Venezolana de Petroleo (CVP) and Ecopetrol of Colombia have indicated the existence of petroleum. Moreover, it is true that hydrocarbon specialists have participated in the negotiations in recent years.<sup>3</sup> While Venezuela's oil reserves are declining slowly, Colombia's production dropped precipitously from 200,000 barrels per day (bpd) in 1970 to 156,000 bpd by 1975. Until recently Colombia had to import 20,000 bpd to meet domestic needs.<sup>4</sup>

Easily one of the most significant technological advances affecting the law of the sea since World War II (excluding military instruments or operations) is considered to be the expanded use and rapid extension of offshore oil exploration and exploitation. The increased cost of prospecting for and extracting petroleum from submarine areas has proven to be more than equaled by the substantial profits thus far gained from such activities. Further, existing geological studies show the existence of large reserves of carbon, platinum, magnesium, precious stones and radioactive elements in the Gulf.<sup>5</sup> While Colombia has claimed that the problem is juridical, Venezuela has accused Colombia of attempting to "petrolize" the question and has treated the issue as primarily territorial rather than economic.<sup>6</sup>

Colombia cites the 1958 Geneva Convention on the Continental Shelf as the legal basis for her claims over the continental shelf. Colombia argues that Venezuela's reservation to the Convention specifically excepts such criteria and reserves the right to make special arrangements and negotiations for the demarcation. Venezuela meets this argument by citing the decision of the International Court of Justice in the 1969 North Sea Cases. Both of these legal arguments will be discussed below.

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<sup>3</sup>Resumen (Caracas), June 9, 1974, § III, at 12. It was reported in 1974 that there were large natural gas deposits in the Colombian Guajira. Latin American Economic Report (Great Britain), November 22, 1974, § II, at 181. In 1971 the Venezuelan Minister of Mines and Petroleum indicated that studies had been made which show the Gulf favorable for the discovery of oil. El Nacional (Caracas), May 3, 1971, at D-1.

<sup>4</sup>Latin America (Great Britain), October 24, 1975, § IX, at 334.

<sup>5</sup>See the statement by the Colombian geologist Dr. Llinas Pimienta in Latin America, June 26, 1970, § IV, at 205.

<sup>6</sup>R. Leoni, Posición de Venezuela ante Colombia (1971), at 49.

## THE HISTORY OF THE DISPUTE

While the Colombia-Venezuela boundary dispute has come to the fore during the contemporary democratic era, its roots extend far back into history. Following the Wars of Independence and the 1830 dissolution of Gran Colombia, the Michelena-Pombo Treaty of 1833 recognized El Cabo de la Vela (located at the head of the Guajira peninsula), as the point at which the northern part of the Colombia-Venezuela boundary would begin. The treaty, based on earlier explorations and Spanish maps of the area, in effect acknowledged Venezuela's possession of the greater part of the Guajira peninsula. At the time, Colombia was amenable to the arrangement because of internal political difficulties resulting from a frontier dispute with Ecuador. The treaty was ratified by Colombia and then, for unexplained reasons, was subsequently rejected by the legislature of Venezuela. Ruben Carpio Castillo, a prominent Venezuelan geographer and former deputy of the National Congress, writes that the earlier congress "demonstrated a crass historical ignorance and a lack of geographical conscience and of Bolivarian judgement. This scandalous demonstration of ignorance on the part of Congress was prejudicial to the interests of our country."<sup>7</sup> In 1973, presidential candidate Carlos Andrés Pérez would similarly speak of the "irresponsibility" of previous generations of Venezuelans.<sup>8</sup>

The failure to effect a treaty relegated the controversy to a state of limbo for fifty years. It resurfaced again in 1884 when the two countries agreed to arbitration. In 1891 the Princess Regent of Spain, Mariana Cristiana, delivered an award placing the boundary, not at El Cabo de la Vela but, rather, at the "Mogotes de los Frailes," a point which could not be located with precision.

In 1901 a Mixed Border Commission opted for the parallel of the Castilletes as the eastern marker of the land boundary. This decision also failed to produce a formal agreement, causing the matter to be referred to arbitration again in 1916. The arbitrator, the Swiss Confederation, rendered a judgment in 1922 ratifying the 1891 arbitration without locating the "Mogotes de los Frailes." Not until 1941 was the dispute subject to another decision. In 1941 the treaty of Santos-López Contreras on border demarcation and the navigation of common rivers was signed and

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<sup>7</sup>R. Castillo, *El Golfo de Venezuela: Mar Territorial y Plataforma Continental* (1971), at 68.

<sup>8</sup>Interview with Carlos Andrés Pérez in *Resumen*, November 25, 1973, § I, at 7.

ratified by both Venezuela and Colombia. It was hardly a popular treaty in Caracas, for Venezuela thereby ceded some 5,000 kilometers of the Guajira peninsula. While the geographical coordinate of the Castilletes forms the basis of negotiations today, the 1941 Treaty made no mention of rights over marine and submarine areas.

#### SUGGESTED MEANS FOR DELIMITING THE MARINE AND SUBMARINE AREAS

Two main issues relative to the Colombia-Venezuela dispute have gradually emerged: the territorial sea, and the submarine areas of the continental shelf. Colombia has a Gulf coast and, by virtue of that coast, a territorial sea, according to the 1941 Treaty. The terrestrial frontier provides the point of departure for the delimitation of the territorial sea and marine and submarine areas. It does not, however, resolve the course of the extension of this boundary line into the waters of the gulf, not only for the twelve mile territorial sea limit to which both countries ascribe,<sup>9</sup> but also for the delimitation of the continental shelf.

Colombia has maintained that the method of delimiting the territorial sea, marine and submarine areas, and continental shelf in the Gulf should be the median line drawn according to the so-called Boggs procedure. S. Whittemore Boggs, in 1951 a Special Advisor on Geography to the United States (U.S.) Department of State, wrote that one should:

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

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

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<sup>9</sup>For Venezuela see Gaceta oficial, No. 496, Extraordinario del 17 de agosto 1956; also, the Constitution in Gaceta oficial, 23 de enero 1961. For Colombia see Article 80 of Decreto legislativo, No. 3183, 20 de diciembre 1952.

sured from the nearest points on opposite shores—that is, from the intersection of the low-water-datum plane with the coast.<sup>10</sup>

Thus, the equidistance line leaves to a coastal state “all those portions of the continental shelf that are nearer to a point on its own coasts than they are to any point on the coast of” the adjacent coastal state.<sup>11</sup> Specifically, Boggs applied his theory to the Gulf of Venezuela, both to the extension of the territorial frontier of the Guajira peninsula, and to the boundary between the Colombian Guajira and the Venezuelan Paraguaná peninsulas.<sup>12</sup>

To the contrary, however, Venezuela has claimed that the method for drawing the marine boundary should be that of the prolongation of the territorial frontier. An equidistant line would divide the water roughly equally for states with straight or nearly straight coastlines. In other cases, such as the Gulf of Venezuela, an equidistant line would disproportionately favor one party—in this case Colombia.<sup>13</sup>

Under Article 12 of the Convention on the Territorial Sea and Contiguous Zone the equidistant line is accepted:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.<sup>14</sup>

<sup>10</sup>Boggs, *Delimitation of Seaward Areas Under National Jurisdiction*, XIV Am. J. Int'l L. 265 (1951).

<sup>11</sup>The North Sea Cases, [1969] I.C.J. 18.

<sup>12</sup>See map in Boggs, *supra* note 10, at 261.

<sup>13</sup>The ICJ in the North Sea Cases points out the inequity extant in certain cases:

The slightest irregularity in a coastline is automatically magnified by the equidistance line as regards the consequences for the delimitation of the continental shelf. Thus it has been seen in the case of concave or convex coastlines that if the equidistance method is employed, then the greater the irregularity and the further from the coastline the area delimited, the more unreasonable are the results produced. So great an exaggeration of the consequences of a natural geographic feature must be remedied or compensated for as far as possible, being of itself creative of inequality. [1969] I.C.J. 50.

<sup>14</sup>515 U.N.T.S. 205.

Venezuela made a reservation to this article because "neither the case of equidistance lines nor their variants are applicable since the Gulf of Venezuela is a bay that presents special circumstances."<sup>15</sup>

A critical area concerning the territorial sea is the division of the waters north of the parallel of Castilletes between the northern Guajira peninsula and the Venezuelan Los Monjes islets. Measured from the nethermost point at low tide, the distance between the Colombian coast and the islets is only eighteen to nineteen miles. The continental shelf of the coast slopes more than that of the islets, and the irregularities, to be taken into account in establishing a base line, are more pronounced on the Guajira peninsula than in Los Monjes.<sup>16</sup> The reason for the dispute over this area is that each country has a twelve mile territorial sea claim and there is an overlap of some five miles in the respective claims. The critical area for the last ten years of controversy has revolved about the sovereignty over the submarine areas of the continental shelf south of the parallel of Castilletes, and between the Colombian Guajira peninsula and the Los Monjes islets.<sup>17</sup> Some Colombian nationalists have also alleged that their nation has sovereignty over the Los Monjes archipelago.<sup>18</sup> In a diplomatic note of November 22, 1952, the Colombian Foreign Minister, Juan Uribe Holguín, recognized Venezuela's sovereignty over Los Monjes:

The government of Colombia declares that it does not object to the sovereignty of the United States of Venezuela [now called the Republic of Venezuela] over the archipelago of Los Monjes and that, in

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<sup>15</sup>Venezuela, Ministerio de Relaciones Exteriores, Libro amarillo, separata 1969 (1970), at XLII. Strictly speaking the rule of the equidistance line is not the same as the median line. "A true median line presupposes a line which is in the middle. Theoretically, at least, a boundary line through the territorial sea between two adjacent states, while an equidistant line is not a true median line." Grisel, *The Lateral Boundaries of the Continental Shelf and the Judgment of the International Court of Justice in the North Sea Continental Shelf Cases*, LXIV Am.J. Int'l L. 574 (1970), quoting A. Shalowitz, *Shore and Sea Boundaries* (1962), at 231. See also [1969] I.C.J. 17, 37-38. In a dissenting opinion, however, Judge Sorensen claims that the distinction is fictitious as substantiated by the proceedings of the Geneva Conference, [1969] I.C.J. 251.

<sup>16</sup>C. Castillo, *El Golfo de Venezuela*, at 82.

<sup>17</sup>A reference by Colombian President López Michelsen in 1974 to the "so-called" Gulf of Venezuela brought angry protestations in the Venezuelan press that the substantial part of the Gulf was not in question as it represented "historic waters." Resumen, August 4, 1974, § III, at 2.

<sup>18</sup>One basis for the allegations is that the archipelago is more proximate to the Guajira peninsula than to the Venezuelan coast. This particular argument is specious in that it would mean that Colombia's Caribbean islands of San Andrés and Providencia should belong to Nicaragua, not to Colombia.



consequence, is not opposed nor has any claim to formulate for the exercise of that or any act of dominion on the part of that country over the archipelago in reference.<sup>19</sup>

It should, however, be noted that no reference was made in the note to rights over the continental shelf. In August 1971, there was a debate on the issue in the Colombian Senate.<sup>20</sup> Many Colombian legal experts contend that it is unconstitutional to change boundaries without the consent of the Congress. Thus, under the Vienna Convention on the Law of Treaties, a treaty opposed to the constitution of a signatory country can be considered null and void under certain circumstances. Others say that the Colombian constitution refers only to the 'cession' of territory and not to the recognition of the rights of others. No claim to Los Monjes has been made by the Colombian government and Venezuela denies the negotiability of her sovereignty over them.

Neither the territorial sea, contiguous zone or patrimonial sea of Los Monjes nor its ownership is presently at issue.<sup>21</sup>

Under consideration now is the delimitation of the marine and submarine areas in the Gulf. The depth of the continental shelf is not disputed, since the maximum depth is only some seventy to seventy-five meters. Even the traditionally accepted depth for the continental shelf has been considered to be at least two hundred meters.

Los Monjes arise from the continental shelf, are not submerged at high tide, and thus conform to the 1958 Geneva Convention on the Territorial Sea definition of an island as "a naturally-formed area of land, surrounded by water, which is above water at high-tide."<sup>22</sup> Venezuela contends that as islands they have a continental shelf under the terms of the Geneva Convention on the Continental Shelf, which states that the term continental shelf refers: "(b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands."<sup>23</sup>

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<sup>19</sup>For the complete text of the note see César Moyana Bonilla y Ernesto Vásquez Rocha, *Los Monjes y las Bahías Históricas Ante el Derecho Internacional* (1971), at 84-87.

<sup>20</sup>See Hernando Holguín Peláez, *Los Monjes: Enjuiciamiento de una Traición 1499-1975* (1975), at 303-342.

<sup>21</sup>Interview with a member of the Venezuelan Congressional Foreign Relations Committee (July 21, 1975).

<sup>22</sup>516 U.N.T.S. 205.

<sup>23</sup>499 U.N.T.S. 311.

Colombia, on the other hand, denies that Los Monjes have a continental shelf. Colombia argues that Los Monjes are not islands, but rather rocks or keys, being totally devoid of plant or animal life.<sup>24</sup>

Colombian negotiators have insisted that an equidistant or median line be drawn on the continental platform between the *continental* coastlines of the two neighbors—i.e., between the Guajira and Paraguaná peninsulas—disregarding the islets.

Venezuela claims that the equidistant or median line should be drawn between Los Monjes and the Colombian Guajira. Wittemore Boggs proposed an alternate jurisdictional equidistant line between the Guajira and Los Monjes—“assuming that the two countries were to agree to take the Monks Islands into account.”<sup>25</sup>

#### THE 1958 GENEVA CONVENTION

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

In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.<sup>26</sup>

Article 6(2) applies the principle of equidistance to the delimitation of lateral boundaries between adjacent states.<sup>27</sup>

In the absence of agreement, and unless another line is justified by special circumstances, the boundary shall be determined by applica-

<sup>24</sup>El Universal (Caracas), July 10, 1975, at I-6. Colombia, however, claims a continental platform for the sandbanks and islets of Roncador, Quita Suenos and Serrana. C. Castillo, *El Golfo de Venezuela*, at 90.

<sup>25</sup>Boggs, *Delimitation of Seaward Areas*, *supra* note 10, at 261.

<sup>26</sup>499 U.N.T.S. 311.

<sup>27</sup>The term “lateral” was first used by the International Court of Justice (I.C.J.) in the North Sea Continental Shelf cases. [1969] I.C.J. 18.

tion of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured.<sup>28</sup>

Using this article for legal support, Colombia contends that the lateral boundary of the continental shelf (where Venezuela and Colombia adjoin one another on the Guajira peninsula) should be the Boggs equidistant line rather than the extension of the terrestrial boundary.

Venezuela, however, while being the only Latin American state to have signed and ratified all four of the 1958 Geneva Conventions, excepted to the criteria in Article 6 of the Convention on the Continental Shelf and reserved the right to negotiate for special circumstances.<sup>29</sup>

Under a Venezuelan proposal, Article 6 would have read:

1. Where a continental shelf is adjacent to the territory of two or more states whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such states shall be determined by agreement between them or by other means recognized in International Law.
2. Where the same continental shelf is adjacent to the territory of two adjacent states, the boundary shall be determined in the manner prescribed in paragraph 1 of this article.<sup>30</sup>

The Venezuelan representative argued that "bilateral agreements could take account of special conditions obtaining in any given case and would provide a more practical solution."<sup>31</sup> Further, at the thirty-second meeting of the Fourth Commission on the Continental Shelf, Venezuelan geologist and mining engineer Armando Schwarck Arglade contended that "cases in which the median line would offer the best solution were likely to arise less frequently than any others, so that exceptions would be more numerous than the cases covered by the general rule."<sup>32</sup>

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<sup>28</sup>499 U.N.T.S. 311.

<sup>29</sup>Venezuela, Ministerio de Relaciones Exteriores, Libro amarillo, separata, 1969, at XLII.

<sup>30</sup>UN Doc. A/CONF 13/C.4/L. 42, at 138.

<sup>31</sup>UN Doc. A/CONF. 13/42, para. 25, at 21.

<sup>32</sup>UN Doc. A/CONF. 13/42, para. 9, at 94.

## THE NORTH SEA CASES

Venezuela now claims that the action of the International Court of Justice (ICJ) in the 1969 North Sea Cases vindicates Venezuela's position.<sup>33</sup> The Court held (eleven to six) that the equidistance principle was not "an inescapable . . . *a priori* accompaniment of basic continental shelf doctrine."<sup>34</sup> In 1958, the doctrine had been "purely conventional" and had not since become binding custom.<sup>35</sup> Finding no applicable rule of customary international law for this type of demarcation, the Court decided that delimitation should be effected through "agreement" in accordance with "equitable" principles. Rejecting a single method for use in all circumstances, the ICJ prescribed that the applicable standard should be the application of methods guaranteeing an equitable outcome. "There is no legal limit to the considerations which states may take account of for the purpose of making sure that they apply equitable procedures . . ."<sup>36</sup> The weight to be given to different facts would therefore vary with the circumstances of the case. Venezuela has contended that she would have her continental shelf mutilated by a strict application of the geometrical course of the equidistant line.

Colombian geographers and lawyers deny the similarity between the coastal area off the Republic of Germany and that in the Gulf of Venezuela, pointing out the exceptional configuration of the former. The application of the equidistance principle would have produced "a true amputation" of the platform of Germany. It is further noted that Colombia and Venezuela are bordering nations while Denmark and the Low Countries are not. Also, Germany had not ratified the 1958 Geneva Convention as Venezuela had.<sup>37</sup>

Pursuant to her position on the Continental Shelf and Territorial Sea Conventions, Venezuela failed to sign the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes in 1958,<sup>38</sup> while

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<sup>33</sup>The claim is made with regard to the case of both sections (1) and (2) of Article 6, since the median line is considered by Venezuela to be a variant of the equidistant line.

<sup>34</sup>[1969] I.C.J. 32.

<sup>35</sup>[1969] I.C.J. 41.

<sup>36</sup>[1969] I.C.J. 50. Although the continental shelf as a doctrine has been in existence only since 1945, the ICJ in this case simply assumed that it had become a part of general customary law.

<sup>37</sup>E. Zuleta Angel, *El Llamado Golfo de Venezuela*, (1971).

<sup>38</sup>450 U.N.T.S. 169.

Colombia reserved obligations under previous conventions for the settlement of disputes. Also, because of this position, Venezuela was the only coastal Latin American state to vote against the Lima Declaration at the August 1970 regional conference on the law of the sea. The Caracas government rejected the Declaration on the grounds of Article 2, which asserted the right of each riparian state to establish the limits of its maritime sovereignty or jurisdiction according to reasonable criteria. Venezuela refused to admit any extension of the territorial sea that might diminish or affect rights of free navigation or rights that Venezuela enjoyed in seas adjacent to her territory.<sup>39</sup>

#### OVERVIEW

It should be noted that both countries' positions regarding the continental shelf are merely affirmations and not sovereign legal rights. The controversial North Sea Cases establish that there is no rule of international law in this area. Moreover, the equidistant lateral line is only part of Venezuela's claim. Venezuela contends that the 1941 treaty established the geographical coordinate of the Castilletes parallel, and thus the dividing line cannot project to the south of that point as Colombia claims. Under the terms of the present negotiations, Venezuela has indicated that she is not disposed to discuss her sovereignty south of the parallel. With the zone under current discussion lying to the north of the parallel, it does not include all Colombian aspirations.

Also related to the issue of the delimitation of submarine areas is the 1942 Gulf of Paria Treaty signed by Venezuela and Great Britain. Concerned with the shallow area of the high seas between the Venezuelan peninsula of Paria and the then British-owned island of Trinidad, that treaty was the first to deal with the delimitation of the submarine areas "of the seabed and of the subsoil outside of the territorial waters" of the contracting parties.<sup>40</sup> There has been an occasional allusion in the Colombian press that the principle applied in the 1942 Treaty was the equidistant method and should therefore be applied in the Gulf of Vene-

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<sup>39</sup>El Universal, August 4, 1970, at I-1.

<sup>40</sup>Venezuela, Ministerio de Relaciones Exteriores, *Tratados públicos y acuerdos internacionales de Venezuela, 1937-1942* (1942), § VI, at 720.

zuela.<sup>41</sup> In fact, however, there is no mention within the Gulf of Paria Treaty of any method of delimitation being used. This appears to be consistent with Venezuela's current position that the only "method" for delimiting submarine areas is direct bilateral negotiations.

#### THE COURSE OF CONTEMPORARY NEGOTIATIONS

The actual course of the current controversy dates only from the 1960's, when the Colombian government initiated oil exploration measures in the Gulf. Following protests by the government in Caracas and initial contacts in 1965 and 1966, exploratory discussions were begun in late 1967 by a Mixed Colombian-Venezuelan Commission. Nevertheless, it was not until January 19, 1971 that President Rafael Caldera made the first public announcement of the official Venezuelan position. He clearly stated it to be "that of a dividing line between the Colombian coast of Guajira and the Venezuelan islets of Los Monjes, combined with a line of demarcation that follows the direction of the terrestrial frontier because the areas understood between the Venezuelan coasts are traditional and historic Venezuelan waters."<sup>43</sup> The historic waters thesis has been countered by the Colombian contention that international law does not recognize the existence of historic waters in cases where there is a dispute over sovereignty.<sup>44</sup> It is of interest to note that the Venezuelan delegate (Dr. Carmona) to the First Committee of the 1958 Geneva Law of the Sea Conference defended the rights of third world countries to bays and gulfs in declaring:

It [the Venezuelan government] could not, however, view with indifference the position of countries which needed to protect their rights in bays or gulfs not at present of a historic character: Why

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<sup>41</sup>While admitting that the land beneath the Gulf of Paria is not properly a part of the continental shelf, Arthur Dean, chairman of the U.S. Delegation to the 1958 and 1960 Geneva Law of the Sea Conferences, claims that the principle of equidistance was employed in the 1942 Treaty. *The Law of the Sea: Offshore Boundaries and Zones* (L. Alexander 1967), at 250. On the other hand, the eminent Latin American international legal publicist F. V. Garcia Amador concludes that the Gulf of Paria submarine areas were delimited by the conventional means of direct negotiations. F. V. Garcia Amador y Rodriguez, *The Exploitation and Conservation of the Resources of the Sea; A Study of Contemporary International Law* (1963), at 115.

<sup>42</sup>*El Universal*, January 20, 1971, at I-1. For an authoritative statement of Colombia's position by then Colombian Foreign Minister Alfredo Vásquez Carrizosa see *El Universal*, January 18, 1971, at I-1.

<sup>43</sup>See article by Daniel Samper Pizano in *El Tiempo* (Bogotá), February 14, 1971, at 6.

should historic rights prevail in International Law? Venezuela could never accept the thesis that rights could be acquired by occupation in international matters. There should be no recognition of a prescriptive title to the detriment of new countries now in full process of development.<sup>44</sup>

After 1967, talks remained relatively unofficial at the technical and diplomatic level until the joint Declaration of Sochagota in August 1969<sup>45</sup> led to a *modus operandi* for formal negotiations in March 1970.<sup>46</sup>

Discussions continued at the commission level in Rome until they were broken off in March 1973, while the press in both countries encouraged emotional nationalism over the dispute with announcements of an arms buildup between the two neighbors. Colombia suggested the entry into negotiations of a third party, such as the International Court of Justice or the United Nations, but this idea was rejected by Venezuela. Meanwhile, the respective governments attempted to allay fears and dull the thrust of press accusations, yet by October of 1971 there were genuine fears of war.<sup>47</sup> Exaggerated charges and countercharges continued to appear from the mass media throughout 1972, despite the establishment in 1971 of a mixed Commission to study the entire range of relations between the two countries.

The Rome talks (terminated in early 1973 without progress) have been characterized by a former Venezuelan foreign minister as only "exploratory."<sup>48</sup> While Colombia called for arbitration (preferably by the ICJ), Venezuela argued for bilateral negotiations at the foreign minister level.<sup>49</sup> An agreement in July 1973 to reopen direct negotiations, together with Venezuela's formal entry into the Andean Pact in the fall of the same year, appeared to promise possible resolution of the controversy. With the inauguration in March 1974 of the present Democratic Action (AD) administration of President Carlos Andrés Pérez in Venezuela, discussions were transferred from the diplomatic to the highest decision-making level.

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<sup>44</sup>UN Doc. A/CONF. 13/39, para. 37, at 23.

<sup>45</sup>Venezuela, Ministerio de Relaciones Exteriores, Libro amarillo, 1969, at 35-37; see also Venezuela, Presidencia, El primer mensaje del presidente de las República Dr. Rafael Caldera al Congreso Nacional, 11 de marzo de 1970, at 45.

<sup>46</sup>Venezuela, Presidencia, El segundo mensaje de Caldera, 1971, at 279.

<sup>47</sup>Text of the communique in El Universal, December 20, 1971, at I-10.

<sup>48</sup>Interview, *supra*, note 21.

<sup>49</sup>El Tiempo (Bogotá), February 12, 1971, at 1.

Recently, Colombian ex-President Misael Pastrana Borrero announced that in July 1973 negotiators had been at the point of signing a comprehensive agreement when domestic political problems intervened.<sup>50</sup> In fact, however, for more than four years there have been continuous reports that an agreement was imminent.

The August 1974 election of Alfonso López Michelsen to the Colombian presidency was interpreted by many as another auspicious sign since he and President Pérez of Venezuela share a lengthy and warm friendship. It was widely reported that a settlement was pending, when approximately five hundred retired Venezuelan officers issued a manifesto in October 1974 rejecting any concession by Venezuela in the controversy.<sup>51</sup> While the action was unanimously denounced by Venezuelan political parties, the document definitely dampened negotiations. Although Venezuela is a functioning democracy with little danger of a coup d'état, the military still represents a potent force in Venezuelan politics. Moreover, the armed forces in both countries have taken a particular interest in the border dispute.

In what was considered a surprise move, President López Michelsen proposed to the Colombian Congress on July 20, 1975 a joint condominium over the Gulf of Venezuela. Terming the 1970's the decade of the sea, and perhaps attempting to seize the initiative, he asked:

Why not think and declare at once, in the face of the world, that in accord with an old Venezuelan aspiration, the Gulf of Venezuela is an historic bay, condominium of the two riparian states, Colombia and Venezuela? In this way we would substitute the confrontation between our two countries, while ships of other flags fish in the region, for an affirmation of our common interests, . . . The delimitation of the areas, in proportion to our respective perimeters, would come in addition.<sup>52</sup>

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

This represented the first such proposal at the official level. No mention was made in the speech of joint exploitation, as ex-Ambassador to Venezuela Héctor Charry Samper was quick to point out. Nevertheless, the President of the Committee on Foreign Relations of the Colombian Chamber noted that the formula would open the way to possible co-exploitation.<sup>53</sup>

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<sup>50</sup>Latin America, October 27, 1975, § IX, at 334.

<sup>51</sup>Resumen, October 27, 1975, § V, at 12.

<sup>52</sup>El Universal, July 21, 1975, at I-6.

<sup>53</sup>El Universal, July 23, 1975, at I-6.



The idea that the two could join in utilizing the riches of the Gulf was not new, having already been revived in 1973 by the Colombian geologist Diego Llinas Pimienta. However, at that point it had never been the subject of an official governmental proposal. Moreover, the Colombian government had never before admitted that the Gulf might be anyone's historic waters.

The López proposal is a novel one. The problem seems to lie in the fact that in private law condominium and delimitation are mutually exclusive. If the proposal does not contemplate division at any time, the acceptance of joint condominium over the disputed area would eventually lead to joint exploitation. Then the question of how to divide the profits would arise. Moreover, Venezuela's insistence that the area to the south of the parallel of Castilletes is non-negotiable precludes joint ownership over an area which Colombia claims to be in dispute. Therefore, if put forward as a substitute for negotiations, the proposal does not appear to be feasible.

The first official response from the Venezuelan Foreign Ministry did not deal with the substance of the López proposal. Officials at the United States Embassy in Caracas were concerned at the Ministry announcement which noted that:

in the context of the negotiations . . . , it would be interesting to consider the closing off of the Gulf of Venezuela within the agreements the two states may decide. In any case the important initiative of the Colombian President is not directly related to the delimitation in the interior of the Gulf over which the conversations between the two governments will continue.<sup>54</sup>

Closing off the Gulf might subject foreign oil tankers to transit taxes or other restrictive measures, causing further problems since both the U.S. and Great Britain consider the Gulf to be international waters. In any event, the government in Caracas has not accepted the Colombian proposal nor does it seem disposed to do so.

#### CONCLUSION

Despite the current cordial relations between the administrations in Colombia and Venezuela, intense nationalistic sentiment in both countries has not waned and negotiations have been inconclusive. It is often sug-

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<sup>54</sup>Resumen, August 3, 1975, § VIII, at 3.

gested by moderates in the two nations that joint exploitation would be the more feasible and probable solution; nevertheless, there appears to be no official undertaking to draw up such a plan.

It is obviously in the self-interest of these two remaining stable democracies in South America to seek a resolution of the potentially dangerous controversy. Both are interested in the maintenance of cordial relations as a basis for the future development of the Andean Group; the natural resources lying beneath the Gulf are potentially of great value. Nevertheless, the timing is not crucial for either. This is especially clear on the part of Venezuela, where neither governmental nor congressional elites appear to be pressing for a solution. However, it also holds true for Colombia, where petroleum production is now on the rise.

Some suggestions have been formulated that the controversial discussions simply be postponed as Venezuela has done with the Guayana border dispute through the 1971 Port of Spain Protocol. There appears to be little support for this proposal, however. This is perhaps a result of the fact that, due to the lack of consensus on the Port of Spain Protocol, the Venezuelan Congress failed either to ratify or to reject that document.<sup>55</sup>

There is also some question as to whether the marine and submarine area issue can be resolved unless a solution can be found for the continuing flight of Colombian *indocumentados* and their sometimes subsequent deportation. It also seems clear, at least relative to Venezuela, that the military's traditional firm defense of national sovereignty has been one reason that Venezuela has not pressed the issue. While the institutionalization of democracy seems to be proceeding, prevailing patterns of domestic power relationships have scarcely been obliterated.

There is little question that there can be no solution fully acceptable to all Colombians and Venezuelans. According to the International Court of Justice in the North Sea Cases, there is no firm rule of international law governing the delimitation of the continental shelf. Thus, neither party is likely to be totally satisfied with an arrangement that might appear to be a derogation of sovereign rights. In each country, an international treaty negotiated by the executive must be ratified by the national legislature. A resolution to the dispute could provide an interesting precedent for study with regard to potentially controversial submarine boundaries in other areas of the world. For the present, however, the prolonged ministerial and presidential talks have not produced a solution.

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<sup>55</sup>President Caldera in September 1971 denied any analogy between the Colombian and Guayana controversies.