CHAPTER VII

IMPLICATIONS OF THE EXCLUSIVE ECONOMIC ZONE REGIME FOR FISHING ACTIVITY IN THE EASTERN CARIBBEAN

In the preceding Chapter, the most fundamental implication of the EEZ regime was examined, namely the need to delimit the area within which its provisions may be implemented. The difficulties inherent in this exercise were also highlighted.

This Chapter is devoted to an examination of the implications of the EEZ regime for the small island states and territories of the Eastern Caribbean in the area of "fishing". Three main aspects will be highlighted in this connection. The first relates to the manner and extent to which the EEZ regime impinges on this area of interest in the marine environment as manifested by the several states and territories of the Sub-region. That is to say, an examination will be undertaken of the precise manner and extent to which this activity may be pursued, is affected or determined by the introduction of the EEZ regime. Secondly, the examination will include a review of the rights, as well as the duties that are prescribed under the EEZ regime, in particular with respect to the implications

for the capacity of the states and territories in question to either enjoy or discharge them as appropriate. Under this heading will be discussed the "management" implications of the EEZ regime.

IMPLICATIONS FOR THE EEZ REGIME FOR FISHING ACTIVITY IN THE CARIBBEAN

Notwithstanding the fact that the EEZ provides for vast extensions of coastal state jurisdiction, its major implication in the context of the island states and territories of the Eastern Caribbean is essentially a negative one. The close proximity of the islands has, in the context of this regime, had the effect of transforming the Caribbean Sea into a patchwork of national EEZs. Areas which formerly enjoyed the status of high seas, in which freedom of fishing was permitted all States, are now incorporated into national EEZs. The net effect of this is that the automatic right of access on the part of Caribbean fishermen to vast areas of the Caribbean Sea no longer obtains. In fact, overall, there is a net reduction of the area in which fishing operatives of individual island States and territories may now legally carry out their activity without recourse to the conclusion of access agreements.

An important factor exacerbating this situation, is the unequal distribution of the living resources of

the Caribbean in favour of those countries situated on or near the continental mainland. This means that a country like Trinidad and Tobago would have a relatively more abundant fishery than countries lying further north.

In the words of a leading Caribbean Law of the Sea expert

> "The insular Caribbean territories appear to have suffered as a result of the adoption of the 200 mile Exclusive Economic Zones in the new Convention. Prior to the declaration of the Exclusive Economic Zones by mainland states like Colombia and Venezuela, Mexico and those in Central America, the Island States in the chain had traditional and habitual access to the resources of those states outside their 12 mile territorial sea limit."[1]

Further, and rather interestingly,

> "...Barbados has lost to Tobago its Flying Fish resources and now seeks a fishing agreement with Trinidad and Tobago in respect of Flying Fish and other species. It appears that Barbados now imports Flying Fish from Trinidad and Tobago. Prior to the adoption of a 200 mile Exclusive Economic Zone and a declaration to that effect by Trinidad and Tobago, Barbados would have been able to fish freely and legally for Flying Fish

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[1] L. Ballah, "The Law of the Sea: What it is and How it will Change Fishing and Marketing Practices in the Caribbean." Keynote address to the Thirty-Sixth Session of the Gulf and Caribbean Fisheries Institute, Port-of-Spain, 14th November, 1983.

off Tobago outside of the 12 mile territorial sea."[2]

Inasmuch, therefore, as the countries of the Caribbean cannot increase their production from the already less than abundant fishery that generally obtains within their national EEZs, recourse must of necessity be had to the conclusion of Fishing Agreements in order to have access to fishing grounds, given the need for, inter alia, fish products as staple food items in most of the islands concerned. The availability of fish as an item of export will also generally be diminished. High-priced species may however continue to be exported to the lucrative North American market.

FISHERIES RELATIONS IN THE EASTERN CARIBBEAN

According to Article 62 of the 1982 Convention, in cases where the coastal state does not have the capacity to harvest the entire allowable catch of the living resources of its EEZ, it shall give other States access to the surplus of the allowable catch. Such access may be granted on the basis of negotiated agreements or otherwise, in accordance with specified terms, conditions, laws and regulations.

Although bilateral fishing agreements and joint-venture fishing agreements have been frequently used to regulate foreign access to fisheries resources of the

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[2] L. Ballah, op. cit.

waters falling under the jurisdiction of coastal states, the trend towards the extension of such jurisdiction, combined with the need for the regulation of fisheries access on the part of foreign fishing vessels has enhanced the role of these types of agreement as a means of achieving this end.[3] However, as concluded by the Norway/FAO/WECAF Seminar on "The Changing Law of the Sea and the Fisheries of the Western Central Atlantic Region," it must be agreed that:

> "Given the relative scarcity of resources off the coasts of the island states, it is likely that the main interest of distant water fishing nations will be directed toward the negotiation of access agreements with mainland coastal states in this region. For the island states, it will be important to secure continued access for their artisanal fishermen to the waters off the coasts of neighbouring countries."[4]

The need to negotiate access for the exploitation of the fisheries resources of other countries on the part of the small island states and territories of the

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[3]See Carroz, J., et Savini, M., "Accords de Peche Bilateraux" in Circulaire FAO Sur les Peches, No. 709, 1978.

[4]See FAO Document FL/WECAF/81/4. The Seminar took place in Havana, Cuba, during the period 14-17 November, 1980.

Eastern Caribbean, places yet another obstacle in the path of their national socio-economic development.

The status of the fisheries relations of the states and territories of the Eastern Caribbean that have evolved as a direct implication of the adoption of the regime of the exclusive economic zone, will now be illustrated by reference primarily to the experience of the twin-island state of Trinidad and Tobago. Emphasis will be placed on the difficulties encountered by states in not only the negotiation but also the implementation of fishing agreements.

TRINIDAD AND TOBAGO/VENEZUELA FISHING RELATIONS: BACKGROUND

In a speech delivered in 1959, the then Premier of Trinidad and Tobago enumerated six factors which, in his view, provided the background to the prevailing state of relations between Trinidad and Tobago and Venezuela. Among these factors, which included such elements as the asylum afforded by Trinidad and Tobago to Venezuelan political refugees; the problem of contraband; the discriminatory 30 percent surtax on West Indian exports; and the "annexationist ambitions of Venezuelan extremists", was another, mentioned second of the six, dealing with what was described as

> "...the special problem of the fishermen of both countries, who consciously or unconsciously ignoring territorial waters, cross the

> national boundaries in their search for subsistence and livelihood."[5]

The conclusion reached in respect of the factors enumerated, was to the effect that

> "in the light of this background the two countries, notwithstanding cordial and valuable contacts at personal and individual levels, have traditionally been bad neighbours."

Further,

> "it was in this atmosphere of mutual mistrust and antipathy that the present government of Trinidad and Tobago...enumerated as one of the basic planks in its foreign policy the deliberate cultivation of good relations with Venezuela."

THE TRINIDAD AND TOBAGO/VENEZUELA FISHING AGREEMENT 1977

With the principal rationale of regulating the operations of those fishermen who "consciously or unconsciously cross the national boundaries in their search for subsistence or livelihood," a Fishing Agreement was signed on 12 December, 1977 by the Government of the Republic of Trinidad and Tobago and the Government of the Republic of Venezuela. The text of this Agreement is attached at Appendix VIII. Reflecting the state of relations between the two co-

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[5]Speech by Dr. Eric Williams, Premier of Trinidad and Tobago to the House of Representatives on Trinidad and Tobago/Venezuela Relations, 28 August, 1959, in Preiswerk (ed.) Documents on International Relations in the Caribbean. Institute of Caribbean Studies, Puerto Rico 1970, pp. 208-211.

signatories, the conclusion of the Agreement was the eventual product of "several years of protracted negotiations."[6] The Agreement came into force on 17 July, 1978[7] by an Exchange of Diplomatic Notes at a ceremony held in Caracas, the Venezuelan capital. Its initial duration was for a period of two years. However, arising from differing approaches on the part of both delegations with respect to the effective coming into force of the Agreement, the Agreement was deemed to have expired in July 1981 or three years after it constitutionally came into force. The Agreement was then renewed for further periods of two years and one year in 1981 and 1983 respectively: May 1984 being the date stipulated on the latter occasion for its final expiry.

The Agreement containing some 18 articles, made provision for an unspecified number of fishermen of the two countries to operate in three main areas viz: the area North of Trinidad; the area South of Trinidad and North of Venezuela; and the Special Areas within

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[6]See the Statement by the Minister of External Affairs of Trinidad and Tobago/Venezuela Fishing Agreement delivered in the Trinidad and Tobago Parliament on 22 June, 1977.

[7]The Act Establishing an EEZ along the coasts of the Mainland and islands of the Republic of Venezuela was adopted by the Venezuelan Congress on 26 July, 1978. See Gaceta Oficial Extraordinaria No. 2291 of July, 1978.

Venezuelan territorial waters namely, Boca de Pedernales, Bahia de Coquin and Bahia de Bombeadores.[8] A map depicting the authorised fishing areas appears at Figure 15. The first two areas identified were referred to as the "Common Areas." With the exception of the Special Areas, fishing activities "shall only be allowed two miles from the coast of each country." The Agreement also stipulated, inter alia, that

> "the Contracting Parties shall cooperate actively in fishing matters with a view to promoting the establishment of joint fishing enterprises for catching, processing and marketing of fish."[9]

The two countries also agreed

> "to coordinate oceanographic research programmes in the Gulf of Paria and adjacent marine areas, especially in the following fields: conservation, mariculture, and marine biology; development of scientific and technological research in relation to living resources, as well as identification of the physical, chemical and biological characteristics of these resources."[10]

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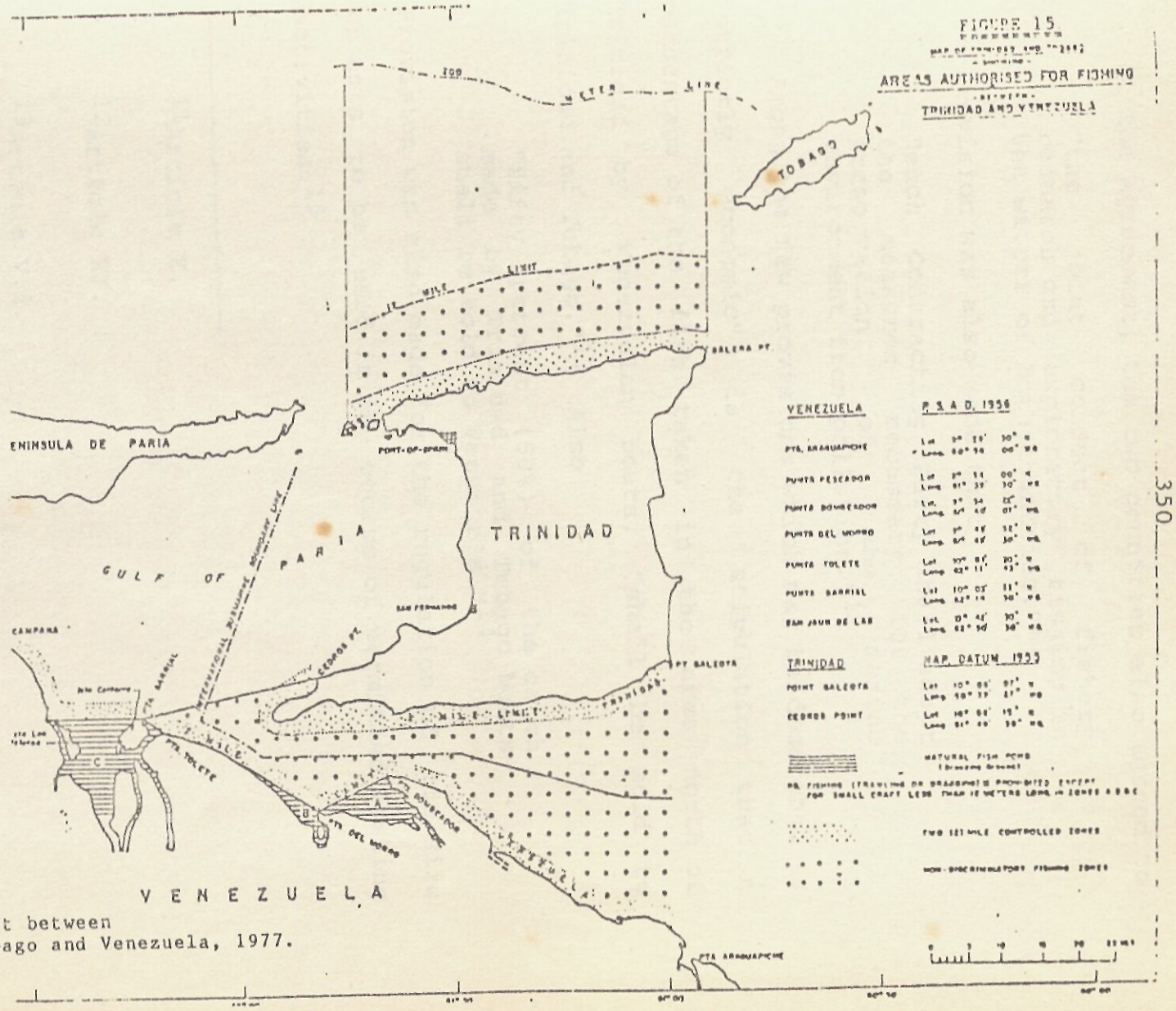
[8]Article III.

[9]Article VIII.

[10]Article IX.



Source: Fishing Agreement between
Trinidad and Tobago and Venezuela, 1977.

In the Agreement, the two countries also agreed to

> "the joint conduct of fishery research and exploratory fishing in the waters of both countries."[11]

Provision was also made that

> "each Contracting Party shall adopt the measures necessary for the preservation of the marine environment from pollution."[12]

Among the few provisions which may be described as "strictly economic" is the stipulation that a percentage of the fish taken in the area north of Trinidad by Venezuelan boats, "shall be sold to Trinidad and Tobago."[13] Also

> "fifty percent (50%) of the catch made by Trinidad and Tobago boats shall be sold to Venezuela."[14]

Provision was also made for the regulation of the size of nets to be used in the course of permitted fishing activities.[15]

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[11] Article X.

[12] Article XI.

[13] Article V.2.

[14] Article VIII (2).

[15] Article VII (ii).

INSTITUTIONAL ARRANGEMENTS IN THE TRINIDAD AND TOBAGO/VENEZUELA FISHING AGREEMENT

While the creation of international organizations to implement the provisions of multilateral treaties[16] is a common phenomenon, the creation of formal institutions for the administration of simple bilateral agreements such as the Trinidad and Tobago/Venezuela Fishing Agreement is a relatively rare occurrence.

The Trinidad and Tobago/Venezuela Fishing Agreement envisaged the creation of a Joint Commission charged with the administration and implementation of its provisions.[17] The Commission was intended to meet at least every six months or at any other time, on the request of either Contracting Party. The duties of the Commission included the presentation to the respective governments of recommendations on measures deemed necessary for the proper conservation and management of the living resources in the waters of both Parties.

The Commission was also responsible for examining any amendments suggested by either Party with respect to the provisions of the Agreement. Other specific functions of the Commission included the formulation of recommendations on the percentage, price and place of

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[16]See, for example, the CARICOM, OECS and NATO Treaties.

[17]Article XIII.

sale to Trinidad and Tobago of portions of fish catches of Venezuelan boats in the area North of Trinidad;[18] and also recommendations with respect to the date, price and place where the fifty percent of the catch by Trinidad and Tobago vessels in Venezuelan waters was to be delivered.[19]

PROBLEMS ENCOUNTERED IN THE NEGOTIATION OF THE TRINIDAD AND TOBAGO/VENEZUELA FISHING AGREEMENT

Reference has already been made to the "several years of protracted negotiations" which the conclusion of the December 1977 Trinidad and Tobago/Venezuela Fishing Agreement involved. In terms of its spatial aspect, the negotiation of the Agreement also has a certain peripatetic quality attaching to it. Negotiating sessions, formal as well as informal, were held in the capital cities of both countries and at other venues where delegations of the respective countries had the opportunity to interact. For example, a series of informal talks took place during the sixth session of the UNCLOS III in New York and also in Bogota, Colombia, where Trinidad and Tobago officials were primarily engaged on a Trade Mission. These exchanges were in addition to those which were

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[18] Article V (2).

[19] Article VII (2).

being held in Caracas on a continuing basis between members of the Venezuelan negotiating team and Trinidad and Tobago's Ambassador in Venezuela.

By March 1977, four formal or scheduled rounds of negotiations had taken place in an effort to resolve the issues to be dealt with in the context of the proposed Trinidad and Tobago/Venezuela Fishing Agreement. It was only at this fourth session that a Draft Agreement finally emerged. Even before that date, the conclusion of an Agreement was frustrated by the intervention of three major issues on which both sides found difficulty in reaching a compromise. These issues related to the mesh-size of nets to be used for shrimping in the Special Areas proposed; the desire on the part of the Venezuelans to have Trinidad and Tobago fishermen operating in Venezuelan waters sell a certain percentage of their catch to a processing plant in Venezuela: the problem being the exact percentage to be sold and the price at which such sale may take place; and the desire on the part of the Venezuelan authorities to incorporate into the discussions on a Trinidad and Tobago Fishing Agreement, proposals relating to the further delimitation of the maritime boundaries between the two countries. The Venezuelan position on this last issue, was prompted by its desire to proceed with further exploration of offshore

hydrocarbons. In that context, it was proposed that the delimitation of maritime boundaries would be "to the general good."[20]

The Trinidad and Tobago authorities on the other hand, whether due to its general unpreparedness for the negotiation of maritime boundaries, or to a realistic appraisal that such negotiation would be time-consuming, while fishing activities called for early regulation, reportedly expressed a preference to have negotiations on the Fishing Agreement completed as a priority and in isolation from other issues.

Although a Draft Agreement emerged at the end of the negotiating session of 22-25 March, 1977, the first two issues mentioned remained unresolved, namely the question of the size of mesh of shrimping nets to be used in the Special Areas; and the percentage, price and venue of sale with regard to Trinidad and Tobago catches in the Special Areas.

Some idea of the "protracted" nature of the negotiations is afforded by the fact that Venezuelan responses to proposals submitted by Trinidad and Tobago in the course of the March 1977 Session of UNCLOS III were reportedly received in August 1977: a full five months after their receipt. These responses which

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[20]Interview with officials at Frontiers Division of the Ministry of External Affairs, Caracas, November 1984.

included counter-proposals on the part of the Venezuelans, contained a compromise with respect to the mesh size of shrimping nets, that is, to limit this to 3.5 centimetres earlier proposed, a suggestion which proved acceptable to Trinidad and Tobago; a proposal to limit the weight of the 12 metre pirogues to be used in the Special Areas to two and a half tons instead of the Trinidad and Tobago proposal of three tons; and the insertion of a new provision to permit nationals of either Contracting Party to use rented vessels to exploit the resources of the fishing areas to be provided for in the Agreement.

In this last connection, Trinidad and Tobago, perhaps fearing an uncontrolled infiltration of foreign boats into her waters, rejected the proposal to use boats which were not owned by nationals of the Contracting Parties. A final proposal by the Venezuelans would restrict the duration of the proposed Agreement to two years without making provision for an alternative mechanism to replace in upon its expiry. Trinidad and Tobago, for its part, clearly opting for a more predictable set of arrangements, expressed a preference for an Agreement with an initial duration of two years but which would continue after the expiry of that period, for an additional period of one year, subject to the withdrawal, upon notice, by either

Contracting Party, or pending its replacement by a satisfactory joint venture fishing enterprise as envisaged in the Draft Agreement. It was these several suggestions, as periodically amended by either Party, which found expression in the Draft Agreement.[21]

As late as September, 1977, a new proposal was submitted by Trinidad and Tobago, according to which Venezuelan fishermen operating in the area North of Trinidad would be required to sell a percentage of the catch taken in that area to Trinidad and Tobago. This would have the obvious advantage of helping to ensure a constant supply of fish to the Trinidad and Tobago consumer, quite apart from counter-balancing similar demands made by Venezuela with respect to catches made by Trinidad and Tobago operatives in the Special Areas which fall under Venezuelan jurisdiction. The aspects of the Draft Agreement which found the approval of the Contracting Parties, are contained in the review, earlier in this work, of the main provisions of the Trinidad and Tobago/Venezuela Agreement. In particular, the stipulation in the Agreement of the requirement that Trinidad and Tobago fishermen sell to

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[21]This Section of the thesis owes a particular debt of gratitude to the extensive interviews granted by officials of the Frontiers Division of the Venezuelan Ministry of Foreign Affairs and also by Trinidad and Tobago officials. Interviews granted after the expiry of the agreement in May 1984 have also made an invaluable contribution to this Section.

Venezuela 50 percent of their catch in the Special Areas, was stated to be a sine qua non of the conclusion of a Trinidad and Tobago/Venezuela Fishing Agreement. On the other hand, the Agreement, simply states with respect to the disposal of catches made by Venezuelan operatives in the area North of Trinidad, that

> "a percentage of the fish taken in this area by Venezuelan boats shall be sold to Trinidad and Tobago; the percentage, price, venue for sales and other details to be worked out by the Fisheries Commission..."[22]

PROBLEMS ENCOUNTERED IN THE IMPLEMENTATION OF THE TRINIDAD AND TOBAGO/VENEZUELA FISHING AGREEMENT 1977

While the existence of the Trinidad and Tobago/Venezuela Fishing Agreement undoubtedly contributed to the overall improvement of the bilateral relations of these countries, for the purpose of this thesis, it is the difficulties encountered in this context that will be emphasised.

As has been earlier indicated, Article XIII of the Trinidad and Tobago/Venezuela Fishing Agreement made provision for the establishment of a Joint Trinidad and Tobago/Venezuela Fisheries Commission upon which the implementation of the terms of the Agreement itself devolved. For this reason, an examination of the

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[22]Article V.2.

problems encountered in the implementation of the Trinidad and Tobago/Venezuela Fishing Agreement will be undertaken with reference, mainly, though not exclusively, to the activities and reports of that Commission.[23]

ISSUES DISCUSSED WITHIN THE JOINT TRINIDAD AND TOBAGO/VENEZUELA FISHERIES COMMISSION

Some detailed insights into the problems encountered in the implementation of the Trinidad and Tobago/Venezuela Fishing Agreement are afforded by the comprehensive expose in Parliament by the Minister of External Affairs of Trinidad and Tobago on the work of the first two meetings of the Joint Trinidad and Tobago/Venezuela Fisheries Commission.[24]

By June 1979, two meetings of the Commission had been convened. Although, by this date, fully a year had elapsed since the exchange on 17th July, 1978 of Diplomatic Notes by virtue of which the Fishing

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[23]The work of the Joint Fisheries Commission has been the subject of periodic interventions in the Parliaments of the Contracting Parties as well as of Articles in, particularly, the Venezuelan press. Material for the drafting of this section was also provided in the course of extensive interviews kindly granted by the fishermen of Icacos and Cedros on the South West Peninsula of Trinidad and by officials of the two countries concerned.

[24]See Statement by Minister of External Affairs on the Trinidad and Tobago/Venezuela Fishing Agreement Delivered in the Trinidad and Tobago Parliament on Friday 22nd June, 1979.

Agreement was ratified, it was clear that the Agreement had remained virtually inoperative. This occurred as a result of the fact that the overall machinery for the effective implementation of the Agreement had not been established, a situation which gave cause for alarm on the Trinidad and Tobago side, given the change of government consequent upon the Venezuelan national elections of 1978.

At the first meeting of the Commission, held in Caracas during the period 9-10 October, 1978, there emerged a conflict of approaches with respect to a fundamental aspect of the Agreement, namely the determination of the date of its entry into force and, consequently. the date of its expiry with all the implications this would have for the planning of activities under the provisions of the Agreement. In this context, the Trinidad and Tobago members of the Commission were reportedly convinced that the Agreement had entered into force on the date of the Exchange of Notes. This was in accordance with the provisions of the Agreement which clearly states, inter alia, that

> "the present Agreement shall enter into force on the date on which an exchange is made of diplomatic notes which indicate compliance with the legal formalities required by the constitutional procedures of each Contracting Party."[25]

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[25]Article XVIII.

After the First Meeting of the Commission, the Venezuelan delegation indicated

> "...that the Agreement could only be considered to have come into force when machinery had been established to permit fishing to begin in accordance with the Agreement. This would require the issuing of permits to Trinidad and Tobago fishermen to enter Venezuelan waters."[26]

The validity of this position as adopted by the Venezuelan authorities is highly questionable. The provisions of Article XVIII of the Trinidad and Tobago/Venezuela Fishing Agreement dealing with the coming into force of that Agreement have already been mentioned. In such a context, given the fact that such provisions had been complied with, there can be no doubt that the Agreement was in force and that it was therefore incumbent upon Venezuela to set in place the relevant administrative arrangements for the performance of its treaty obligations. This approach to the question finds support in the Vienna Convention on the Law of Treaties 1969 which in its Article 26 reiterates the principle of "pacta sunt servanda" according to which:

> "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

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[26]Statement of the Minister of External Affairs of Trinidad and Tobago in Parliament, June 22, 1979.

Further, in its Article 27, this Convention stipulated that:

> "A party may not invoke the provisions of its internal law as jurisdiction for its failure to perform a treaty. This rule is without prejudice to article 46."

This provision with respect to internal law renders even less tenable the Venezuelan claims based on its inefficient administrative arrangements. Further, the exception provided for in Article 46 of the Vienna Convention on the Law of Treaties is hardly applicable in this case.

That the Venezuelan approach to the question of the entry into force of the Agreement was favourable to Trinidad and Tobago is incontestable. Had the "proper" position been adopted, the considerable period that elapsed between the ratification of the Agreement and the granting of fishing permits to its nationals would have substantially reduced the effective duration of the Agreement. Nevertheless, this development, in the context of the Agreement, points to a profoundly undesirable aspect of its proper administration and general implementation.

The first meeting of the Joint Commission also took note of two additional important factors which are closely related to the implementation of the Trinidad and Tobago/Venezuela Fishing Agreement. The first of

these relates to the fact that the original map attached to and forming an integral part of the Agreement omitted to show that fishing was prohibited within two miles of the coast of either country as stipulated in Article IV. The second point refers to the declaration by the Venezuelans that, given the lack of adequate facilities in the Pedernales area, the duty of landing fifty percent of their catch from the Special Areas in Venezuela by Trinidad and Tobago fishermen in accordance with Article VII. (2) of the Agreement was to be temporarily waived. Trinidad and Tobago was reportedly in a similar position.

Arising from the second meeting of the Commission held in Port-of-Spain during the period 1-2 November, 1978, was a request from the Venezuelan delegation to its Trinidad and Tobago counterpart for a list of fishermen and boats which traditionally engaged in fishing in Venezuela's territorial waters in order that fishing licences could be processed. However, from an initial list of 179 applications submitted on 23 November, 1979, under the terms of Article VII.(1) of the Agreement, the Venezuelan authorities, which had issued over 70 permits in 1973 before the signing of the Agreement, provided, over two months later, a mere thirty (30) fishing licences. In this context, it was stated that

> "the Ministry of External Affairs of Trinidad and Tobago immediately expressed its disappointment to the Embassy at the number of licences issued and its hope that in keeping with the spirit of the Fishing Agreement, which sought to safeguard the livelihood of the traditional artisanal fishermen of both Trinidad and Tobago and Venezuela, that the remaining 149 permits would be issued in the very near future."[27]

Giving a further dimension to the nature of the problem posed by the "permits question" for the implementation of the Fishing Agreement, the Minister of External Affairs also revealed that

> "the Government of Trinidad and Tobago has not considered it appropriate to distribute these 30 licences since it would be unjust to make an arbitrary selection of recipients, and moreover, to do so would amount to tacit acceptance of the legitimate right of the Venezuelan National Guard to arrest those fishermen to whom licences were not issued."

The Minister of External Affairs also indicated that repeated attempts on the part of his Government to convene a Third Meeting of the Commission "has had no positive response to date", that is some six months after the receipt of the thirty permits and the protest by his government in this regard. In partial mitigation of Venezuelan behaviour in this context, it could be that the delay in responding to Trinidad and

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[27] Statement of the Minister of External Affairs, op. cit.

Tobago communications might have been partially due to the change in the Venezuelan Government and the consequent need for that country, to nominate new representatives to the Joint Commission.[28] This, however, could in no conceivable way have diminished the frustration and dissatisfaction of the Trinidad and Tobago authorities with respect to the implementation of the Joint Trinidad and Tobago/Venezuela Fishing Agreement.

The continued frequent arrests or harassment of Trinidad and Tobago fishermen while in Venezuelan waters notwithstanding the declared self-imposed policy of restraint on the part of both countries pending the full implementation of the Agreement, only served to further deteriorate the state of diplomatic relations between the two countries.

THE THIRD MEETING OF THE JOINT COMMISSION AND AFTER

The Third Meeting of the Joint Trinidad and Tobago/Venezuela Commission was eventually convened in Caracas on November 7, 1979 with a resumed session taking place in Port-of-Spain on November 28, 1979. At this Session, the number of permits to be granted to Trinidad and Tobago fishermen was increased to a total

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[28]The new COPEI regime assumed office in March 1979 following elections of some six months earlier.

of sixty at which level it remained until the eventual expiry of the Agreement in 1984.[29]

From this Third Meeting held in November 1979, to the Seventh Meeting held in April 1983, the Trinidad and Tobago/Venezuela Fisheries Commission was required to deal with a host of problem-areas which impeded the effective implementation of the Fishing Agreement. The main problem-areas may be highlighted as follows:

(i) The activities of the Commission itself including the infrequent nature of its meetings;

(ii) Problems arising from differing approaches to even fundamental provisions of the Agreement;

(iii) The continued harassment of Trinidad and Tobago fishermen and their effective denial of fisheries access to the special areas by the Venezuelan Coast Guard contrary to both the letter and the spirit of the Fishing Agreement;

(iv) The number of fishing licences granted and the delays encountered in their processing and distribution;

(v) Difficulties encountered in the landing of the stipulated fifty percent of the catches by fishermen of both countries in the territory of the other Contracting Party;

(vi) The fact that no joint-venture enterprises emerged under the Agreement notwithstanding the provisions of its Article VIII;

(vii) The fact that, notwithstanding the significance of fisheries information as the most important fisheries management

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[29]The number of permits actually issued was increased from 30 to 57 on February 20, 1980, increasing by a further 3 to 60 on May 30, 1980.

> tool, only a basic and minimal level of joint marine scientific research had been undertaken despite the provisions of Articles IX and X of the Agreement.

The central issue before the seventh meeting of joint Trinidad and Tobago/Venezuela Fisheries Commission held in Caracas during the period April 6 to April 8, 1983, was the imminent expiry of the Agreement after agreed extensions and the need to either conclude a new Agreement or to secure yet another extension of the 1977 instrument. In this connection, Venezuela had already served notice during the sixth meeting of the Commission held in July 1982, of its intention to terminate the existing Agreement unless satisfactory progress had been made towards the conclusion of a new one. In addition to its unfulfilled demands for access for its industrial vessels off the North Coast of Trinidad, Venezuela presumably saw in her receipt of 32 permits from Trinidad and Tobago, as against the 60 granted by her to that country, an imbalance in the distribution of benefits provided by the 1977 Agreement. In the event, the Agreement was further extended on a provisional basis for a period of one year from May 8, 1983 during which time a new Agreement was expected to be negotiated and signed.[30]

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[30]See El Nacional, Caracas, May 10, 1984.

THE EXPIRY OF THE 1977 AGREEMENT AND FURTHER DEVELOPMENTS IN TRINIDAD AND TOBAGO/VENEZUELA FISHERIES RELATIONS

The first meeting convened to negotiate a new Trinidad and Tobago/Venezuela Fishing Agreement took place in Port-of-Spain, Trinidad, during the period May 16 to 18, 1983. It will be recalled that the decision to convene this meeting was taken at the seventh meeting of the Joint Trinidad and Tobago/Venezuela Fisheries Commission, which agreed that the 1977 Agreement should be extended for an additional period not exceeding one year with effect from May 8, 1983, during which period a new Agreement was expected to have been negotiated and signed. That this first meeting was unsuccessful in concluding a new Agreement is now a matter of historical record. Indeed, the more than twelve months which elapsed after the seventh meeting of the Fisheries Commission, proved an insufficient period of time for the negotiation of a new Trinidad and Tobago/Venezuela Fishing Agreement. A second round of negotiations aimed at the conclusion of a new Agreement took place in Caracas during the period November 3-4, 1983.[31] This, too, proved unsuccessful. Indeed, once it was learned that November 1983 was the date of the second round of negotiations, it was clear that the 1977 Agreement would pass away, in accordance

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[31] See El Diario de Caracas, November 4, 1983.

with the decision of the Fisheries Commission and emphasised by the then Foreign Minister of Venezuela, Jose Alberto Zambrano Velasco during his visit to Trinidad and Tobago in May 1983, without, in all probability, any new Agreement having been signed. This conclusion was reached, however, with reference to a variable which, on the face of it, is exogenous in respect of fisheries activities but which nevertheless must have been quite relevant. Reference is here being made to the Venezuelan political calendar.

By November 1983, the date which had been fixed for the second round of negotiations to conclude a new Trinidad and Tobago/Venezuela Fishing Agreement, it was already known that national Presidential elections were scheduled to take place within a matter of weeks, in December 1983. The reluctance of administrations to enter into new international commitments during their final days in office is almost as axiomatic as it is inevitable. On the basis of this observation, it would have been somewhat rash to have expected a new Fishing Agreement to be concluded in November 1983. Moreover, any new administration would assume office only in March 1984. The programmed expiry of the Trinidad and Tobago/Venezuela Fishing Agreement in early May, 1984, allowed, therefore, a mere two months for the new Administration to settle into office, field negotiating

teams and to generally undertake all the other administrative as well as political operations which are reasonably expected to take place in such circumstances. The third meeting aimed at the negotiation of a new Trinidad and Tobago/Venezuela Fishing Agreement was not convened until Friday May 4, 1984, a mere four days before the existing agreement was due to expire. The outcome of that meeting was adequately reflected in the Venezuelan press, according to which

> "the Trinidad and Tobago/Venezuela Fishing Agreement expired yesterday without any agreement having been reached on a new judicial instrument as had been hoped and without any consideration having been given to the extension of the old Agreement."[32]

By May 1985, fisheries, the area over which relations between the two countries had been stormiest, but which eventually and for several years, provided the only basis on which any meaningful contact took place between the two countries, remained unregulated. Meanwhile, traditional fishing pursuits, linked also to the "community" that has developed among the fishermen of both countries and generally with the people of the Venezuelan coastal areas--extending sometimes to the

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[32]See El Diario de Caracas, Wednesday May 9, 1984. A similar report was published in El Nacional of Thursday May 10, 1984.

existence of family ties on both sides of the water--continued, in breach of customs, phytosanitary, immigration and other laws and regulations of the respective countries.

Finally, it must be noted that the negotiating session held in May 1984, was adjourned sine die.[33] Since that date, however, two further formal negotiating sessions were convened; one in Caracas in October, 1984, and the other in Port-of-Spain in May 1985. These initiatives also failed to produce a new Trinidad and Tobago/Venezuela Fishing Agreement. Eventually a new Agreement was signed in Port-of-Spain on 26th November, 1985.

MAJOR CONSIDERATIONS IN THE NEGOTIATION OF THE 1985 TRINIDAD AND TOBAGO/VENEZUELA FISHING AGREEMENT

The negotiation of a new Trinidad and Tobago/Venezuela Fishing Agreement was bound to be a difficult task given of the needs and perceptions of both countries, their difficult and disadvantaged geographical location and the current status of the International Law of the Sea. In this last respect, the 1982 Convention provides that:-

> "Geographically disadvantaged States will have the right to participate on an equitable basis, in the exploitation of an appropriate part

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[33] El Diario de Caracas, May 10, 1984.

> of the surplus of the living resources of the Exclusive Economic Zones of Coastal States of the same subregion or region..."[34]

Further...

> "The terms and modalities of such participation shall be established by the States concerned through bilateral, sub-regional or regional agreements..."[35]

With respect to the respective needs and perceptions of Trinidad and Tobago and Venezuela, it is interesting to note a report in the Venezuelan Press, two days after the expiry of the Trinidad and Tobago/Venezuela Fishing Agreement according to which

> "although we have not been able to verify the reasons for the delay in concluding a new Agreement, it has been alleged that the deadlock has been caused by the demands made by the Trinidad side."[36]

What could have been the nature of such "demands"? Trinidad and Tobago's interest in a new Fishing Agreement with Venezuela would be in the first place, to secure a set of arrangements that are effectively administered. Based on its experience with the 1977 Agreement, such arrangements would need to set out

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[34]Article 70.1.

[35]Article 70.3.

[36]Article entitled "Trinidad and Venezuela" in El Nacional, Caracas, 10 May, 1984.

clearly, provisions relating to the entry into force of the Agreement; the timely processing and distribution of fishing permits so as to avoid the eighteen (18) month delay which Venezuela required to issue an "acceptable" number of permits; an increase in the number of such permits; the matter of the quorum for the Fishing Commission inasmuch as the existence of a vacancy on that body also had the effect of delaying its work; and other measures related to the effective and predictable functioning of the Agreement. With respect to "demands" as may have created an impasse in the Trinidad and Tobago/Venezuela negotiations, it might be surmised that, given the problem of the continued harassment of Trinidad and Tobago fishermen by the Venezuelan Coastguard while perforce transiting the two-mile conservation area in which fishing is forbidden, Trinidad and Tobago, rather than suggest the imposition of curbs on the powers of the Venezuelan Coast Guard--which would have been impolitic--might have suggested a modification of the limits of the Special Areas within Venezuelan waters in which Trinidad and Tobago fishermen may carry out their activity. This was one area that stood out as being likely to produce an impasse in the negotiation of a new Trinidad and Tobago/Venezuela Agreement. On the other hand, in the newspaper article last quoted,

Trinidad and Tobago might have been receiving criticism for the concessions that had been refused Venezuela. The demand on Venezuela's part for trawlers to operate off the North Coast of Trinidad has already been noted. In addition, the declared intention of the Government of Trinidad and Tobago to legislate into existence its Exclusive Economic Zone and Archipelagic State Regimes, clearly threatened Venezuelan access to substantial areas off the coast of Trinidad and Tobago which hitherto had enjoyed the status of "high seas". But what, on the other hand, might have been the needs or "demands" as well as the perceptions of the Venezuelan negotiators?

According to an article in the Venezuelan press which offers the nearest and most easily accessible appreciation of views expressed in the society,

> "the idea of drafting a new instrument on the Venezuelan side was deemed necessary for technical reasons and the need for greater precision."[37]

This could be interpreted as alluding to the need for spelling out in technical and precise detail, provisions which, in the 1977 agreement, were either generally vague or essentially hortatory. Provisions relating to joint-venture enterprises might have been

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[37]Article entitled "Venezuela and Trinidad Return to 1977" in El Diario de Caracas, May 9, 1984.

cases in point. But the matter was obviously of greater complexity. For example, the Director of Fisheries Development, of the Venezuelan Ministry of Agriculture and Livestock, Dr. Favio Alvino Cebrian, was quoted, a matter of days after the assumption of office by the new Administration, as saying that:-

> "Our country will revise the content and scope of those international agreements which have to the present time, regulated the development of fishing activity."[38]

This remark, the article points out, was made in the context of current attempts by Venezuela to negotiate a new Fishing Agreement with Trinidad and Tobago. In this connection, Dr. Cebrian is quoted as stressing the fact that

> "...the new agreement would include conditions that are more favourable to our country from the economic point of view and equally with respect to the national exploitation of the fisheries resources."

This reference suggests, not only that Venezuela intended to obtain increased benefits or concessions under any new agreement, but also the allusion to "rational exploitation" does suggest that there might have been some envisaged reduction in the benefits or concessions granted to Trinidad and Tobago by Venezuela

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[38]Article entitled "Venezuela Revisara los Convenios Internacionales de Pesca," in El Universal, 18 May, 1984.

under the 1977 Agreement. In other words, some trend towards renewed Venezuelan "maritime expansionism" might be discerned.

A most extensive and interesting illustration of the possible perceptions that might condition the Venezuelan approach to the negotiation of a new Trinidad and Tobago/Venezuela Fishing Agreement is provided in yet another newspaper article which appeared in the Venezuelan press on 8 May, 1984, the date on which the 1977 Agreement finally expired.[39]

In this article, it is stated that:[40]

> "For several weeks negotiations on a new agreement have been taking place alternatively in Caracas and Port-of-Spain. The issue would not attract great attention if considered in isolation but such is not the case if we view the matter in the global context of the international relations of our country and particularly in the context of the frontiers issue and our relationship with the countries of the region, areas in which Venezuela has generally not fared very well."

Further...

> "For their part, Trinidadian fishermen have been operating in the Gulf of Paria in search of shrimp using "trawling" as their fishing

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[39]Article by Adolfo P. Sagueiro "Negotiation: Venezuela/Trinidad and Tobago Fishing Agreement" in El Universal, 8 May, 1984. The article was, obviously written some days before its publication.

[40]All emphases in the excerpts have been added.

method which is extremely damaging from the environmental point of view. In this way they have exhausted the shrimp stocks of their side and by means of the 1977 Agreement, they obtained access to Venezuelan internal waters in the region of the Orinoco Delta. In exchange for this access to areas under Venezuelan sovereignty the Trinidadians grant a limited number of fishing permits to Venezuelan fishermen affording them access to the territorial sea, contiguous zone and exclusive economic zone to the north of their island, an area that is of no particular interest because of its low productivity. The Trinidadians do not wish to give, and have not given Venezuela access to the areas off the East Coast of Trinidad which are indeed interesting and profitable.

As a result we find ourselves once more facing a picture of Venezuela coming out on the losing side in its relations with its neighbours..."

Moreover,

Now that our resources have declined our influence has done likewise, demonstrating once more that money does not buy friends but opportunist solidarity; so much more in the case of our Caribbean neighbours with whom we are linked only by the co-ownership of a maritime basin and from whom we are separated by ethnic, cultural, historical, religious and linguistic barriers as well as differences of interest.

"All this is very easily seen in the discourtesy with which Venezuelans are treated almost throughout the Caribbean; the hostility of their governments and the absolute lack of solidarity with the Continental Latin-American cause to which these peoples, perhaps with reason, do not

feel linked. This is very different from the case of the twenty-one (21) original member states of the OAS which have been, and are, linked to us by active ties of brotherhood derived from a common heritage and similar problems which are tantamount to common interests, notwithstanding slight differences.

Fishing and related matters are not our specialty but we are aware of the fact that our neighbours have cleverly taken advantage of our weakness in being magnanimous and are now trying to continue doing the same for several years more to the detriment of our interests, without making us an equivalent offer in return.

It is for this reason that with a profound sense of Venezuelan nationalism and not without a continental vision, we exhort our Foreign Ministry to maintain a negotiating stance which, without necessarily being intransigent should be firm and unyielding. What is needed now is to recover ground without yielding any further. If on the 8th May, there is no Agreement, it would not matter if each country were to confine the activity to its own waters, and we Venezuelans can redirect the fishermen from Margarita to their areas of the Caribbean where it has been shown that there is an abundance of fish without having to allow foreign fishermen in the mouth of our Delta or in the waters of the River and without having to deal with the disagreeable incidents such as the complaints and arrests that have taken place in the area."

After directing a vitriolic attack on "the Surinamese Dictator" and the fisheries regulations of that country, the article stirringly concludes:

> "Compatriots, the stream of black gold which once remedied everything, has stopped; today we need to defend the interest of Venezuela to the hilt and on all fronts however removed and irrelevant they may seem to us."

The sentiment expressed in this Article are a far cry from those which were expressed in the same newspaper just ten years earlier. The status of the Venezuelan shrimp fishery was then quite different. According to an article by Oscar Lugo Gonzales,[41] who quotes a study co-sponsored by the FAO, the Venezuelan Ministry of Agriculture and Livestock and the Venezuela Guyana Corporation,

> "the Venezuelan Fisherman in the Gulf of Paria and the Orinoco Delta areas does not know how to fish for shrimp, nor does he have the instruments or equipment necessary for such a task."

In the same article, the view was expressed that

> "if the new Government approaches the solution to the problem by granting conditional fishing permits to the Trinidadians, it would succeed in integrating the economic interests of both countries within the context of conservationist and nationalist criteria because of the following reasons:
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> (i) It would help Venezuelan fishermen learn the shrimping technique;

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[41] See Article entitled "A Situation that must be Corrected: Trinidad takes away much of our Fishing Resources in the East," in El Universal, Caracas, 22 April, 1974. All emphasis added.

(ii) It would help Venezuelan producers in the area;

(iii) It would considerably increase the economic development of nearby towns;

(iv) The Trinidadian fishermen would benefit economically."

Whatever the merits of the respective perceptions and aspirations harboured by Trinidad and Tobago and Venezuela in the context of the negotiation of a new Fishing Agreement, the complexity of the issues involved, if not their absolute number, presented a most daunting task. Further complications were introduced by the fact that such an Agreement would operate in the context in which fishing was but one element, and would have had to relate to the existence of a range of other sociological, political and economic issues such as those related to the existence of common families on both sides of the Gulf of Paria and also to contraband activities. What was even more ominous, was that it appeared certain that on the basis of these and other considerations earlier mentioned, that the "traffic" between Trinidad and Tobago and Venezuela would continue whether or not a new Fishing Agreement was ever concluded between the two countries.

Thus far, one major obstacle has been identified as having been responsible for the impasse in the Trinidad and Tobago/Venezuela negotiations aimed at the

conclusion of a new Fishing Agreement. This obstacle refers to the desire, on the part of Venezuela, to secure access for its fishing operatives to what would eventually be Trinidad and Tobago's exclusive economic zone, off the east coast of the island of Trinidad. This suggestion is corroborated by the contents of an interview granted by the then Foreign Minister of Venezuela, Dr. Isidro Morales Paul to the Venezuelan Press.[42] In the report of the interview published, this authoritative source is quoted as having

> "...explained that the political will exists for the conclusion of a new Agreement which among other things has been complicated by the desire of Venezuelan fishermen to operate in the area east of Trinidad and Tobago."

The Foreign minister also reportedly indicated that

> "...the President of the Republic of Venezuela, Jaime Lusinchi, has issued instructions to seek to obtain "logical and reasonable solutions which would prejudice neither the interests of Venezuela nor of Trinidad."

In addition,

> "difficulties had arisen during the negotiations for a new Agreement as a result of conflicting interests... which...were not insuperable."

In another Venezuelan Press report, a representative of the Venezuelan Ministry of

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[42]See Article "Morales Paul spoke about Fishing Agreements" in El Diario de Caracas, 17 May, 1984.

Agriculture and Livestock, and a member of the Venezuelan negotiating team on the Fishing Agreement suggested

> "the need to sign a bilateral agreement as a matter of urgency..."[43]

This source of information also provided further indications of the then outstanding issues to be resolved in the context of a new Trinidad and Tobago/Venezuela Fishing Agreement, by reference to

> "...the need to decide on the type of boats, size of crews, the operating capacity of boats to be licensed, as well as other aspects such as protection of the marine environment."

These issues identified by the representative of the Venezuelan Ministry of Agriculture and Livestock, related to what would be core issues in any proposed fisheries access agreement. Taken together, the type of boats, the size of crew and the operating capacity of boats to be licensed, provide a direct indication of the fishing effort and the fishing power of the operatives to which a country's fisheries resources are to be exposed. That the negotiation of a new Trinidad and Tobago/Venezuela Fishing Agreement proved to be an intractable exercise, is therefore hardly surprising.

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[43]See excerpt of interview with Antonio Gines in Article entitled "Lack of an Agreement with Trinidad and Tobago" in El Nacional, Caracas, 17 May, 1984.

Of primary significance for this thesis, however, is the fact that the need to grapple with these "intractable" core issues on the present scale, in the context of a proposed Trinidad and Tobago/Venezuela Fishing Agreement, had been brought about by

> "...the fact that in recent years the legislation of both countries with respect to their marine areas has been modified in accordance with the new concepts that have been established for the Law of the Sea."[44]

In a word, it is the introduction of the Exclusive Economic Zone regime that had required recourse to the instrumentality of fishing agreements on the present scale with all the problems that are inherent in this innovation in the International Law of the Sea.

Following the May 1985 round of negotiations on a new Trinidad and Tobago/Venezuela Fishing Agreement, the matter appeared to have been further complicated and the conclusion of a new agreement further postponed by, inter alia, Venezuelan demands, according to which her signature of a new Fishing Agreement would be conditional upon the signature by Trinidad and Tobago,

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[44]See Article entitled "Technical Differences Delay Signature of the Fishing Agreement with Trinidad" in El Nacional, 25 May, 1984. It must be clarified that Trinidad and Tobago was yet to give legal expression to its declaration made on 29 April, 1983, of a 200 mile EEZ. The Venezuelans obviously viewed the eventual enactment of the appropriate legislation as inevitable.

of at least, a partial delimitation Treaty with Venezuela. Thus we had two major aspects of the EEZ problematique operating in tandem to the political disadvantage of Trinidad and Tobago.[45]

THE 1985 TRINIDAD AND TOBAGO/VENEZUELA FISHING AGREEMENT

The Fishing Agreement signed by Trinidad and Tobago and Venezuela on 26th November, 1985 was eventually ratified and therefore entered into force, on 7th May, 1986, the date on which the exchange of Notes took place as prescribed in its Article XII indicating the compliance by both Parties of the Legal formalities required by their respective constitutional procedures.[46] The text of this Agreement is attached as Appendix IX.

The new Agreement retains many of the features of its predecessor and, indeed, many of the provisions are

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[45]See "Venezuela wants definite Boundaries" Trinidad Express, June 25, 1985. The linking of the fishing and delimitation issues was also confirmed by the Permanent Secretary, Ministry of External Affairs, leader of the Trinidad and Tobago delegation, during the course of an interview on Trinidad and Tobago Television on the evening of Friday May 31, 1985, following the conclusion of the last round of negotiations. See also the Joint Declaration issued by the Minister of External Affairs of Trinidad and Tobago and the Minister of External Relations of Venezuela in Port-of-Spain on 26 November, 1985.

[46]Information supplied by the Ministry of External Affairs and International Trade of Trinidad and Tobago.

identical. The new Agreement however represents a general improvement on the former, especially with respect to the consolidation of shrimping areas in Venezuelan waters to which certain Trinidad and Tobago fishermen enjoy access,[47] the designation of agencies for the disposal of catch,[48] and the strengthening of measures for the conservation and protection of the resources of the marine space falling under the jurisdiction of the respective Parties.[49] The new Agreement also promised to be a more effective instrument by virtue of the clearer definitions it contains with respect to the regimes applicable in the various fishing areas prescribed.[50] The institution of the Fisheries Commission has also been retained as the body responsible for overseeing the implementation of the Agreement.[51] In the context of this thesis, the most remarkable innovative feature of the new Agreement is the provision it makes for access by thirty (30) Venezuelan boats to the Fisheries resources of the

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[47]Articles II and III.

[48]Articles III and V.

[49]Articles VI and VIII, among others.

[50]Articles II - V.

[51]Article VIII.

Exclusive Economic Zone of Trinidad and Tobago subject to the payment of an annual fee of US$200 and the recognition of a three month conservation period.[52]

SUMMARY APPRAISAL OF THE 1985 AGREEMENT

The 1985 Agreement provides for, inter alia, access for sixty (60) Trinidad and Tobago artisanal fishing vessels to the shrimp resource in the "Special Area" in Venezuelan internal waters during a fishing season extending from 1 December to 30 June.[53] Against this, however, is the access permitted for thirty (30) Venezuelan trawlers to operate in the Exclusive Economic Zone of Trinidad and Tobago in addition to the forty (40) permits allowed to Venezuelan artisanal fishermen to operate in the "Area North of Trinidad."[54] On the basis of the foregoing and related provisions of the Agreement, it has been suggested that under the 1985 Agreement, the balance of advantages is weighted in Venezuela's favour.[55] In this connection, it may also be useful to bear in mind that the overall

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[52]Article V.

[53]Article III.

[54]Article IV.

[55]See Editorial, Trinidad Guardian, 6 December, 1985.

question of the conclusion of a Fishing Agreement with Venezuela especially as it relates to the securing by Trinidad and Tobago of permits for its fishermen to operate in Venezuelan waters, has, as can be gauged from almost weekly press reports, acquired great prominence in the national political arena. It may therefore be that, in at least this short-term cost-benefit appraisal of the 1985 Agreement, the Trinidad and Tobago authorities paid due attention to this fact.

Implementation of the 1985 Trinidad and Tobago-Venezuela Fishing Agreement

A major obstacle to the effective implementation of the 1985 Agreement, as indeed of its predecessor, has been the numerous reported incidents involving the detention, arrest and even shooting of Trinidad and Tobago fishing vessels, the confiscation of catches and gear as well as the alleged infliction of corporal punishment on Trinidad and Tobago fishermen by members of the Venezuelan National Guard. Numerous fines have also reportedly been levied by the Venezuelan Ministry of Agriculture and Livestock which also has responsibility for "fishing".[56]

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[56]See, for example, reports in the Trinidad Guardian, of 16 January 1987 and 13 February, 1988. Also the Trinidad Express of 3 February, 1988; 12 February, 1988; 24 February, 1988; 3 March, 1988; 7 March, 1988 and 6 April, 1988, among many others.

On the more substantive aspects of the Agreement, any progress with respect to the implementation of the Agreement may be gauged by reference to the work of the Fisheries Commission. In a statement made in the Trinidad and Tobago Parliament on 27 March, 1987, by the Minister of External Affairs, International Marketing and Tourism, certain aspects of the work of this body were reported.[57] At its Second Meeting held on 10th March, 1987, the Commission's deliberations were said to centre on the following main topics:

(i) Implementation of the Fishing Agreement;

(ii) Cooperation in Fisheries Research;

(iii) Cooperation in Planning of Joint Ventures; and

(iv) Issues related to the Control of Activities.

In connection with the foregoing, agreement was reported to have been reached with respect to the finalization of arrangements for the sale by Trinidad and Tobago fishermen of fifty (50) percent of their catch to stipulated Venezuelan companies. Prices as well as a definitive collection site had also reportedly been agreed. Further, agreement was also reportedly reached with respect to the streamlining of procedures for the timely issue of fishing permits.

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[57]See News Release No. 348 dated 30 March, 1987. Issued by the Information Division, Office of the Prime Minister of Trinidad and Tobago.

Some modest progress was also reported in the area of Joint Fisheries Research as a basis for, inter alia, the conduct of joint venture operations. With respect to "Control of Activities", a programme of four exchange visits was scheduled between the Trinidad and Tobago Coast Guard and the Venezuelan National Guard. Three of these visits which aim at the promotion of general understanding between the enforcement agencies of the two countries by means of the establishment of radio and other communication regimes; safety measures; reporting and detention procedures and the general exchange of information, have reportedly taken place.[58]

It is worth noting that a major contribution toward the more effective implementation of the 1985 Fishing Agreement was made by the Trinidad and Tobago authorities through the opening of a Consulate in Tucupita, capital of the Federal Territory of Delta Amacuro on 22 June, 1986.[59] The establishment of a full-time presence in an area relatively near to the fishing area, the site of most "incidents", and to the more generally used detention centres, has reportedly brought benefits with respect to the treatment of

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[58]See El Diario de Caracas, 23 April, 1987 and The Daily Journal, Caracas, of the same date.

[59]See Trinidad Express, 23 June, 1986 and Trinidad Guardian, 24 June, 1986.

Trinidad fishermen by the Venezuelan authorities and to the speedy processing of cases.

Detracting somewhat from the general positive listing of achievements by the Fisheries Commission with respect to the implementation of the 1985 Agreement, are indications received through recent conversations with Trinidad and Tobago permitted fishermen, that arrangements for their sale of a portion of the catch at the agreed site have not been working satisfactorily due, mainly, to the risk factor born of rough seas in the specified area. The matter is reportedly before the Fisheries Commission for resolution even if the government of Trinidad and Tobago has reportedly unilaterally approved the sale of catches by Trinidad and Tobago fishermen at Icacos.[60] Discussions with Trinidad and Tobago as well as with Venezuelan officials suggest that the range of issues discussed by the Fisheries Commission at its second meeting, is representative of the main areas of concern that have arisen during the four meetings held up to September 1988.[61]

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[60]See Trinidad Guardian, 4 July, 1987.

[61]See also News Release No. 835 dated 13 June, 1988. Information Division, Office of the Prime Minister of Trinidad and Tobago for a summary agenda of the Fourth Meeting of the Commission.

Some Final Observations

According to its article XIII.2, "The Present Agreement shall have a duration of two (2) years." Given its entry into force in May 1986, the Agreement expired in May, 1988. In accordance with Article XIII.3, however, the Contracting Parties have decided to extend the Agreement for an additional period of one (1) year during which time a new Agreement is expected to be negotiated. The first round of negotiations aimed at the conclusion of a third Fishing Agreement between Trinidad and Tobago and Venezuela convened in Caracas during the period 5-7, September, 1988. A second round convened in Port-of-Spain during the period, 21-23, September, 1988.[62]

TRINIDAD AND TOBAGO/BRAZIL FISHERIES RELATIONS

EXTENSION OF BRAZILIAN MARITIME JURISDICTION

On November 18, 1966 Brazil extended its territorial sea from 3 to 6 miles with an additional six-mile contiguous zone.[63] On 25 April, 1969, Brazil

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[62] Information supplied by the Frontiers Directorate of the Venezuelan Ministry of External Relations. See also Trinidad Guardian, 21 September, 1988.

[63] See Morris, "Maritime Policy of Brazil" in Marine Policy Reports, Vol. 5, No. 5, May 1983, College of Marine Studies, University of Delaware, U.S.A., pp. 1-5.

further extended its territorial sea to 12 miles. Decrees of 1966 and 1969 again extended, but only moderately, national offshore areas "in ways regarded at the time as legitimate,"[64] thus evoking no protests by the United States of America or other maritime powers. Then on 25 March, 1970, a Brazilian decree declared a 200 mile territorial sea[65] which drew strong protests on the part of the United States and other maritime powers.[66] However, on 9 May, 1972, reflecting a reconciliation of United States and Brazilian positions, a United States/Brazil Shrimp Conservation Agreement provided, inter alia, for the licencing of United States fishing vessels by Brazil and for cooperation on the part of the two countries toward the development of the Brazilian fishing industry. Since that time, Brazil, unlike the United States of America, voted on 30 April, 1982 for the adoption of the 1982 Convention, though presumably with an expansive interpretation of the rights within the regime created by the Convention in respect of the EEZ as it relates to coastal states.

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[64]Morris, op. cit.

[65]Decree No. 1098. See also Trinidad Guardian, 26th March, 1970.

[66]See Brazilian Herald, 4th June, 1971.

It is also worthy of note that Brazil has the second largest Exclusive Economic Zone of all Third World States, and, with the largest and most powerful navy in Latin America, enjoys the greatest regional flexibility in EEZ enforcement.[67] All this is related to the rise of Brazil within recent times, to the status of a middle power which propels it not only towards regional leadership generally but also to a special interest in maritime affairs.

Following its Decree Law No. 1098 of March, 1970, another Decree, No. 68459 was promulgated on 1 April, 1971 which "Regulates fishing, in order to insure rational utilization and conservation of the living resources of Brazilian territorial waters."[68]

Up to 1970, shrimp boats from Trinidad and Tobago as well as from Barbados, Guyana, Suriname and French Guiana operated in what were then areas of high seas, beyond 12 miles of the Brazilian Coast. With the coming into effect of Decree No. 68459 on 1 June, 1971, the shrimping industries of these countries were threatened. In 1970, it was estimated that some 60 percent of the shrimp processed in Trinidad and Tobago were obtained in Brazilian waters. Loss of access to

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[67]Morris, op. cit.

[68]'Informal Translation' provided by Permanent Mission of Brazil to the United Nations, New York.

Brazilian shrimping grounds would also have cost some 608 jobs and an annual loss of foreign exchange estimated at some US$2 million. In addition to the loss of employment and foreign exchange, the companies involved in this industry also stood to incur financial losses in the form of loss of revenue and in the form of loss of capital funds that had already been committed to the construction of a new shrimp-processing facility.[69]

The coming into effect of Decree Law No. 68459 on 1 June, 1971, provided the impetus to Trinidad and Tobago to commence negotiations with the Brazilian Authorities aimed at the conclusion of a bilateral fishing Agreement such as would guarantee continued access by Trinidad and Tobago shrimp boats to waters now falling under Brazilian jurisdiction.

DIFFICULTIES IN THE DEVELOPMENT OF TRINIDAD AND TOBAGO/BRAZIL FISHERIES RELATIONS

Trinidad and Tobago concluded shrimping agreements with the Government of Brazil thus securing access by Trinidad and Tobago trawlers to the shrimp resources of Brazil for the period 1972-1977. Delegations representing the Governments of Trinidad and Tobago and Brazil met in Brasilia in January, 1975, to renegotiate

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[69]Letter dated 7 May, 1970 from the Managing Director of International Food Limited. Source: National Fisheries Company of Trinidad and Tobago.

the Agreement on Shrimp Fishing signed by the two Governments in 1972 and which was in force until 31 December, 1974.[70] Out of these negotiations emerged the Brazil/Trinidad and Tobago Shrimp Fishing Agreement 1975. This Agreement entered into force on 28 February, 1975 through an exchange on Notes by the two Governments.

Before 1977, by virtue of he Agreements mentioned, Trinidad and Tobago trawlers fished in Brazilian territorial waters in consideration of a payment to Brazil of a fixed fee. Under these Agreements, Trinidad and Tobago vessels were permitted to take their entire shrimp catches to Trinidad and Tobago.

Since 1977, the policy of the Brazilian Government requires that all boats fishing in its territorial waters be based in Brazil and discharge their entire catch at a Brazilian port. Indeed, as early as January 1975, it had been suggested by the Brazilian Authorities that the format of any further agreement from 1978 onwards would be revised.[71] In this context,

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[70] See Exchange of Notes between the Government of Trinidad and Tobago and the Government of the Federative Republic of Brazil Constituting the Brazil/Trinidad and Tobago Shrimp Fishing Agreement in Trinidad and Tobago Treaty Series, No. 2, (1975).

[71] FAO Document Reference. FI:GCP/INT/398 (NOR) dated January 1983 containing the "Report of the EEZ Policy and Planning Mission to Trinidad and Tobago."

it was indicated that any agreement for the exploitation of their fishery resources would have to provide the framework for the establishment of joint ventures between Brazil and Trinidad and Tobago. Negotiations aimed at the conclusion of a new Agreement commenced in early 1976 and concluded on 8 May, 1978, with the signing of a bilateral Umbrella Agreement to regulate fishing by Trinidad and Tobago operatives in Brazilian waters. The Umbrella Agreement of May 1978, attempted to provide the basis for the formation of a Joint Venture Company between the National Fisheries Company and a Brazilian Company.

Prolonged and difficult negotiations took place between the National Fisheries Company and Empesca Norte, of Brazil on the formation of a joint company. Since Tr nidad and Tobago's principal objective in gaining fisheries access to Brazilian territorial waters was to obtain raw material for the processing plant owned by the National Fisheries Company, Trinidad and Tobago negotiators sought to conclude arrangements, contrary to the provisions of Brazilian law, according to which a trawler fleet would operate out of Port-of-Spain and discharge its catch not in Brazil but at the National Fisheries Company in Trinidad and Tobago. Negotiation of this basic and sensitive issue was bound

to be difficult.[72] On the other hand, the inability to obtain a waiver of the Brazilian regulations would have had the effect of rendering the bilateral agreement meaningless, at least from the Trinidad and Tobago point of view. In that case, attention would have had to be shifted to the also resource-rich waters of Guyana, or alternative uses would have had to be found for the shrimp processing and trawler maintenance facilities already installed in Trinidad and Tobago.

The proposed Joint Venture Company between Trinidad and Tobago and Brazil was also seen as the solution to certain problems which prevented the conclusion of a fleet-leasing arrangement with another Brazilian Company in 1978, as a result of objections raised by the Brazilian naval authorities. For their part, these authorities insisted that all trawlers authorized to fish in Brazilian territorial waters be required to operate from a Brazilian base-port. In this way, and from their point of view, the movement of all trawlers in the Brazilian territorial waters would be better controlled. From the Trinidad and Tobago point of view, however, such a requirement could only have a negative effect on the finances of a joint venture company which could not thereby be able to take

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[72] See FAO Document: FI:GCP/INT/398 (NOR) dated January, 1983.

advantage of the low cost and easy availability of fuel in Trinidad and Tobago. Objections were also raised by the Brazilian navy to any contemplated exceptions to the requirement that the export of fish caught in Brazilian waters be prohibited unless it was first physically discharged at a Brazilian port.

Difficulties arising in the negotiation of the Trinidad and Tobago/Brazil Joint Venture in Fishing may be summarized with respect to the following "demands" of the Trinidad and Tobago negotiators with respect to:

(a) An "understanding" with the Brazilian Government allowing trawlers of the joint venture to operate from Port-of-Spain;

(b) An allocation of a quota of trawlers to the joint venture company by the Brazilian Government;

(c) A clear statement by the Brazilian Government authorising discharge in Port-of-Spain of shrimp caught in Brazilian waters;

(d) The financial soundness and corporate reputation of the Brazilian partner.

For some eighteen months during the period mid-1978 to the end of 1980, all efforts to establish a joint-venture between Trinidad and Tobago and Brazil failed. This was due largely to the insurmountable "bureaucratic problems" as mentioned above and also because of internal company problems at the National Fisheries Company.[73] In the circumstances, nothing of

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[73]See FAO Document FI :GCP/INT/398 (NOR) dated January 1983.

significance was accomplished by the way of progress towards the implementation of the Umbrella Agreement.

In early 1981, however, after an effort that involved intervention at the highest diplomatic and political levels, Trinidad and Tobago was able to have the joint venture question once more on the action calendar of Trinidad and Tobago/Brazil relations. This effort resulted in the selection of a Brazilian Company, Leal Santos Pescados S.A. by the Government of Brazil to negotiate with the National Fisheries Company of Trinidad and Tobago under the aegis of the Umbrella Agreement. Eventually in April 1981, following an intensive series of meetings, an agreement was signed between the two companies. The main elements of this Company--Company Joint Venture suggest a substantial achievement on the part of Trinidad and Tobago.

According to the Agreement, National Fisheries Company was empowered to lease to Leal Santos up to thirty trawlers to operate and fish out of the Brazilian port of Belem. However, the fuel for the trawlers was to be provided from Trinidad and Tobago thus contributing to a reduction in operating costs. In addition, the shrimp caught by the trawlers was to be exported from Belem to Trinidad and Tobago. With respect to the Brazilian inputs into the enterprise and reflecting the substantial gains scored by the National

Fisheries Company, the lease paid for trawlers by Leal Santos was to be fixed at the level of export value of the shrimp catches less operational expenses in Belem. Also, the Leal Santos share in the joint-venture was fixed at five percent of the export value of the catches.

With this solid body of achievements behind it, the Trinidad and Tobago partner envisaged commencement of operations at an early date. They had not however counted on the emergence of yet another major obstacle, this time in the form of regulations imposed by the Central Bank of Brazil according to which a twenty-five percent tax was to be levied on all currency remitted from Brazil.

From the Trinidad and Tobago point of view, the imposition of this tax would have rendered the venture unprofitable. Eventually, appeals were again made at the highest political level in Brazil, and a waiver on the tax was granted in March 1982. The way was then clear for the implementation of the Trinidad and Tobago/Brazil Company-to-Company Joint Venture Agreement in Fishing.

Additional concessions granted by Brazil to the joint-venture included the stated possibility of increasing the number of trawlers after the first year of operation depending upon performance. Such trawlers

were not required to be owned by National Fisheries but could be leased or chartered. Also, the Brazilian authorities reduced from seventy-five percent to sixty percent, the percentage of Brazilian crew which, according to their labour regulations, must be employed on vessels operating in Brazilian waters. In addition, the National Fisheries Company was permitted to retain its officer crew and to employ Brazilians only as deck crew.

At the time of the conclusion of the 1978 Trinidad and Tobago/Brazilian Fishing Agreement, Trinidad and Tobago was the only foreign country permitted to fish in Brazilian waters without having to land the catch at a Brazilian port.

FIN FISHING IN BRAZILIAN WATERS

With respect to fin fishing, by virtue of an "Act" signed by the Brazilian Minister of Agriculture in 1980,[74] a joint venture in fin fishing with Trinidad and Tobago was made possible with the automatic right to discharge the product in Trinidad and Tobago. To this end, a Memorandum of Understanding was signed by both countries. This was however never implemented.[75]

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[74]Act No. 02/80 CIRM-33/5 dated 22 May, 1980.

[75]Source: Ministry of Food Production, Marine Exploitation, Forestry and the Environment, Trinidad and Tobago.

SUMMARY COST-BENEFIT ANALYSIS OF THE TRINIDAD AND TOBAGO/BRAZIL JOINT VENTURE IN FISHING

While company records remain confidential, the benefits provided by the operations of the National Fisheries Company may be explored with reference to the foreign exchange earned on the export of shrimp caught in Brazilian waters and exported to countries such as the United States of America and Japan after processing. Also, the National Fisheries Company provides employment at its plant for some 325 individuals thus providing a livelihood for some 1,300-1,400 persons. Additional employment is provided for Trinidad and Tobago nationals at nationwide outlets of the National Fisheries Company. Finally, the contribution made by the operations of the National Fisheries Company to the constant supply of a protein-rich food-source must be taken into account. With respect to the assessment of the costs and benefits of the operations of the National Fisheries Company, it must nevertheless be borne in mind that fuel costs to registered fishing operatives in Trinidad and Tobago are considerably subsidized by the Government.

In the author's view, the extent of this subsidy, amounting to some TT$6 million for the period June-September, 1982 the latest period for which data are readily available, from the Petroleum Products Subsidy

Fund, implies that, in its absence, a totally different cost profile would have been evident in the operations of the National Fisheries Company resulting, most likely, in a decision not to proceed with the Trinidad and Tobago/Brazil Joint-Venture in Fishing. As it stands, the subsidy enables the National Fisheries Company to minimise its losses while, at the same time, generating employment as well as the other advantages mentioned above. At the present time, the Trinidad and Tobago/Brazil Joint Venture in Fishing is de facto suspended by virtue of the withdrawal by the National Fisheries Company of its trawlers from Brazil coupled with the tremendous instability that has been produced within the Company following recent fundamental changes in its management amid charges of corruption and other irregularities on the part of the former office holders and the institution of an investigation into the Company's operations. This latter development has not been without implications for the collection of data relevant to this thesis.[76]

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[76] See Trinidad Guardian, 10 November, 1987; 11 November, 1987; 18 November, 1987 and 9 March, 1988.

TRINIDAD AND TOBAGO/GUYANA FISHING RELATIONS[77]

Discussions between Trinidad and Tobago and Guyana on a Draft Agreement Concerning Fishing in the Fishery Zone of Guyana took place in Georgetown, Guyana during the period 7-8 March, 1978.

Before the Guyanese adoption of a 200 mile Fishing Zone in July, 1977, most of these waters enjoyed the status of high seas in which Trinidad and Tobago fishermen had traditionally fished without hindrance. By October 1977, Trinidad and Tobago vessels had ceased fishing in Guyanese waters. With respect to the negotiation of a Fishing Agreement, difficulties were encountered with respect to the following issues:-

(i) Whether a Memorandum of Understanding should be attached to an Agreement of this type;

(ii) The requirement by Guyana that Trinidad and Tobago vessels land 4,000 pounds of shrimp by-catch free of cost in Georgetown after each trip. This would provide Guyana with a valuable source of protein and also save foreign exchange;

(iii) Payment of a Guyanese $100,000 fishery zone fee by each Trinidad and Tobago fishing vessel wishing to operate in Guyanese waters. (No such fee had been requested by Cayenne or Venezuela);

(iv) An undertaking requested of the Government of Trinidad and Tobago that, for the duration of the Agreement, it would permit

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[77]This section is heavily indebted to the Office of the Director of Fisheries of the Ministry of Food Production, Marine Exploitation, Forestry and the Environment of Trinidad and Tobago.

nationally and privately owned Guyanese Fishing Vessels to obtain fuel in Trinidad and Tobago at local prices and to waive the conditions requiring Guyanese vessels receiving such fuel to land their catch in Trinidad and Tobago contrary to the Petroleum Regulations in force in Trinidad and Tobago;

(v) The scope of the Agreement. The Guyanese wished to limit the scope of the agreement to shrimping as opposed to including other types of fishing as was preferred by Trinidad and Tobago given the projected needs of its fish-processing plant;

(vi) Duration of the fishing season. The Guyanese declared a fishing season of 1st March to 31st October with only nationally owned Guyanese boats being permitted to operate in the low season. Trinidad and Tobago, for its part, has assigned great importance to access to the Guyanese zone during the Brazilian closed season which lasted from 1st December to 28 February.

(vii) Conditions imposed on the transiting of the Guyanese Fishery Zone since. In the view of the Trinidad and Tobago fishermen, the former regime of free passage no longer appeared to obtain in Guyanese waters.

In the overall view of the Trinidad and Tobago authorities, Guyana was seeking to impose unacceptable conditions on Trinidad and Tobago fishermen based on its perception that Trinidad and Tobago's need for fisheries access was absolute and driving. This having been said, the exclusion of, or the non-allocation of access rights to Trinidad and Tobago fishermen, would have the effect of increasing the risks inherent in over-dependence on one or two fishing areas. Trinidad and Tobago's preference would surely have been to

secure, or rather, to maintain access to all the waters of the ecosystem in which it is located.

Trinidad and Tobago's decision to reject Guyanese demands might have been partially prompted by the fact that, in the months following the adoption of a 200 mile Fishery Zone by Guyana and the consequent discontinuation of fishing activity in those waters by Trinidad and Tobago fishermen, there had been no evidence of adverse effects on the Trinidad and Tobago fishing industry. Also, access to other areas such as those off Suriname, offered the prospect of even better catch-rates. Nevertheless, a fish-processing plant was due to be opened shortly by the National Fisheries Company Limited so that access to Guyanese waters would have been viewed in a favourable light vis-a-vis the richer waters of Suriname because of the shorter distance and the consequently reduced fuel and other operating costs involved.

By September 1979, the question of the supply of fuel by Trinidad and Tobago to Guyanese fishing operatives was a source of some controversy and was reported to have "snarled negotiations to allow Trinidadians to fish in Guyanese waters..."[78] This statement was attributed to then Prime Minister Forbes

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[78]Newspaper Report supplied by Reuter (CANA) Georgetown 25 September, 1979 in Guyana Chronicle 27 September, 1979.

Burnham of Guyana. In the same report, Prime Minister Burnham was quoted as follows:-

> "We said, very well, we will wait until you recognise that there are two sides to the same 25 cents piece. You will keep your oil, and, we will keep our fish and shrimp."

PRESENT STATUS OF TRINIDAD AND TOBAGO/GUYANA FISHERIES RELATIONS

There is in existence a commercial Agreement between Guyana Fisheries Company Limited and the National Fisheries Company Limited of Trinidad and Tobago such as would allow the latter to process its entire shrimp catch in Trinidad and Tobago. The fish by-catch may however be processed in Guyana. This operation is however dormant.

BRIEF COMPARISON OF THE COMMERCIAL FISHING AGREEMENTS REACHED BETWEEN TRINIDAD AND TOBAGO AND GUYANA AND THOSE BETWEEN GUYANA AND BARBADOS AND CUBA

By 1978, Guyana had concluded Fishing Agreements with Cuba and Barbados. While these agreements are quite different in certain details, it is interesting to compare some of their provisions with those proposed to Trinidad and Tobago by Guyana.

THE BY-CATCH

The provision for this in the Guyanese agreement with Barbados is similar to that proposed for Trinidad and Tobago. In the case of the Cuban agreement,

however, practical considerations are advanced for a variation of the provision. Cuban vessels are to use a collector vessel and the amount of the daily by-catch shall not be less than 100 pounds. It is to be noted, however, that the Agreement with Cuba is a more comprehensive one embracing such elements as joint fisheries research and also the provision that Cuba must deliver the entire by-catch to Guyana.

OPERATING FEE

No annual operating fee is mentioned in the Barbados Agreement. In the Agreement with Cuba, the fee in respect of which provision is made is a Fishery Zone Fee applicable to all vessels of the same length operating from a base in Guyana. With respect to the Agreement with Trinidad and Tobago, the reference fee of $100,000 from which an annual operating fee is to be negotiated is that chargeable to a vessel flying a foreign flag and operating from a base outside Guyana.

FUEL CONCESSION TO GUYANESE FISHERMEN

No such concession is provided for in the Agreements with Barbados and Cuba. The proposal for concessions on fuel costs made to Trinidad and Tobago was therefore unique.

CLOSED FISHING SEASON

The Barbados Agreement provides for the same closed fishing season as that proposed to Trinidad and Tobago. The agreement with Cuba, on the other hand, permits year round fishing.

PROCESSING OF SHRIMP

The Agreement with Barbados provides for the landing of not less than fifty percent of the total shrimp catch in Guyana for processing. The Cuban agreement provides for a landing of twelve percent. In the proposal to Trinidad and Tobago, the figure originally specified was 100 percent.

SUMMARY

The demands made by Guyana of a fellow CARICOM country, appear to be generally greater than those made of non-CARICOM states such as Cuba and even the Koreas. This hardly squares with the attitude affected by Guyana, according to which

> "the Government of Guyana as a matter of policy grants to fellow CARICOM member States preferential terms when negotiating Fishing Agreements with them."[79]

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[79]Information Sheet received from the Guyanese Ministry of Foreign Affairs dated 18 October, 1983.

TRINIDAD AND TOBAGO/SURINAME FISHING RELATIONS

On April 14, 1979, Suriname declared a "Law containing the Extension of the Territorial Sea of the Republic of Suriname and the Establishment of a Contiguous Economic Zone." A major implication of this was that the habitual and traditional access enjoyed by foreign fishermen to the waters off Suriname where shrimp and fish were the main target species, would no longer be available. Suriname commenced the enforcement of its law of April 14, 1979 on November 1, 1979.

The importance to Trinidad and Tobago of the securing of access to the EEZ of Suriname was underscored by four main developments. These were the closure, as it then seemed, of the rich shrimping grounds of Brazil to Trinidad and Tobago fishermen upon the expiry of the 1975-1977 bilateral fishing agreement between the two countries; the difficulties then being experienced in obtaining access to the waters off the Guianas; the expansion at the time, of the processing capacity of the National Fisheries Company of Trinidad and Tobago;[80] and the consequent necessity of gaining access to additional fishing grounds.

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[80] By 1981 the National Fisheries Company had an overall capacity to process 4.5 million pounds of shrimp and 25 million pounds of fish per year. Source: National Fisheries Company.

To date, the conclusion of an agreement between Trinidad and Tobago and Suriname to govern their relations in the field of fishing, has proved impossible although, by all appearances, notwithstanding the several years of stalemate that have elapsed since preliminary talks were held in June 1979, avenues for communication remain open. The question of a "resource for resource" principle was reportedly made by Suriname according to which Trinidad and Tobago would provide fuel to Suriname in exchange for the fish to be caught in her waters: "a barrel for a bushel." No agreement was reached on this point presumably for the reason that Trinidad and Tobago feared the creation of a dangerous and expensive precedent.

The author has been unable to reliably confirm unpublished reports which suggest that an arrangement was concluded between the National Fisheries Company Limited of Trinidad and Tobago and a Suriname-based Company to enable Trinidad and Tobago vessels to enjoy access to the fishing grounds of Suriname without the need for the extension by Trinidad and Tobago of fuel concessions originally requested by the Government of Suriname. The result of the on-going probe into the activities of the National Fisheries Company are

expected to shed some light on these and related matters in the near future.

TRINIDAD AND TOBAGO FISHERIES RELATIONS WITH THE FRENCH DEPARTMENT OF GUYANA

The present status of fisheries relations between Trinidad and Tobago and France with respect to the Overseas Department of Guyana has developed in the context of the evolving International Law of the Sea especially as this refers to the Exclusive Economic Zone. Indeed, since 1977, the European Economic Community (EEC), of which France is a member, has operated a system of conservation and management of fishing resources applicable to vessels flying the flag of certain non-member countries in the 200 nautical mile zone off the coast of the French department of Guyana.[81] This system is subject to periodic change so that, for example, Regulation (EEC) No. 708/83 of March 28, 1983 was in force for the period 1 April 1983 to 31 March, 1984 whereas Regulation (EEC) No. 1499/84 adopted on 24 May, 1984 governed the regime for the period 1 June, 1984 to 31 December, 1984. A later Regulation No. 8/85 was adopted on 19 December, 1984

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[81] See Official Journal of the European Communities, No. L145/1 of 31 May, 1984.

and entered into force on 1 January, 1985.[82] Changes are invariably introduced in these Regulations whether in respect of the number of boats to be permitted, the size of the total allowable catch, the number of allocated sea-days and other variables.

For example, under Regulation No. 1177/82 of 11 May, 1982 which expired on 31 March, 1983, Trinidad and Tobago was allowed to have nine of its vessels engage in fishing activities in the waters off French Guyana. Under the Regulation currently in force, this number has been reduced to eight. An indication of the nature of the conditions of access to these waters is afforded by reference to Articles 4 and 5 of the current Regulation which stipulate that:

> Article 4.1: Licences may be issued for shrimp fishing to vessels which fly the flag of one of the countries listed in point 2 of Annex I. The catch quantities authorized under such licences, the maximum number of licences and the maximum number of days at sea during which such licences are valid shall be as specified for each country in point 2 of Annex I.
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> Article 5.2: Licences for fishing thunnidae shall be granted subject to an undertaking by the owner of the vessel concerned to permit an observer to come aboard at the Commission's request.

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[82] See Official Journal of the European Communities, No. L1/73.

Article 5.3: Licences for fishing snapper shall be granted subject to the double undertaking by the owner of the vessel concerned:

- to land 50% of the catches in the French department of Guyana...

- to permit an observer to come aboard at the Commission's request.

It must be pointed out that access to the waters off French Guyana on the part of foreign boats is not restricted to vessels from Trinidad and Tobago. A similar privilege is enjoyed by other neighbouring countries such as Guyana, Venezuela and Suriname and the current Regulation contains what are described as "token entries" for Barbados and Guyana. Barbados has, in the past, received up to five permits for its fishing vessels to operate in the waters of Cayenne.[83]

The Agreement concluded between the Member States of the European Economic Community and the recipient states under these arrangements, provides and example of the facilitation of access to fishermen from Trinidad and Tobago and other countries, who had traditionally and habitually enjoyed free access to the fishing ground, which, before the more recent developments in the International Law of the Sea, formed part of the High Seas.

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[83]See for example Regulation (EEC) No. 708/83, 28 March, 1983.

The area affected by the French extension of fisheries jurisdiction off the coast of French Guyana is an integral part of what is commonly described as the "ocean-swamp" of the Atlantic, and constitutes a biologically endemic area with a single discernible eco-system extending from Trinidad and Tobago along the coasts of the countries situated in the North-eastern seabord of South America.

Quite apart from its effect in providing continued access to the resources of the area, the European Economic Community (EEC) Agreement with other states also serves to ensure that the peculiar unity of these resources is subject to a policy of coordinated management by neighbouring countries for purposes of conservation of the species involved.

That the existing access Agreement is of potential benefit to Trinidad and Tobago is unquestionable. The Agreement, for example, allows direct discharge of catches--except snapper--at the National Fisheries Company in Trinidad and Tobago. With respect, however, to the difficulties encountered in its implementation, a single observation would suffice. This is to be the effect that, given the lack of adequate equipment, Trinidad and Tobago has been generally unable to exercise or take advantage of the facility. For the entire period April 1983 to April 1985 for example, all

trawlers belonging to the National Fisheries Company[84] were engaged in the implementation of the Trinidad and Tobago/Brazil Joint Venture in Fishing. This fact assumes greater significance when linked to the content of Regulation No. 1177/82 of 11 May, 1982, according to which, for example, of the nine licences issued to Trinidad and Tobago to fish in the waters off French Guyana, only one was issued to a private operator who only occasionally exercised the French Guyana option.[85]

Under the Regulation No. 8/85 of 19 December, 1984, Trinidad and Tobago has been allocated a Total Allowable Catch of sixty tonnes; eight fishing-vessel permits, and a maximum fishing time of 600 sea days. With respect to these provisions, only "token entries" appear for Barbados and Guyana.

SOME ASPECTS OF THE FISHERIES RELATIONS OF BARBADOS

As a means of promoting its further economic development and by way of diversifying its economic structure away from the much relied-upon tourism and sugar production sectors, the Barbadian authorities have recognized the potential contribution to be made by its fishing sector.

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[84] In Trinidad and Tobago, the offshore fishery is dominated by this Government-owned enterprise.

[85] See FAO Doc: GCP/INT/398 (NOR) dated January 1983.

In 1971, the Government of Barbados in conjunction with local investors established a fisheries company, International Sea Foods. Five years later in 1976, as a prelude to the reorganization of the company and in an attempt to increase its efficiency, the Government assumed full ownership. On 15th February, 1978 an Umbrella Agreement dealing primarily with the establishment of a Joint Venture in Fishing was concluded between Barbados and Brazil.

Before that date, International Sea Foods operated under a licencing system on the basis of which it was able to shrimp in agreed areas off the coast of Brazil, taking shrimp and other fish to Barbados where this helped to improve the nutritional status of the country and also permitted substantial savings in foreign exchange.

Up to 1980, however, the Agreement remained non-operational. Related to the conclusion of a joint-venture Agreement in fishing between Brazil and Barbados, is the access sought by the latter country to the waters of Trinidad and Tobago. Apparently, the fishing and navigational techniques employed by the Captains of Barbadian fishing vessels on their way to and from the agreed shrimping areas off the coast of Brazil have always required them to invoke the right of innocent passage through the territorial waters of

Trinidad and Tobago. Shrimping and other forms of fishing have also been undertaken in the waters and fishing banks of Trinidad and Tobago. In 1977 the Government of Trinidad and Tobago was formally approached by the Government of Barbados for permission for some two dozen of its vessels to shrimp in the waters and fishing banks of Trinidad and Tobago and to exercise the right of innocent passage through the territorial waters of Trinidad and Tobago. A fishing agreement is yet to be concluded between the two countries. The first round of actual negotiations convened to conclude a Fishing Agreement between Trinidad and Tobago and Barbados took place in Port-of-Spain during May 1988. Further rounds are envisaged.[86] The essential purpose of the proposed agreement would be to

> "permit access, to the waters of Tobago, to a stipulated number of Barbados fishing vessels under agreed conditions."[87]

The negotiations are taking place against the backdrop of charges by Trinidad and Tobago fishermen of an "invasion" of their waters by fishing boats from

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[86] See News Release No. 557 of 20 April 1988. Information Division, Office of the Prime Minister of Trinidad and Tobago.

[87] News Release No. 557 of 20 April 1988. op. cit.

Barbados.[88] No time-frame has been indicated for the conclusion of a Trinidad and Tobago-Barbados Fishing Agreement.

BARBADOS/GUYANA FISHERIES RELATIONS

A fishing agreement was concluded between Barbados and Guyana on 2nd October, 1979. The Agreement, which in its Preamble, expresses the concern of the parties for "the rational management, conservation and utilization of the living resources of the sea and for the contribution to the needs and welfare of their peoples provided by these resources," is essentially a non-reciprocal access Agreement which regulates fishing by Barbadian vessels for all species of fish and certain species of shrimp. The Agreement defines the areas in which shrimping/fishing may be undertaken; the types; numbers and quantities of fish that may be caught, including the by-catch; landing requirements to be observed by Barbados vessels in Guyanese waters; fishing seasons; the maximum number of vessels which may be used, and the specific mesh sizes of nets that are permitted. The maximum permitted by-catch of undersize shrimp is also stipulated as is the

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[88] See Trinidad Express 11 November, 1987. Also News Release 587 dated 25 April 1988, Information Division, Office of the Prime Minister of Trinidad and Tobago, which reports that talks have taken place at the official level on this subject.

requirement that the entire catch be landed in Guyana. The Barbados/Guyana Fishing Agreement expressly states that it took "into account State practice and the work of the Third United Nations Conference on the Law of the Sea" in the formulation of its provisions.

To date, no fishing has been done by Barbadian vessels in the Guyanese waters in accordance with the provisions of the Agreement since this has since been viewed as an uneconomic venture. Thus the Agreement remains a virtual dead-letter.[89]

SOME IMPLICATIONS OF THE EXCLUSIVE ECONOMIC ZONE REGIME FOR FISHERIES MANAGEMENT

THE OLD REGIME: THE CONVENTION ON FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS (1958)

This Convention, which was adopted at the First United Nations Conference on the Law of the Sea, was the first international attempt to regulate fishing activity in areas which at the time, though situated adjacent to the territorial seas of coastal states, enjoyed the status of "high seas."[90]

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[89]Information received from the Embassy of Guyana, Caracas, Venezuela.

[90]See Goodridge, J.A., A Review of International Regulations and the National Legislation of Selected Countries on the Conservation and Management of Living Resources of the Sea. Institute of Marine Affairs, Trinidad and Tobago, 1983.

The first preambular paragraph of this Convention indicates the danger which the implementation of this instrument was intended to forestall, namely, the danger of over-exploitation of the living resources of the sea such as would adversely affect man's ability to meet the food needs of the world's population. From the outset, therefore, the Convention betrays an interest in a world-wide global concern affecting all States.

The second preambular paragraph, in addition, stresses the need for "conservation of the living resources of the high seas" but indicates by virtue of the use of the expression "whenever possible", a preference for the conservation problem to be solved "on the basis of international cooperation through the concerted action of all the States concerned."

The Convention affirms the freedom, enshrined in Article 2 of the 1958 Convention on the High Seas, of nationals of all States to engage in fishing on the high seas subject to certain qualifications.[91] This Article also imposes on all States the duty "to adopt, or to cooperate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas."

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[91]Article 1.

The Convention also recognises that "a coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea."[92] However, no effective provisions to facilitate the discharge of functions relating to this interest are contained in the instrument so that the interests of the coastal state are not adequately covered. In fact, this reflects what is perhaps the major inadequacy of the Convention. Nor did the Convention define the extent of the areas to be covered by coastal State jurisdiction. Reflecting unquestionably the preponderant influence of developed, distant-water fishing nations,[93] the Convention resisted any tendency toward the expansion of fishing zones in favour of coastal States. Conservation requires the effective implementation of "measures rendering possible the optimum sustainable yield from these resources so as to secure a maximum supplement of food and other marine products."[94] Such measures might include the imposition of fishing quotas, the stipulation of mesh

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[92]Article 6.1.

[93]The emergence of the Third World as a political force in the international community necessarily had to await the decolonisation process.

[94]Article 2 of the convention.

sizes and other measures to regulate fishing-effort generally. The Convention provided no effective machinery for the formulation, imposition or enforcement of such measures. In addition, no serious effort was made in that document either to redistribute fishing rights or to regulate pollution. Thus, the coastal States and the States which, given their acknowledged "special interest", stood to lose most from the absence of adequate conservation measures, were denied any effective increase in their jurisdiction: considerations relating to the entrenched ethos of a "freedom of the seas" regime remaining the order of the day even when the success of conserving a resource to meet the needs of mankind, is accepted to have been threatened.

The requirement prescribed by the Convention that coastal states "enter into negotiation with a view to prescribing by agreement the measures necessary..."[95] appears to represent no more than a token reduction or modification of the freedom of the high seas.

The Convention on Fishing and Conservation of the Living Resources of the High Seas was part of the regime formulated in 1958 with the intention of bestowing order upon the International Law of the Sea. Inasmuch, however, as this Convention, as were indeed

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[95]Article 6.3 Emphasis added.

the other three which also emanated from UNCLOS I, was steeped in the traditional freedom-of-the-sea ethos, it tended to be backward looking and soon proved inadequate in the face of the rapid technological, political and social changes that occurred in international society. This led either to the emasculation of the Conventions as seen in the low number of ratifications, given the number of independent states, or in the substantial modification and even distortion of their intended purposes usually on the basis of unilateral state practice, as the law failed to keep pace with changing conditions. Most coastal states of Asia, Africa and Latin America declined to ratify the Convention on Fishing and Conservation of the Living Resources of the High Seas, because of the limits imposed on the rights of coastal states or rather because the flexibility of action that was denied coastal states in its provisions, created a situation that was deemed inimical to their national interests. The situation is adequately summarized by Henkin for whom

> "the 1958 Conventions reflect that aspirations of coastal states were restrained by the international law

of freedom and the inchoate 'commonage' that underlay the law."[96]

Against this kind of rationale, it has been appropriately concluded that the Convention of Fishing and Conservation of the living resources of the High Seas was "almost ignored in practice by all those to whom it was particularly relevant."[97]

A mere decade after the adoption of the 1958 Conventions, there took place the series of unilateral actions, regional Conferences and Seminars to which reference has already been made in this thesis and whose results, from the Montevideo Declaration and the Lima Declaration of 1970; the Declaration of Santo Domingo of 1972 and the adoption of the Exclusive Economic Zone concept by the OAU Council of Ministers in 1973, led into the first substantive session of UNCLOS III in 1974. By this time, the Exclusive Economic Zone had already been accepted as a legitimate innovation in the international legal practice of States by a vast portion of the international community.

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[96]Henkin, L. "Old Politics and New Directions" in Churchill et al, New Directions in the Law of the Sea. Oceana Publications Inc. Dobbs Ferry, New York, 1973, Vol. III, pp. 3-10.

[97]Anand, R.P. "The Politics of a New Legal Order for Fisheries," in O.D.I.L., Vol. II, Nos. 3/4, 1982, p. 275.

As stated by the Kenyan delegate on the eve of UNCLOS III:

> "The exclusive economic zone is an attempt at creating a framework to resolve the conflict of interests between the developed and the developing countries in the utilization of the sea. It is an attempt to formulate a new jurisdictional basis which will ensure a fair balance between the coastal states and other users of the neighbouring waters."[98]

THE IMPLICATIONS OF THE EXCLUSIVE ECONOMIC ZONE FOR FISHERIES MANAGEMENT

In contrast to the tentative formulation of Article 6 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, the language of Article 56 of the 1982 Convention is as direct as it is simple. It states, inter alia, that

> "In the exclusive economic zone, the coastal State has 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..."

Filling an obvious omission in the 1958 Convention, it is also explicitly provided in Article 56, that, in the Exclusive Economic Zone, the coastal

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[98]Report of the 13th Session of Asian-African legal Consultative Committee, Lagos, Nigeria, January 1972, p. 24.

state has jurisdiction with regard to the protection and preservation of the marine environment.

The details of the fisheries management regime as enshrined in the 1982 Convention are to be found in Articles 61-73 and contain provisions with respect to conservation of the living resources (Article 61); Utilization of the living resources (Article 62); Straddling stocks (Article 63); Highly migratory species (Article 64); Marine Mammals (Article 65); Anadromous Stocks (Article 66); Catadromous Species (Article 67); Sedentary Species (Article 69); the conferment of certain rights to given categories of States (Articles 69 and 70); and the application or mode of application of these provisions, (Articles 71-73). Part XII of the Convention, covering Articles192-237, contains provisions dealing with the "Protection and Preservation of the Marine Environment."

The immediate implication of the Exclusive Economic Zone regime for fisheries management is the transfer of responsibility and attributions to coastal states and away from international bodies where they operated, or from the laissez-faire system of an earlier period, with respect to this activity by virtue of the spatial and jurisdictional gains achieved by coastal States. Pointing to such factors as the increased pressure of demand on the world's resources;

the existence of pollution beyond degrees of environmental tolerance; the jeopardization of fish stocks brought about by over-fishing; and the more effective technological means available for marine exploration and exploitation, the position was said to have been reached where

> "virtually all the conditions which enabled the oceans to be treated as free and relatively unmanaged commons for so many centuries have been eliminated in the last few decades."[99]

The regime for the management of the living resources of the Exclusive Economic Zone implies and is based upon a series of economic, political and biological propositions with the last of these categories determining the mode of operationalization of the other two. For example, the coastal State is expected to conduct its management programme taking into account "the best scientific evidence available to it," (Article 61) in order, inter alia to "maintain or restore populations (Article 61) of harvested species at levels which can produce the maximum sustainable yield as qualified by relevant environmental and economic factors", (Article 61). The effects on species associated with or dependent upon harvested

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[99]Buzan, B., "A Sea of Troubles? Sources of Dispute in The New Ocean Regime," Adelphi Papers, No. 143.

species" (Article 61) are also to be taken into account all with a view to the optimum utilization of resources (Article 62) based on the concept of the "entire allowable catch" (Article 62).

The successful implementation of a management programme therefore assumes a certain minimum marine science capability: a capability which, at best, will only be partially present in countries such as the island States and territories of the Eastern Caribbean.

At the practical level, a host of criticisms have been levelled at the management techniques that are prescribed in the 1982 Convention with particular emphasis on the negative implications this may have on any attempt at fisheries management. The foremost target of this essentially intellectual assault has been the concept of "Maximum Sustainable Yield" which like the term "harvest", which is also used in the 1982 Convention likens wildlife rather to field crops and other vegetable resources whose management regimes are said to differ considerably.[100] The "Maximum Sustainable Yield" has been defined as

> "...that level of operation in which the sustainable yield (i.e. where catch is equal to the natural growth

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[100]See Teclaff and Utton, (eds.) International Environmental Law, Praeger Publishers, New York, 1974.

> of the stock) is as large as possible."[101]

Against the backdrop of this definition, the view expressed by Joseph and Klawe appears, on the face of it, quite logical and simple. Their proposition is to the effect that:

> "Populations of fish are self-regulating, renewable resources whose rate of renewal depends upon the quantity of organisms remaining to perpetuate themselves. There exists for each one of them some level below which the resources cannot perpetuate itself and likewise some population level at which production can be maximized on a sustained basis. By his activities man can affect the rate of renewal of such resources."[102]

At one level the criticism has been made that

> "...the biological principles upon which fisheries management rests have not been adequately communicated to professionals in other fields and partly because too few fishery scientists have perceived or acknowledged the important

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[101] See Anderson, L., "A Classification of Fishery Management Problems To Aid In The Analysis and Proper Formulation of Management Problems," in O.D.I.L., Vol. 4, No. 2, 1977, pp. 113-120.

[102] Joseph, J. and Klawe., "The Living Pelagic Resources of the Americas" in O.D.I.L., Vol. 2, Spring 1974, pp. 37-64.

> interaction and interdependence of social, economic and even biological goals."[103]

At another level, the more fundamental criticism is made to the effect that

> "the scientific basis for fishery management is notoriously imprecise, so that the size (or even existence) of stocks surplus to coastal state requirements could be disputed."[104]

Within the literature on fisheries management, there is a glaring lack of consensus on the part of fisheries scientists with respect to the utility of the concept of the maximum sustainable yield (MSY) which is central to the management mechanism prescribed by the 1982 Convention. On the basis of the author's considerable library search in this area, it appears that most professionals are at least dubious about the utility, let alone the applicability of the concept. For example, in his review of another writer's treatise, Alverson writes that

> "...there is evidence that the author's perceptions of maximum sustainable yield (MSY) and surplus production differ or are interpreted in an overly simplistic fashion. The discussion of surplus production and Maximum Sustainable Yield, which

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[103]See Alverson, D.L., "Management of the Ocean's Living Resources: An Essay Review," in O.D.I.L., Vol. 3, No. 2, 1975, pp. 99-125.

[104]Buzan, B., "A Sea of Troubles? Sources of Dispute in the New Ocean Regime," op. cit.

> occurs in Christy's contribution is a reiteration of a textbook example of a simple dome-shaped production curve that, although a part of modern theory, has had limited use in designing past fisheries management strategies."[105]

The same writer, expressing doubt as to the actual functioning of nature in as predictable a manner as is implied by the models of the population dynamics of fish resources, points out that

> "Annual changes in recruitment (independent of population size) can bring about two fold to tenfold changes in sizes of many exploited fish populations."[106]

Moreover,

> "the preconceived view however, that Maximum Sustainable Yield is some hallowed, set value that can be used to fix annual catches is still held by many decision makers who have not adjusted to the fact that these values may have no real durability in time or short-term utility."[107]

Another objection that may be raised in connection with the Maximum Sustainable Yield concept is that this theory is normally applied to a single species population, whereas in the Caribbean, as is the case in most other geographical environments, the target

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[105] Alverson, D.L., "Management of the Ocean's Living Resources: An Essay Review," op. cit., p. 105.

[106] Alverson, D.L., op. cit., pp. 106-107.

[107] Ibid., p. 107.

populations are to be found in multiple-species populations so that the recruitment pattern, growth rates, natural mortality rates as well as the general pattern of interaction of multiple species must simultaneously be undertaken--a task of almost bewildering complexity.

The situation has been aptly summarised by reference to the fact that

> "the knowledge of species interactive effects is both incomplete and imprecise, and a proper and complete description of a concept of optional resource management as yet undefined."[108]

STRADDLING STOCKS

The 1982 Convention provides for States to take measures in order to coordinate and ensure the conservation and development of stocks where "the same stocks of associated species occur within the exclusive economic zone of two or more coastal states."[109] In cases where such stocks occur both within the Exclusive Economic Zone and in an area adjacent to it, provision is made for both the coastal States and the States

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[108] Donaldson, J., and Pontecorvo, G. "Economic Rationalization of Fisheries: The Problems of Conflicting National Interests on Georges Bank," in O.D.I.L., Vol. 8, No. 2, 1980, pp. 149-169.

[109] Article 63. See also FAO Doc. COF1/83/5 of July 1983, p. 9.

fishing such stocks to take measures to conserve these stocks in the "adjacent areas." These areas would obviously fall within the High Seas regime which is therefore to some extent "qualified" by the Exclusive Economic Zone Regime. In any event, States are invited to make use of appropriate sub-regional or regional organizations in seeking to agree on the relevant measures to be taken.

In a Caribbean setting, where jurisdictional zones overlap and where a distance of 200 miles might encompass the entire extent of the Exclusive Economic Zones of several States, the question of straddling stocks is of considerable importance. To begin with, in order to effectively manage such stocks, there would be a need for consultation perhaps on a sub-regional level in order to agree on procedures for their allocation.[110] This would pose considerable difficulty for the island states and territories of the Eastern Caribbean inasmuch as they lack adequate expertise and infrastructure such as would enable them to make continuing assessments of the state of stocks for the time being falling within their respective jurisdictions. There may conceivably arise, in addition, conflicts with respect to the apportionment

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[110] See Miles, E.L., "Changes in the Law of the Sea: Impact on International Fisheries Organizations," in O.D.I.L., Vol. 4, No. 4, 1977, pp. 409-444.

of income receipts gained from the exploitation of such stocks. In this connection, the view has been expressed that it might be easier for each country to deal with foreign operatives with respect to the quota allocated to that state, by the use of licence fees and similar mechanisms, than for neighbours to agree on the distribution of economic rent among themselves.[111] The harmonisation of access regimes and control mechanisms to be applied to foreign fishing operations should prove desirable in this context as should the harmonization of management regimes generally.

Another major difficulty which may arise, relates to the likely situation where, in the context of straddling stocks, a neighbouring country wishes to negotiate an increase in his stock allocation but is unable to offer as much by way of fees as, say, foreign fishing interests. In any case, the large number of states and territories that are crowded into the marine space of the Eastern Caribbean can only serve to complicate negotiations for the allocation of national quotas if not for a "total allowable catch."[112]

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[111] See Miles, E.L., op. cit.

[112] See Copes, P., "The Law of the Sea and Management of Anadromous Fish Stocks" in O.D.I.L., Vol. 4, No. 3, 1977, pp. 233-259.

Conflicts may also arise in these situations where stocks cross or straddle the boundary between the EEZ of a coastal state and the high seas. In such situations, the coastal states may come into conflict with high seas fishermen if the intensity of the latter's fishing effort threatens the efficacy of their management and conservation efforts.[113]

With respect to stocks such as tuna which exist largely beyond the limits of national jurisdiction, disputes may also arise over the creation of management measures designed to prevent their over-exploitation. A major implication of this and related considerations, is that, notwithstanding the exclusive legal authority conferred them under the EEZ regime, coastal states may find themselves unable to wholly shape conditions of access to stocks in its EEZ Otherwise put, while States might retain the exclusive authority conferred in Article 56, 61, and 62 of the 1982 Convention, this may often prove inadequate for the accomplishment of management objectives. It follows, then, that international cooperation will be required to supplement the "exclusive" fundamental jurisdiction of coastal states. It is therefore the scale of the problem that has changed rather than its nature. Another implication of the EEZ in this context, relates

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[113]See Buzan, B., "A Sea of Troubles?" op. cit.

to the fact that the exclusion of distant-water fishing fleets from the newly extended coastal areas may lead to increased pressure on the fisheries resources of the high seas thus fuelling potential areas of conflict as may exist between high-seas fishing concerns and the authorities of coastal states. In situations of conflict, vital management information may not be forthcoming. Such a situation may well eventually arise in the case of the probable need on the part of certain Eastern Caribbean States and territories to cooperate with Venezuela given the jurisdictional claims attaching to Aves Island. The problems of "poaching" and surveillance and enforcement have been discussed elsewhere in this thesis as have been those relating to the need, on the part of some small distant-water fishing states such as Trinidad and Tobago, to negotiate access Agreements as a result of the innovation of the Exclusive Economic Zone regime.

Another major implication of the EEZ regime as contained in the 1982 Convention, as it relates to fisheries management is the possibility that "some methods of management in order to be effective may incur costs that are greater than the benefits."[114] These would include management systems based on quotas

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[114]See Gulland, J., "Conditions of Access to Fisheries: Some Resource Considerations" in FAO Fisheries Report, No. 293, FAO 1983, p.p. 81-88.

and on the "total allowable catch" which require considerable efforts to collect reliable detailed information with respect to all landings, by species, size and a host of other criteria. The problem and possibly the expense are increased if landing are allowed in more than one country.

HIGHLY MIGRATORY SPECIES

The 1982 Convention, in its Article 64, recognizes that the conservation of highly migratory species requires a high degree of international cooperation. The coastal State and other states whose nationals fish for these species whether within or beyond the EEZ are all under a duty to cooperate in order to ensure conservation and also to promote the objective of the optimum utilization of such species. Such cooperation is to take place either directly or through appropriate international organizations. Moreover, States are required to cooperate in establishing such organizations "in regions for which no appropriate international organization exists." A clear role is thus envisaged for international organizations in the management of highly migratory species.

With respect to the implications of Article 64, inasmuch as other fishing states are obliged to cooperate with coastal states, it follows that they are not at liberty to adopt conservation and allocation

measures that are applicable only on the high seas without efforts at cooperation with coastal states for this purpose. It would also appear that in circumstances where no agreement proves possible as between high seas fishing nations and coastal states on the exploitation of highly migratory species, such exploitation may be conducted only in accordance with the determination by the coastal states of the total allowable catch for the region as a whole; and of their capacity to harvest the total allowable catch within their EEZs.

In addition, all management decisions contemplated by coastal states will require to take into account the availability of stocks wherever they may be exploited including areas outside the relevant EEZs. In other words, in their determination of conditions of access to highly migratory species within their EEZs, coastal States may in all probability find themselves constrained by the effects of fishing activities and regulatory measures occurring or being implemented outside their respective EEZs whether on the high seas or in the EEZs of other countries.

The general implication therefore is to the effect that the "exclusive" authority to conserve and allocate stocks of highly migratory species occurring within the EEZ of a coastal state is inadequate to produce the

desired result and needs to be supplemented by cooperative activity involving those other neighbouring states in whose EEZ's, the same stock is available. Similarly, coastal states will be unable to efficiently manage these stocks if they are also subject to exploitation on the high seas: that is to say, beyond the reach of their national jurisdiction.

IMPLICATIONS OF THE EXCLUSIVE ECONOMIC ZONE FOR REGIONAL FISHERIES ORGANIZATIONS

Given the extension of coastal state jurisdiction to incorporate areas formerly under the high seas regime with respect to activities formerly carried out by Regional Fisheries Bodies, there is a general expectation that the activities of such bodies will be reduced or at least substantially modified. In fact, the establishment of the Exclusive Economic Zones has led many coastal states, both developed and developing, to request changes in the administrative structures of fisheries organizations--changes which guarantee that the organization will not infringe national sovereignty. The result of this development has been a reduction in the management powers of the fishery organizations.

With respect to the states and territories of the Eastern Caribbean, the relevant body is the WECAFC. An interesting aspect of this body, reflecting the fact of

its formation at the same time as the protracted negotiations of UNCLOS III were taking place, is the fact that its terms of reference specifically exclude any management functions. It might be said, therefore, that the effects of the EEZ on this regional fisheries body were felt even before the fully-fledged acceptance if not the development of that regime. Notwithstanding this fact, however, it may be, that the outlook in the long run is for the slow expansion of the Commission's work into the area of management since the resource-deficient States which constitute its membership will have need of some mechanism to carry on the continuous study and assessment of fish stocks.[115]

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[115]See Miles, E.L., "Changes in the Law of the Sea: Impact on International Fisheries Organizations" in O.D.I.L., Vol. 4, No. 4, 1977, p. 427.

CHAPTER VIII

IMPLICATIONS OF THE EXCLUSIVE ECONOMIC ZONE REGIME FOR MARINE SCIENTIFIC RESEARCH IN THE EASTERN CARIBBEAN

That marine scientific research constitutes prime value in Law of the Sea concerns is evident from the numerous provisions regulating this activity in the 1982 Convention.

Of the 320 Articles that make up this Convention, a full twenty-eight articles,[1] are included in Part XIII which deals specifically with Marine Scientific Research. This exceeds, in terms of the number of articles regulating this activity, those which specifically govern the EEZ regime as set out in Part V of the Convention.[2] Nor is this all, for apart from the provisions falling under Part XIII, there are numerous stipulations with respect to the conduct of marine scientific research in sections dealing with Straits, the Territorial Sea, the Continental Shelf, the EEZ, the High Seas, the Area and in other portions

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[1]Articles 238-265.

[2]Articles 55-75.

of the Convention which deal with the Conservation and preservation of living resources and of the marine environment generally.

A selection of Articles from the 1982 Convention illustrating the vast concern harboured in respect of maritime scientific research is set out in Table XIII. Nor does this table pretend to be exhaustive.

In addition to the Articles set out in Table XIII, another set of over thirty consecutive articles, numbers 245-278 specifically address the issue of marine scientific research. Articles 245 -265 deal with the subject under such headings as:

(1) Conduct and Promotion of Marine Scientific Research[3]

(2) Scientific Research Installations or Equipment in the Marine Environment[4]

(3) Responsibility and Liability[5]

Then Articles 266-278 constitute a separate part of the Convention, Part XIV, entitled "Development and Transfer of Marine Technology" which is inextricably

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[3]Articles 245-257.

[4]Articles 258-262.

[5]Articles 263-265.

TABLE XIII

SELECTED PROVISIONS OF THE 1982 CONVENTION DEALING WITH MARINE SCIENTIFIC RESEARCH

ARTICLE	TITLE OF ARTICLE	PROVISION
19(j) +	Meaning of Innocent Passage	Passage of a foreign ship shall be considered to be prejudiced to the peace, good order and security of the coastal state if in the territorial sea it engages in "any act aimed at collecting information to the prejudice of the defence or security of the coastal state", and, in 19(j) "the carrying out of research or survey activities."
21.1(g)	Laws and Regulations of the coastal State relating to innocent passage	The coastal State may adopt laws and regulations in respect of "marine scientific research and hydrographic surveys."
21.4	Laws and Regulations of the coastal State relating to innocent passage	"Foreign ships exercising the right of passage through the territorial sea shall comply with all such laws and regulations..."
25	Rights of protection of the coastal state	The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

ARTICLE	TITLE OF ARTICLE	PROVISION
39.1(c)	Duties of ships and aircraft during transit passage	Ships and aircraft shall "refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress."
40.	Research and Survey Activities	During transit passage, foreign ships, including marine scientific research and hydrographic survey ships may not carry out any research or survey activities without the prior authorization of the States bordering straits.
54	Duties of ships and aircraft during their passage, research and survey activities, duties of the archipelagic State and laws and regulations of the archipelagic State relating to archipelagic Sea lanes passage.	Articles 39, 40, 42, and 44 apply mutatis mutandis to archipelagic sealanes passage.
56.1 (b)(ii)	Rights, jurisdiction and duties of the coastal State in the exclusive economic zone.	"In the exclusive economic zone the coastal State has ...jurisdiction...with regard to...marine scientific research
61.1	Conservation of the living resources.	"The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone."

ARTICLE	TITLE OF ARTICLE	PROVISION
61.2		"The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation."
61.3		"Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield...and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standard."
61.4		"In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species..."
61.5		"Available scientific information... shall be contributed and exchanged... through competent international organizations..."
62.1	Utilization of the living resources.	"The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone..."

ARTICLE	TITLE OF ARTICLE	PROVISION
62.2		"The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone."
63.1	Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it.	"Where the same stock or stock of associated species occur within the excluxive economic zones of two or more coastal States, these States shall seek...to agree upon the measures necessary to co-ordinate and ensure the conservation and development of such stocks..."
63.2		Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek...to agree upon the measures necessary for the conservation of these stocks..."
76.1	Definition of the continental shelf	"The continental shelf of a coastal state comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer-edge of the continental margin..."

ARTICLE	TITLE OF ARTICLE	PROVISION
76.3		"The continental margin comprises the submerged prolongation of the land mass...and consists of the sea-bed and subsoil of the shelf, the slope and the rise..."
76.4		"...the coastal State shall establish the outer-edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines..."
77.1	Rights of the coastal State over the continental shelf.	"The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources."
87	Freedom of the high seas	"...Freedom of the high seas...comprises inter alia ...(f) freedom of scientific research, subject to Parts VI and XIII."
119.1(a)	Conservation of the living resources of the high seas	"In determining the allowable catch...States shall: (a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield..."
119.1(b)		"...States shall...take into consideration the effects on species associated with or dependent upon harvested species..."

ARTICLE	TITLE OF ARTICLE	PROVISION
119.2		"Available scientific information...shall be contributed and exchanged..."
142.1	Rights and legitimate interests of coastal States	"Activities in the Area, with respect to resource deposits in the Area...shall be conducted with due regard to the rights and legitimate interests of any coastal state across whose jurisdiction such deposits lie."
143.1	Marine Scientific Research	"Marine scientific research in the Area shall be carried out exclusively for peaceful purposes..."
143.2		"The Authority may carry out marine scientific research concerning the Area and its resources..."
143.3		"States Parties may carry out marine scientific research in the Area. States parties shall promote international cooperation in marine scientific research..."
144.1(a)	Transfer of technology	"The Authority shall take measures... (a) to acquire technology and scientific knowledge relating to activities in the Area; and (b) to promote and encourage the transfer to developing States of such technology and scientific knowledge..."

ARTICLE	TITLE OF ARTICLE	PROVISION
145.	Protection of the marine environment	"Necessary measures shall be taken...to ensure effective protection for the marine environment from harmful effects..."
238	Right to conduct marine scientific research	"All States...and competent, international organizations have the right to conduct marine scientific research.."
240(a)	General principles for the conduct of marine scientific research.	"Marine scientific research shall be conducted exclusively for peaceful purposes."
240(b)		"Marine scientific research shall be conducted with appropriate scientific methods and means compatible with this Convention."
240(c)		"Marine scientific research shall not unjustifiably interfere with other legitimate uses of the sea...and shall be duly respected in the course of such uses;"
240(d)		"Marine scientific research shall be conducted in compliance with all relevant regulations adopted in conformity with this Convention..."
241.	Non-recognition of marine scientific research activities as the legal basis for claims.	"Marine scientific research activities shall not constitute the legal basis for any claim to any part of the marine environment or its resources."

ARTICLE	TITLE OF ARTICLE	PROVISION
242.1	Promotion of international co-operation	"States and competent international organizations shall ...promote international co-operation in marine scientific research for peaceful purposes."
243.	Creation of favourable conditions	"States and competent international organizations shall cooperate...to create favourable conditions for the conduct of marine science research in the marine environment..."
244.1	Publication and dissemination of information and knowledge	"States and competent international organizations shall, in accordance with this Convention, make available...information on proposed major programmes and their objectives as well as knowledge resulting from marine scientific research."
245	Marine scientific research in the territorial Sea	"Coastal States...have the exclusive right to regulate, authorize, and conduct marine scientific research in their territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State."
246.1	Marine scientific research in the exclusive economic zone and on the continental shelf	"Coastal States...have the right to regulate, authorize, and conduct marine scientific research in their exclusive economic zone and on their continental shelf..."

ARTICLE	TITLE OF ARTICLE	PROVISION
246.2		"Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State."
246.3		"Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects by other States or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out... exclusively for peaceful purposes..."
246.4		"For the purposes of applying paragraph 3, normal circumstances may exist in spite of the absence of diplomatic relations between the coastal State and the researching State."
246.5		"Coastal States may however in their discretion withhold their consent to the conduct of a marine scientific research project of another state or competent international organization in the exclusive economic zone or on the continental shelf of the coastal State..."

ARTICLE	TITLE OF ARTICLE	PROVISION
246.6		"...coastal States may not exercise their discretion to withhold consent...in respect of marine scientific research projects to be undertaken in accordance with the provisions of this Part on the continental shelf, beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured..."
246.8		"Marine scientific research activities referred to in this article shall not unjustifiably interfere with activities by coastal States in the exercise of their sovereign rights and jurisdiction..."
247	Marine scientific research projects undertaken by or under the auspicies of international organizations	"A coastal State which is a member of or has a bilateral agreement with an international organization, and in whose exclusive economic zone or on whose continental shelf that organization wants to carry out a marine scientific research project...shall be deemed to have authorised the project...if that State approved the detailed project when the decision was made by the organization for the undertaking of the project, or is willing to participate in it, and has not expressed any objection within four months of notificiation of the project..."

ARTICLE	TITLE OF ARTICLE	PROVISION
248	Duty to provide information to the Coastal State	"States and competent international organizations which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of a coastal state shall, not less that six months in advance of the expected stating date of the marine scientific research project, provide that State with a full description of: (a) the nature and objectives of the project; (b) the method and means to be used... (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 Coastal State should be able to participate or be represented in the project."

linked to the overall subject area of marine scientific research. Under this heading, Articles 266-269 outline the General Provisions governing the Development and Transfer of Marine Technology, Articles 270-274 deal with International Cooperation in the field while Articles 275-278 deal with National and Regional Marine Scientific and Technological Centres.

The final article to be quoted, Article 278, deals with co-operation among international organisations in the field of the Development and Transfer of Marine Technology.

Needless to say, not all references to marine scientific research are specific, although many are. In this connection, attention is drawn to Articles 40, 56 and 213 among others. Certain other articles have a strong implied association with marine scientific research to the extent that their stipulations could have been neither imagined nor implemented without recourse to that activity. Article 62(1) for example provides that

> "the coastal state shall promote the objective of optimum utilization of the living resources in the exclusive economic zone."

Article 76(4) provides that

> "...the coastal state shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines..."

Neither of these functions or duties, to name only two, could have been conceived without the existence or assumption of marine science capabilities. Thus the Convention is replete with references to marine scientific research which is perhaps the single most recurring theme in the Convention, that is, among the many "uses" of the marine environment. Nor should this be surprising, for were it not the existing, as well as the anticipated developments in marine science which not only led to Ambassador Pardo's monumental intervention in the General Assembly, but which also constitute one of the most important determinants conditioning the progressive development of the International Law of the Sea?

It is worthwhile to recognise that marine sciences impinge on and relate to all uses of the marine environment. Moreover, as Article 238 provides that

> "All States, irrespective of their geographical location and competent international organization...have the right to conduct marine scientific research..."

The island states and territories of the Eastern Caribbean with, for the most part, a greater marine than land area under their jurisdiction therefore, and quite understandably, have a considerable interest, if not as yet the required capabilities, in this most important field of marine scientific research.

Of significance too for the purpose of this thesis, is the great effort being made in the Convention--almost to the point of going out of its way--to make sure that the conduct of marine scientific research is not hindered. Not only does the Convention in its Article 238 place nation States and international organizations on the same footing, although this is not unprecedented, but in Article 246(4) the Convention, with respect to the provision in Article 246(3) according to which

> "Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects..."

provides that

> "For the purpose of applying paragraph 3, normal circumstances may exist in spite of the absence of diplomatic relations between the coastal State and the research State."

Clearly, within the ambit of the Law of the Sea, marine scientific research is recognized as a "supreme good."

When the matter of the delimitation of maritime boundaries was discussed, it was suggested that this was the crucial element facilitating the exercise of jurisdiction inasmuch as it provided the only means of identifying the geographical parameters of the EEZ within which jurisdiction is to be exercised. To the

extent, however, that the technique or method employed in the delimitation of such boundaries may be informed by the results of marine scientific research--in the form, for example, of the confirmation of the existence or otherwise of mineral deposits, which, in a given setting, may be held to constitute "special circumstances", some qualification needs to be introduced at this stage in order to emphasize the primordial importance and indispensability of scientific knowledge in all aspects of the management of maritime zones. Indeed, the results of marine scientific research have beneficial implications for all purposes for which the marine environment is utilized. There are myriad significant human problems in all countries, developed and developing alike, that can be mitigated to a considerable extent by the application of the results of marine scientific research.[6] And in many, if not all cases, knowledge of the relevant phenomena and processes is incomplete thus rendering forecasting--an indispensable aspect of management--impossible. It also renders exceedingly difficult any evaluation of alternative use of strategies or management measures. Without scientific

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[6]See UNESCO Doc. IOC/INF/505 Add. of 10 September, 1982.

knowledge, resources may be wasted or even inadvertently destroyed.

In all countries, the elements required for the implementation of scientific research programmes in the marine environment are essentially the same. These include trained personnel, financial resources, appropriate infrastructural arrangements and so on. In the States and territories of the Eastern Caribbean, serious limitations are imposed on the conduct of such research by the shortage of trained scientists, scientific equipment, finance and other facilities. In this context, it is relevant to note that there are over fifteen (15) marine research institutes located in the countries which lie in or border the Caribbean Sea, including establishments in Barbados and Trinidad and Tobago, which are engaged in various programmes in Oceanography, Meteorology, Marine Biology, Geology, and Fisheries Management. Some form of co-ordination or integration of research effort might be envisaged with a view to the efficient use of scarce resources. In any event, because of the dimensions of many oceanic processes the fact that their occurrence and location are seldom coincident with the limits of national jurisdiction, the effective conduct of marine scientific research requires vast amounts of

international co-operation. A more comprehensive evaluation suggests that

> "A direction of marine scientific research to meet the needs of developing coastal states is likely to breathe life into the proposals for regional research centres, technology transfer, and international co-operation."[7]

The regional approach to marine scientific research appears as a modality that is particularly suited to the crowded insular environment inhabited by the states and territories of the Eastern Caribbean. In this sub-region, the pattern of ocean circulation and the distribution of fish are basically common to the several countries so that the investigation of these phenomena can be effectively pursued only within a framework of regional collaboration.[8] Thus, appropriate institutions are needed not only at the national, but also at the regional and even global levels in order to promote, develop, manage and co-ordinate elements of ocean research. In particular, financial resources are limited at all levels and these institutions could facilitate the combination of

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[7]Winner, R., "Science, Sovereignty and the Third Law of the Sea Conference," in ODIL, Vol. 4, No. 3, 1977, pp. 297-342.

[8]See Doc. IOC/INF/505 Add. "Ocean Science for the Year 2000" UNESCO, 10 September, 1982.

resources among institutions both within and among countries, in order to derive economies of scale.

Other implications of marine scientific research in the context of the EEZ regime relate to this activity as a value in its own right. Results of marine scientific research may constitute information that is vital to the economic and political security of coastal states and with the expansion of coastal-state jurisdiction over an EEZ, new regulations will invariably arise to control information with respect to areas to which all states hitherto enjoyed access. This raises the major controversy with respect to the attitudes of (typically) developed countries who have the capacity both to engage in and also to utilize the results of maritime scientific research vis-a-vis those of resource deficient coastal states such as those of the Eastern Caribbean. With reference to the developed states and marine scientific research, Winner has suggested that

> "...it was virtually an article of faith among marine scientists that, in the long run, the benefits from this knowledge will spread to the entire international community. They argue that unfettered scientific investigation is essential for wise use and protection of the ocean and its resources. Thus the developed

> research states generally favour freedom of marine scientific research..."[9]

On the other hand, according to the same author,

> "...Developing coastal states tend to view marine scientific research in a different way. They cannot overlook the connection between scientific knowledge and industrial or political power. Marine scientists are often viewed as unwitting agents of the dominant political and industrial interests back home rather than as independent intellectual enquirers pursuing truth for its own sake and for the benefit of all."[10]

Further,

> "...They fear the direct, physical exploitation of the resources by foreign industry before they themselves have the technology to engage in domestic exploitation. Many developing coastal states are concerned that more powerful states may apply domestic pressure--or even seek to interfere with their internal politics--in order to gain access to their resources. They believe that their national security may be threatened by the fact that at least some military surveillance of their coastlines and harbours may be performed by hostile states under the guise of oceanographic research. They want to prevent the pollution of their coastal zone by fishing vessels. Finally the performance of marine scientific research has symbolic importance to many developing states. Denying

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[9]Winner, R., "Science, Sovereignty, and the Third Law of the Sea Conference," op. cit. p. 299.

[10]Winner, R., op. cit., pp. 299-300.

> permission for research is often a convenient and graphic way to assert sovereignty over coastal waters."[11]

These remarks, formulated in the contest of less expanded maritime zones apply *a fortiori* to the exclusive economic zone which, in the context of the New International Economic Order, is seen as a major means of achieving the economic social and other developmental goals of the Third World. It is for this reason that marine scientific research, as a value in its own right, stands in need of protection, thus requiring an adequate legislative framework backed up by effective surveillance and enforcement capabilities. As has been mentioned earlier in this thesis, the costs associated with surveillance and enforcement are considerable as are those involved in the pursuit of marine scientific research itself. Here again the benefits of regional collaboration should be unquestionable inasmuch as the small coastal states and territories of the Eastern Caribbean cannot really afford large scale, multidisciplinary institutes but nevertheless require scientific advice for the effective management of their marine areas.[12] Such

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[11] *Ibid*.

[12] See Gulland, J., "Problems and Priorities in providing Research Inputs to Fishing Decisions" in *O.D.I.L.*, Vol. 4, No. 1, 1977. pp. 27-37.

advice could hardly come from joint research ventures involving the developed countries as do many traditional forms of "aid" since

> "...to be realistic, without scientific capabilities comparable to those of the visiting investigators, those in the coastal states may not be able fully to utilize the results."

Further,

> "because of this, the issue of transfer of technology has become closely linked to that of marine science research in the Law of the Sea negotiations."[13]

The basic point appears to be that, unless the tiny island states and territories of the Eastern Caribbean acquire the requisite marine scientific capability, they will remain unable to properly evaluate or effectively exploit and protect their marine resources. Nor will they able to effectively conduct negotiations with other countries in matters relating to the joint exploitation of resources or to any other activity in respect of which the EEZ regime confers jurisdiction.[14]

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[13]See Wooster, W., "Some Implication of Ocean Research," in O.D.I.L., Vol. 4, No. 1, 1977, pp. 39-50.

[14]For a discussion of the marine scientific research needs and approaches of a developed country, see: Hollick, Ann, "National Ocean Institution: Research Needs," in O.D.I.L., Vol. 3, No. 2, May 1975, pp. 155-170.

In the island states and territories of the Eastern Caribbean, the development of an adequate marine science infrastructure with appropriate programmes of activity, has been frustrated by the following factors inter alia:

(i) Lack of financial resources.

(ii) Priority to the ocean and its resources has in many cases been inadequately identified within the context of national development and no comprehensive marine policy has yet been established in many countries.

(iii) National legislation does not always correspond to present national and international requirements.

(iv) The potential benefits to be derived from international co-operation whether bilateral or multilateral, remain largely unrealized.

(v) The limited supply of marine scientists and technologists.

(vi) The limited supply of appropriate and costly infrastructure in the form of laboratories, equipment, libraries, vessels, navigational systems, remote sensing apparatus, physical and chemical oceanographic equipment and so on.

(vii) In many countries there is little appreciation of the opportunities for increasing marine science capabilities which are offered by the United Nations System.

(viii) Recognition by Government of science and technology as factors for development has been inadequate.

These limitations in the context of the already limited knowledge of the EEZs of the respective countries, not only render management decisions

difficult but, as has been indicated above, also limit the capacity of these countries to effectively participate in co-operative research programmes.

Needless to say, the factors enumerated above do not apply to the same degree to all the states and territories of the Eastern Caribbean. For example, in the case of Trinidad and Tobago, while an up-to-date comprehensive legislative management infrastructure is yet to be introduced, it would be an overstatement to say that, in the context of its offshore exploitation of hydrocarbons, the priority given to the ocean and its resources has been inadequately identified within the context of national development. Similarly, while the countries of the OECS have emphasised and implemented the need for adequate fisheries legislation, yet the recognition by their Governments of science and technology as factors for development has, generally speaking, been inadequate.

Given the inescapable fact that marine scientific research is the crucial factor on which the effective exploitation of the oceans depends, an adequate scientific base must be viewed as an essential input into the rational use and management of marine resources and also to the future implementation of the 1982 Convention. The implication of this is that, in the context of countries such as the island States and

territories of the Eastern Caribbean, there is a need to evaluate and to upgrade the level of marine science and related activities at the national and subregional levels. These states and territories will also need to evaluate their present status, their requirements and their priorities inasmuch as the marine science country profiles which will emerge from such an evaluation, will serve not only as guidelines for management and for the determination of marine policy generally, but also as background information for the formulation and receipt of technical assistance projects.

In the final analysis, ocean management efforts can be successful only if based on a timely and comprehensive marine science policy that has been specially formulated to meet particular requirements and in respect of which an adequate infrastructure exists. These are the major implications which face the island states and territories of the Eastern Caribbean with respect to marine scientific research.

CHAPTER IX

CONCLUSION: EVALUATION OF THE EXCLUSIVE ECONOMIC ZONE IN THE EASTERN CARIBBEAN

BASES FOR EVALUATION: POLITICAL, LEGAL AND ECONOMIC CONTEXT OF THE LAW OF THE SEA

The evolution of the EEZ regime as traced earlier in this paper placed the 1982 Convention in the category of international "instruments" which sought to be supportive of the complete political and economic independence of former colonies. Reference was made in this context to the Declaration on the Granting of Independence to Colonial Territories and Peoples;[1] the Resolution on the Permanent Sovereignty Over Natural Resources;[2] the Declaration on the Establishment of a New International Economic Order;[3] and the Charter of Economic Rights and Duties of States.[4]

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[1]Resolution 1514 (XV).

[2]Resolution 1803 (XVII) 1962.

[3]Resolution 3201 (S-VI) May 1, 1974.

[4]Resolution 3281 (XXIX) December 12, 1974.

In order to provide bases that are relevant for the evaluation of the EEZ problematique, the general thrust of the above-mentioned Resolutions of the UNGA is indicated hereunder so that the regime, which provides the main subject of this thesis, might be assessed in accordance with the intentions and perceptions of its formulators and supporters.

In the Resolution on Permanent Sovereignty over Natural Resources, for example, the General Assembly declares, inter alia that:

> (1) The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well being of the people of the State concerned;[5]

By virtue of the Declaration on the Establishment of a New International Economic Order,

> "We, the members of the United Nations...solemnly proclaim our united determination to work urgently for the ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER based on equity, sovereign equality, interdependence, common interest and co-operation among all States...which shall correct inequalities and redress existing injustice, make it possible to eliminate the widening gap between the developed and the developing countries and peace and justice for present and future generations..."[6]

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[5]Emphasis added.

[6]Resolution 3210(S-VI) May 1, 1974, Emphasis added.

In the Charter of Economic Rights and Duties of States, the General Assembly, in the preamble to that important document, expresses itself to be

> "...Declaring that it is a fundamental purpose of this Charter to promote the establishment of the new international economic order..."

and also to be

> "Desirous of contributing to the creation of conditions for:
>
> (3) The acceleration of the economic growth of developing countries with a view to bridging the economic gap between developing and developed countries.

By way of summary of the main political, legal and economic bases for the evaluation of the significance of the EEZ to the island countries of the Eastern Caribbean, it is to be emphasized that the two major directions that have been charted for the modern law of the sea as embodied in the 1982 Convention, have found the developing countries in the vanguard. Reference is here being made to the expansion of coastal state jurisdiction to the expense of commonage, a direction which led to the establishment of the EEZ regime; and, with respect to the sea-bed and subsoil beyond the limits of national jurisdiction, a substantially transformed concept of commonage, which reflects regulation rather than laissez-faire and which stresses

the principles of welfare, particularly economic welfare, as opposed to the unmitigated operation of the free-enterprise market mechanism. These new approaches have been said to constitute

> "...an attempt to establish the prerequisites for a new order among nations; one that recognizes and legitimizes many of the concerns and aspirations of the vast majority of the world which hitherto have gone unfulfilled sometimes by default, but more often than not by the deliberate design of vested economic and other interests."[7]

In a word, the developing countries are seeking to use the international regime of the Law of the Sea as a means of redressing the perceived inequities of the contemporary international legal and economic order since they feel no commitment to the preservation of concepts, mechanisms and procedures which they had no part in formulating and which, in their view, do not adequately take into account their legitimate rights and aspirations.

THE EEZ, THE ISLAND STATES AND TERRITORIES OF THE EASTERN CARIBBEAN AND THE NIEO

The "NIEO" is a comprehensive concept embodying the aspirations of the Third World countries with respect to the general restructuring of political and

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[7]Evriviades, E., "The Third World's Approach to the Sea-bed," O.D.I.L., Vol. II, Nos. 3/4, 1982, pp. 201-264.

economic relationships as between themselves and the developed countries. The realisation of the NIEO involves action in numerous inter-related fields such as trade, economic and social development, the food problem, and the restructuring of decision-making procedures in international organisations such as the International Monetary Fund and the World Bank. Reduced to its essentials, however, the practical significance of and the basic motivation behind the NIEO are, as stated in Resolution 3201 (S.VI), that it

> "...shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries..."

Writing in 1974, amid the politicking within the UNCLOS III forum on the question of the extension of coastal state jurisdiction, the somewhat detached but sobering observation was made to the effect that

> "if there is a world-wide agreement on the economic zone, the consequences are complex and not yet fully explored."[8]

The relevance of this simple remark is confirmed in its disguised or superficial simplicity by the fact that a full ten years later, articles were still being written

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[8] E. Mann Borgese, "Boom, Boom, and Gloom Over the Oceans: The Economic Zone, The Developing Nations and the Conference on the Law of the Sea," in the San Diego Law Review, Vol. 11, No. 3, 1974, pp. 541-556.

> "firstly to examine the applicability of the concept in relation to the requirements of Tanzania as a developing country, secondly, to examine possible legal implications..."

and all this in relation to a country which

> "has been particularly influential in the formulation and development of the EEZ concept since the time of its joining the Asian-African Legal Consultative Committee and subsequently the Yaounde African Seminar, the OAU Council of Ministers, the Sea-Bed Committee and, finally, the Sea-Bed Committee of UNCLOS III."[9]

It may be timely in this connection to express the view that such ardent supporters of the EEZ as Tanzania and Kenya, whose interventions critically contributed to the crystallization of positions on the African continent and elsewhere, with respect to the endorsement of that concept, were probably somewhat misguided. The Latin American initiative on the other hand, given the existence of the vast living marine resources off their coasts, is more readily understood. The East Africans, however, manifest no such obvious justification for their support of the original Latin American demarche. With respect to the Caribbean, it will be recalled that countries such as Trinidad and

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[9]See Mtango, E.E.E. and Weiss, F., "The Exclusive Economic Zone and Tanzania: Considerations of a Developing Country" in O.D.I.L., Vol. 14, No. 1, 1984, pp. 1-54.

Tobago and Jamaica originally favoured a regional type of EEZ and indeed conditioned their support of the concept on the rights of all states of the region to enjoy access to the living resources of the EEZs of regional neighbours. Eventually, as is well known, this position had to give way to the preponderant forces within UNCLOS III leading to a redefinition by those Caribbean countries of their national as opposed to regional EEZ regime. In respect of these countries, too, given their meagre marine resource endowment, the utility of an EEZ, taking into account the considerable management and other problems and costs involved, may well be questioned. With respect to the island states and territories of the Eastern Caribbean, they may be said to have inherited the concept of the EEZ having played no direct part in its formulation. The independent states of the sub-region, for the most part, acquired their political independence during UNCLOS III, and their arrival on the international scene was far too late for them to have had any formative effect on the concept of the EEZ or on the

precise content of the regime such as would give effect to it.[10]

This view is supported by Lewis according to whom

> "Trinidad has been involved in the preparatory arrangements for UNCLOS III and, with Jamaica, Guyana, and to a lesser extent Barbados has played a fairly active part in the proceedings of the Conference...Grenada appears to have played little part in the conference after independence in 1974; Dominica, Saint Lucia and St. Vincent obtained their independence toward the end of the 1970's when for the most part solutions...were already beginning to gel."[11]

Notwithstanding the essentially peripheral participation of the majority of the island States of the Caribbean in the formulation of the concepts and the provisions such as would give legal expression to them, these island states were nevertheless part of that phenomenon of the UNCLOS III years, of the

> "emergence of as many as fifty new developing mini states, all of which will be concerned with the Law of the

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[10] Independence was gained by Grenada in 1974; Dominica, 1978; Saint Lucia 1979; St. Vincent and the Grenadines, 1979; Antigua and Barbuda, 1981; Trinidad and Tobago and Jamaica both achieved Independence in 1962; and Barbados in 1966. St. Kitts-Nevis achieved its Independence in 1983 i.e. after the conclusion of UNCLOS III.

[11] Lewis, V., "The Interests of the Caribbean Countries and the Law of the Sea Negotiations" in Jhabvala, F., (ed.) Maritime Issues in the Caribbean, Proceedings of a Conference Held at Florida International University, pp. 1-19.

> Sea, and the New International Economic Order, all insisting on the equality of States in the international community."[12]

In addition to the support expressed by countries such as Trinidad and Tobago specifically for the EEZ regime, their concern with respect to provisions affecting the rights of islands as are now enshrined in Part VIII of the Convention, also had a direct bearing on the eventual entitlement of all the island States and territories of the Eastern Caribbean to such a zone of economic jurisdiction inasmuch as these units were, for the most part, still under colonial rule, which constituted an implicit impediment as far as their effective participation in international decision-making was concerned.

Taking an optimistic view of the potential contribution of the EEZ to the establishment of a New International Economic Order, the suggestion has been made that

> "...the question of international income distribution...will be resolved in large part by the extension of coastal states' rights over ocean space. This condition represents an increase in the

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[12]See Gamble, J.K. Jr. "Where Trends the Law of the Sea?" in O.D.[illegible].L., Vol. 10, Nos. 1/2, 1981, pp. 61-91.

> potential income of ocean states at the expense of states not so geographically fortunate."[13]

This view has however not gone unchallenged. It has been stated, for example, taking into account both the management as well as the revenue or NIEO problems set out to be solved with the Conference on the Law of the Sea, that

> "The oceans still are an ecological whole. The rational management of ocean space and resources still requires international action. The development gap is still upon us."[14]

An examination of these two extremely divergent viewpoints suggests that each may have been adopted taking the same factors into account except that the optimistic perspective may not have been adequate recognition to the fact that

> "...there is a very broad gap between the availability of a resource and the actual use thereof."[15]

The discussion so far has approached the EEZ in general, almost abstract terms. The general paucity of

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[13]Pontecorvo and Wilkinson, "From Conucopia to Scarcity: The Current State of Ocean Resource Use," in O.D.I.L., Vol. 5, Nos. 2/3, 1978, pp. 382-395.

[14]E. Mann Borgese, "Boom, Doom and Gloom over the Oceans," op. cit., (Emphasis in original).

[15]See Joseph and Klauwe, "The Living Pelagics of the Americas," in O.D.I.L., Vol. 2, Spring 1974, pp. 37-64.

resources in offshore maritime zones of the Eastern Caribbean States has already been noted. Should they have been more generously endowed with economically viable resources, the gap between potential and current or usable resources would have had to be bridged by the provision of certain vital prerequisites such as financial capital, technology, management and guaranteed access to markets with appropriate levels of demand for the products in question. After all, "primitive methods can in no way exploit the sustainable yield."[16] Ultimately though, it has to be remembered that

> "given their existence in a small semi-enclosed sea, the CARICOM states, even if they had the technological capability for taking complete advantage of a two-hundred-mile economic zone declaration, would be unable to do so, as a result of their close proximity to each other."[17]

It was therefore indeed appropriate to reflect that

> "whether practically the acquisition of the economic zone as such will be as beneficial to the poor nations as

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[16] E. Mann Borgese, "Boom, Doom and Gloom," op. cit., p. 546.

[17] See ECLA Document CEPAL/CARIB 82/16 of 2 November, 1982.

is now assumed, remains to be seen."[18]

In response to this, the conclusion has been reached that, although "the economic zone is the price the rich nations are paying for the Truman Doctrine" arising from the fact that "it is they who started the escalation of territorial expansion into the sea," it is nevertheless true that "the extension of jurisdiction over resources--rich economic zones will increase the dependence of poor nations on rich companies and joint ventures."[19]

On the basis of the simple mathematical formula πr^2, a tiny island with virtually no land area would, on the basis of a 200 mile wide EEZ, acquire jurisdiction over an area exceeding 125,000 square nautical miles. For a continental coastal state to generate a similar area of EEZ, it would need to have an ocean frontage extending over 600 miles disregarding coastal sinuousities and possible delimitation problems with adjacent or opposite states.[20]

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[18] E. Mann Borgese, "Boom, Doom and Gloom Over the Oceans," op. cit., p. 245.

[19] E. Mann Borgese, "Boom, Doom and Gloom Over the Oceans," op. cit., p. 556.

[20] See Report of UN Special Committee on Geographical Disadvantage in O.D.I.L., Vol. 3, No. 2, 1975, pp. 181-186.

The island states and territories of the Eastern Caribbean possess land areas ranging generally between 41 square miles (Montserrat) and 2000 square miles (Trinidad and Tobago). In almost every case, however, these states and territories will acquire, under the EEZ regime, vast tracts of hydrospace that are many times the size of the respective land areas. For example, depending upon the mode of delimitation employed, Saint Lucia, with a land area of 238 square miles, might acquire 5,000 square miles of ocean space. Trinidad and Tobago, Barbados and Venezuela with land areas of 2,000 square miles, 166 square miles, and 355,759 square miles respectively, could acquire jurisdiction over 22,400 square miles; 48,800 square miles and 2,222,000 square miles of ocean space.[21] Grenada with a land-area of 133 square miles could obtain an area of 8,000 square miles and St. Vincent and the Grenadines with an area of 150 square miles could obtain jurisdiction over some 11,000 square miles of ocean space. The lengths of the respective Caribbean coastlines also manifest substantial variations including Barbados with 30 miles, Trinidad

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[21]See Johnson, B., "Regionalism and the Law of the Sea: New Aspects of Dominance and Dependency" in Johnston, D., (ed.) Regionalization and the Law of the Sea. Ballinger Publishing Co., Cambridge, Mass., 1978, pp. 103-127. Figures for Barbados are somewhat misleading given the relatively limited resource-profile of the waters.

and Tobago with 175 miles, and Venezuela with 1,080 miles.[22]

In a document entitled "Special Problems of Small Developing Island States in the Management and Development of Fisheries Under the New Regime of the Oceans," the United Nations Food and Agriculture Organization, with respect to the "special opportunities and problems" created by the EEZ regime for small, developing island states, emphasizes that "the two major considerations are:

(a) with the extension of their jurisdiction over marine resources, the real potential of the fisheries to make a significant contribution towards achieving economic independence for many of the states has been strengthened.

(b) their relatively small resources, human and of other kinds, make the effective management and development of their fisheries especially difficult to achieve."[23]

The FAO document, under reference, also observes that

> "the special problems of these states in the management and development of their fisheries stem from three major characteristics: their small size, their location, and the nature of their fisheries."[24]

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[22]See ECLA Document E/CEPAL/PROY 3/L INF 13, dated 25th October, 1979.

[23]FAO Document COFI/83/7 dated July 1983, p. 1.

[24]See FAO Document COFI/83/F dated July 1983, p. 3.

With respect to the particular problems faced by these small developing states, the FAO cites:

(1) a narrow range of primary production and a low volume of output: the concentration of trade flows with a few or even a single market based on commodities whose prices fluctuate severely on international markets; and dependence upon and consequent vulnerability to world economic trends.

(2) Vulnerability to natural disasters, (hurricanes, volcanic eruptions, etc.)

(3) Lack of adequate suitable harbour sites and fragile ecosystems which are "especially sensitive to pollution from industrial processes."

(4) "The low volume of international trade which often supports only low levels of international shipping and communication services. With the low volumes of economic activity and the associated dis-economies of scale, the high costs of the provision and operation of infrastructure, such as roads, ports, airports, communications, and power and water supply are a further deterrent to development; the effectiveness of administrative programmes is also limited by the delays and the cost of inter-island travel and by poor communications."

(5) "Limited human resources. Maintaining educational opportunities throughout island groups is difficult and costly. Where economic opportunities are limited, the attraction of nearby developed states has sometimes led to heavy migration, especially among more skilled workers."

With respect to the problems faced by small island states arising from their geographical location, the FAO Document under reference also notes that:

> "The small island States of the Caribbean, as components of an island chain, have zones of jurisdiction over fisheries that are largely

> interlocking, and delimitation and zone management problems are consequently complicated. The large number of independent countries necessitates several dozen bilateral agreements in order to fix the boundaries of the zones. The zones are small and the fisheries resources they contain are limited. Although the absence of clear-cut boundaries between developing island states is not generally a major problem at present, it will become increasingly important in the negotiations with foreign fishing enterprises and ensuring effective monitoring, control and surveillance."

With respect to the nature of such fisheries as may be available for exploitation by small island states and territories of the Caribbean, it is noted that these "are among the most demanding to develop." Further, due note is taken of the fact that the offshore fisheries in these areas are mostly on highly migratory species. Here too, management efforts have the added complexities associated with stocks which may range through the zones of other states and through adjacent high-seas areas. It may therefore be extremely difficult for these small island states and territories to compete with the well-developed, high technology operations of the distant-water tuna fleets and to sell on a world market dominated by a few transnational companies.

The value of fisheries to the small island states of the Eastern Caribbean or, more effectively, the

objectives of fisheries development in these countries, relate to the saving of foreign exchange through import-substitution in respect of fisheries products; the earning of foreign exchange through exports; increased protein self-sufficiency of the respective populations; the generation of employment and training opportunities and the overall generation of revenue. At the psychological level, but with critical implications for policy, is the fact that the EEZ regime with its extension of the jurisdiction of these states over surrounding sea areas, might well give rise to great expectations in the form of the general economic returns which may accrue to the society. The apparently uncritical acceptance of the renewability of fisheries resources based on the maximum-sustainable-yield management approach, entrenched in the 1982 Convention, may well be a force in this direction. This could have negative policy implications leading to the formulation of unrealistic fisheries objectives and consequent over-capitalization leading ultimately to financial loss all as a result of the real and powerful constraints under which these States must labour.

In this connection, it might well have been the case, especially if the examples of Peru and similarly located countries are duly observed, that the perception of fishing as a simpler and more easily

practical form of exploitation vis-a-vis ocean mining, in which field, only the developed, technological countries held undoubted sway, led to the emphasis placed by developing coastal states on "superjacent waters" as well as on "the ocean floor" which latter concept received the concentrated attention of the developed countries.

Whatever the merits of such speculation, the question needs to be squarely faced as to whether, in what particular forms and with what predictable results, the small island States and territories of the Eastern Caribbean will seek to attract foreign expertise and capital in order to obtain the eagerly anticipated benefits of this zone of multipurpose, functional, economic jurisdiction that is the EEZ.

One solution that has been canvassed in this regard, insists that:

> "Developing nations need the big companies. Joint ventures provide a perfectly acceptable instrument to get the job done; especially if they are accompanied by international guarantees for the security of investments, thus strengthening the status quo; and additionally if they leave top management, and the majority of shares, in the hands of the foreign company, thus making sure the company will get its fair share."[25]

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[25] E. Mann Borgese, "Boom, Doom and Gloom over the Oceans," op. cit., p. 546. (Emphasis added).

Such a prescription from the perspective of the island States and territories of the Caribbean and also from a general Third World perspective, is nothing short of a recipe for plunder and exploitation in the most pejorative sense of that term: a prescription which goes against all the major principles of the Resolution on the Permanent Sovereignty over Natural Resources; the Declaration on the Establishment of a New International Economic Order; and the Charter of Economic Rights and Duties of States. The countries of the Caribbean generally have wrestled with such prescriptions as a seemingly ever present historical reality. An additional imposition must surely prove unpalatable.[26]

The warning has however been sounded by the same author according to whom:

> "The lesson is: if the domestic enterprise is no match, technologically and/or financially, for the foreign company or multinational, the deal will work out altogether in favour of the latter. It will still be a case of post-colonial economy, pure and simple, if, on the other hand, the domestic

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[26]See for example, Ince, B. (ed.), Contemporary International Relations of the Caribbean, Institute of International Relations, U.W.I., Trinidad and Tobago; Thomas, C.Y., Dependence and Transformation, Monthly Review Press, New York; Baran and Sweezy, Monopoly Capital, Penguin Books; Wallerstein, I., The Capitalist World Economy, Cambridge University press, 1983; and Taylor J.G., From Modernization to Modes of Production, The Macmillan Press, 1979.

> enterprise is strong, the enthusiasm of the foreign company is quick to wane."[27]

Since the foreign joint-venture option may prove disadvantageous or of dubious benefit to the island States and territories of the Eastern Caribbean as potential host States, is there, one may ask, a viable, national alternative? It has already been observed that the economic future of many coastal States, including the island States and territories of the Eastern Caribbean, "will be closely related to utilization of the resources of the sea."[28] Paradoxically, however, it has also been suggested that "Marine development will depend to a great extent on prospects for general economic growth. Unless there is hope for the latter, there can be little or no

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[27]E. Mann Borgese, "Boom, Doom and Gloom Over the Oceans," op. cit., p. 546. A telling example of the impact of the overwhelming technological, financial and managerial superiority of a powerful transnational over a developing island state is contained in Meltzoff, S.K., and Lipuma, E.S., A Japanese fishing joint venture: worker experience and national development in the Solomon Islands: ICLARM Technical Reports, 12 International Centre for Living Aquatic Resources Management, Manilla, Philippines. In this case, the yearly sales of the foreign company "in the neighbourhood of $3.6 billion, far exceed the GNP of the Solomons", p. 2.

[28]See Joseph and Klauwe, The Living Pelagics of the Americas, op. cit.

development of the former.[29] Similarly, it has been postulated that the revenue to be derived from the EEZ by Coastal States is a function not of the quantity of ocean space available but rather of the general level of economic development.[30] These views are of course diametrically opposed to those of Nelson who interestingly, is a Caribbean writer, and for whom

> "...the establishment of these offshore claims would entitle the states of the region to enjoy immediately the economic rewards resulting from the establishment of exclusive rights in offshore areas..."[31]

This point of view is also resisted by Pontecorvo and Mesznik, who specifically identify the costs to be incurred by coastal states as a result of the EEZ regime.[32] These economists, writing in 1974, begin

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[29]Mitchell, C.L., and Gold, E., Fisheries Development in Dominica. An Assessment of the New Law of the Sea Implications and Strategies. Dalhousie Ocean Studies Programme, 1983, op. cit.

[30]E. Mann Borgese, "Boom, Doom and Gloom over the Oceans," op. cit.

[31]Nelson, D., "The Exclusive Economic Zone and the New Law of the Sea" in Gold and Letalik, Problems of Development and Ocean Management in the Eastern Caribbean. Dalhousie Ocean Studies Programme, 1983, pp. 13-31.

[32]See Pontecorvo and Mesnik, "The Wealth of the Oceans and the Law of the Sea: Some Preliminary Observations," in the San Diego Law Review, Vol. 11, No. 3, 1974, pp. 679-690.

their attack on the trend towards the extension of coastal state jurisdiction over vast areas of marine space by endorsing the premise that

> "...it is the dynamics of the rapidly changing (increasing) value of ocean resources that is one of the driving forces behind the rising interest in ocean management programmes."[33]

They however pointed out that

> "if by jurisdiction, a country gains control over a fishery, it must assume the cost of management. Furthermore, if the stocks have been utilized by other nations, there will be a problem of "phasing out". This will include the difficulties faced by those "phased out", the reallocation of effort to other fisheries, the exclusion of third parties elsewhere as well as other problems."[34]

The applicability of these factors to the island states and territories of the Eastern Caribbean is as incontestable as their effects have been bothersome if not disastrous.

Displaying an extremely perceptive insight into the EEZ regime and its possible implications, Pontecorvo and Mesznik usher in the stark reality according to which,

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[33] Idem.

[34] Pontecorvo and Mesnik, The Wealth of the Oceans and the Law of the Sea: Some Preliminary Observations, op. cit.

> "another aspect of jurisdiction is that the coastal state must not only assume the management burden for what heretofore has been an international fishery but also the burden of "full utilization of the resources."[35]

Addressing the relevance of the EEZ to the requirements of a New International Economic Order, the view is advanced by these two writers that:

> "To the extent that the extension of territorial claims is perceived as a means of wealth distribution from the richer to the poorer nations, it will be based on many precedents which will give it a broad base of support and may make it acceptable. However, it is not necessarily the most effective way to achieve this end.[36]

They also warn that

> "...when costs of staking claims are disregarded or assumed to be zero, any possible sources of revenue, as uncertain and as low as its present value may be, is worth claiming."[37]

Ultimately the conclusion is reached that

> "...simple extension of territorial claims will tend to worsen, not improve the international distribution of income and wealth."[38]

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[35]Pontecorvo and Mesznik, The Wealth of the Oceans, op. cit., p. 685. Emphasis added.

[36]Pontecorvo and Mesznik, Ibid., p. 688. Emphasis added.

[37]Ibid., p. 688.

[38]Ibid., p. 689. Emphasis added.

Restricting himself to what he calls "Semi-Doomsday Scenarios", J.K. Gamble Jr. speculates that

> "if the gap between the rich and the poor states continues to widen...this will accent the inability of the law of the sea to act as a medium through which economic inequalities can be corrected. If this occurs...there may be a tendency for poor states to use their ocean rights to retaliate against the rich."[39]

The same writer had earlier expressed as a "pessimistic scenario," the view that

> "for many countries in the world, claims to the oceans may be one of the few political bargaining chips they have in a high stakes game of international politics. During the next twenty years, the temptation to play these chips will be great. The likely results will be increased tension, violence and, maybe, regional wars."[40]

Should such an admittedly "pessimistic scenario" develop, it would seriously call into doubt the validity of the view according to which the accomplishments of UNCLOS III are to be regarded as "part of a large effort by the United Nations to move

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[39]Gamble, Jr., J.K., "Where Trends the Law of the Sea?" op. cit., p. 85.

[40]Gamble, Jr., J.K., "Where Trends the Law of the Sea?" op. cit., p. 79.

the world beyond old antagonisms, towards solution of the great common problems confronting us all."[41]

By way of summary of the problematique presented by the introduction of the EEZ regime States and territories of the Eastern Caribbean, reference will be made to the main aspect of the applicability of the concept namely the difficulties encountered in, as well as the net effects of the operationalization of, the concept especially as regards delimitation and the husbandry of resources. It is the combined effects of these two factors which basically determine whether the EEZ is a blessing or a burden to the developing island States and territories of the Eastern Caribbean, that is to say, whether the adoption of this regime will tend to the solution or the exacerbation of their development problems.

A propos of the applicability of the EEZ concept, a concept vaunted abroad in the context of a 200 nautical mile limit, a Caribbean writer addressing the marine problematique of his region suggests that

> "...in its particular setting, this might turn out to be, at least an empty benefit, if not an actually

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[41]See B.P. Menon, Global Dialogue: The New International Economic Order, Pergamon Press, 1977, op. cit.

> prejudicial initiative in terms of economic and political consequences."[42]

Taking into account what has been said earlier about the Caribbean seascape, it no longer comes as a surprise to learn that this remark was formulated with respect not to a 200 mile EEZ but to a 12-mile territorial sea! With respect to what the writer, in 1976, called a "patrimonial sea" of 200-miles it was stated that:

> "Specifically in the Caribbean context, however, one can have some reservations about the merits of the concept. In view of the large number of small-sized individual entities in each other's close vicinity and the effect a combination of the median line and equidistance principles would have when applied...general application of the theory...would lead to a totally unworkable fragmentation of the entire available hydrospace into numerous shapeless units of national economic jurisdiction of varying sizes, unrelated to land territory and its size."

Further,

> "in the absence of supra-national norms and co-operation, this would exclude any realistic possibility of

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[42]See Fonteyne, Jean-Pierre L., "The Caribbean Sea: Values and Options in the Light of Changing International Law" in Lewis, V. (ed.); Size, Self-Determination and International Relations: The Caribbean, I.S.E.R., 1976, op. cit., p. 274.

> rational management of the resource potentials involved."[43]

Stressing another aspect of the EEZ in the region, the Prime Minister of Trinidad and Tobago in his speech to inaugurate the First Session of the Western Central Atlantic Fisheries Commission in 1975 expressed the view that the extensions of 200-mile fisheries or exclusive economic zones

> "would be catastrophic for Caribbean countries that are in a state of virtual dependency on access to fisheries resources of the Western Central Atlantic Region."

More generally, but nevertheless most effectively, the view has been expressed with respect to the 200-mile patrimonial sea, as emerged from the Specialized Conference of Caribbean Countries concerning the problems of the Sea, held in 1972 that

> "the Santo Domingo Declaration...was not the answer of the Caribbean countries to a regional problem. We did not meet there in order to find a legal answer to the problem of the Caribbean...In fact, it has very little to do with it. What is more, the fact that all the participants were Caribbean countries was almost circumstantial. What was intended was to try to reach agreement on what could become a proposal for one aspect of a worldwide legal regime.

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[43]Fonteyne, Jean-Pierre L., op. cit., pp. 275-276.

> Why is this so? The Caribbean, because of its very nature, lends itself very little to this kind of regime or solution called the patrimonial sea."[44]

It is therefore clear that

> "though emanating from a conference of Caribbean countries and as a Caribbean doctrine, the EEZ concept basically reinforced the South American position and not those of the island states of the Caribbean."[45]

In particular, according to one of the Caribbean's foremost experts on the Law of the Sea,

> "it is roughly estimated that one state, Colombia, would have jurisdiction over some 20 percent of the entire Caribbean seabed, and Colombia, Mexico and Venezuela together would control 37 percent. The four poorest states acquire 14.8 percent; the four metropolitan powers--France, The Netherlands, the United Kingdom, and the United States--secure rights to 19.5 percent of the Caribbean Sea by virtue of their possessions or dependencies; Cuba would get 8 percent, Jamaica 8.8 percent, Haiti 3.6 percent, Dominican Republic 6 percent, the Leeward Islands 5.5 percent, the Windward Islands 13.7 percent, and Trinidad and Tobago 3 percent. With regard

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[44]Castaneda, J., "The Patrimonial Sea as A Regional Concept" in Pacem in Maribus: Caribbean Study and Dialogue, I.O.I., Malta, 1974, pp. 341-365.

[45]Lewis, V.A., "The Interests of the Caribbean Countries and the Law of the Sea Negotiations" in Jhabvala, F. (ed.), Maritime Issues in the Caribbean: Proceedings of a Conference held at Florida International University 13th April, 1981. Florida International University Press, 1983.

> therefore to spatial distribution of the Caribbean Sea, the insular Caribbean territories find themselves at a serious disadvantage vis-a-vis the continental mainland territories, particularly Colombia and Venezuela."[46]

With respect to the actual delimitation of the EEZ in the Eastern Caribbean as elsewhere, the 1982 Convention[47] is but one instance where "political acceptability will have to be bought at a cost of legal clarity. The convention will not so much resolve some disputes as contain them. It will not create order out of chaos, but rather define the terms of disorder."[48]

In addition,

> "the Caribbean and Gulf of Mexico area, with its host of island states and colonial leftovers, contains much potential for boundary disputes. The Caribbean islands are closely spaced in terms of 200-mile zones, and some...have already voiced unhappiness at the prospect of being boxed in by the zones of neighbouring states."[49]

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[46]See Ballah, L.F., "The Caribbean and the Emerging Law of the Sea," in Jhabvala (ed.) Maritime Issues in the Caribbean, op. cit., pp. 62-85.

[47]See Article 74.

[48]See Buzan, B., "A Sea of Troubles?" op. cit., p. 2.

[49]Buzan, B., "A Sea of Troubles?" op. cit., p. 18.

With respect to the effective husbandry of resources lying within the EEZ's of Eastern Caribbean States, it remains true that the paucity of reliable information on the nature and extent of the fisheries resources in the Caribbean complicates any evaluation of the effect of the EEZ regime on fishing and fish-marketing practices in the Caribbean.[50]

Also the findings of the United Nations Educational, Scientific and Cultural Organization are nevertheless equally true when, with particular relevance to the EEZ, they point to the fact, so relevant in general terms, in the context of the Eastern Caribbean that:

> "The regime and the Convention bring into sharp relief, on the one hand, the obligations and responsibilities falling on UNESCO's Member States, and the possibilities for the rational exploitation of the living and non-living resources of the sea and the seabed, and, on the other hand, the capabilities of the member States to undertake such rational exploitation, and responsibilities, and to determine effective national policies in marine affairs."[51]

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[50]This point was made by L.F. Ballah in his Keynote Address Delivered at the 36th Annual Session of the Gulf and Caribbean Fisheries Institute, Port-of-Spain, Trinidad and Tobago, 14th November, 1983.

[51]See UNESCO, Triennial Report 1980-82 (Document IOC/INF, 536).

The same report, with equal relevance, emphasizing the achievement of national development objectives as well as international development endeavours such as those inherent in the N.I.E.O., states that

> "the participation of Member States in the benefits, accruing from the use of ocean space and its resources, offered by the Convention on the Law of the Sea can only be fully realized if all member states, and particularly developing ones have the requisite marine scientific and technological capabilities, as a basis for achieving national goals, and participating fully in international activities of interest to them."[52]

It follows therefore that, with reference to the conceptual as well as the several operational aspects of the EEZ as contained in the 1982 Convention, the translation of this legal concept into policy in furtherance of national interests and, in the performance of international obligations, confronts the island states and territories of the Eastern Caribbean with numerous insuperable problems. To those aspects which have most recently been discussed must be added the major factor of the need for an effective monitoring, surveillance and control capability. In other words, at least with respect to the island States and territories of the Eastern Caribbean, the EEZ regime is manifestly less than appropriate. In fact,

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[52] Idem. Emphasis added.

the view has been expressed to the effect that with respect to the insular Caribbean States and territories, "the known resources both living and non-living to be found in the marine areas embraced by such expanded jurisdictions are in the case of the Caribbean so minimal as not even to justify their declaration of EEZ's at this time."[53]

SUMMARY EVALUATION OF THE EEZ PROBLEMATIQUE WITH RESPECT TO THE ISLAND STATES AND TERRITORIES OF THE EASTERN CARIBBEAN

Notwithstanding the storms of protest that greeted the claims of the "territorialist states" of Latin America in the context of their early assumption or jurisdiction over greatly expanded areas of ocean space, the international community, including the island States of the Eastern Caribbean, has, in the course of the last decade or so, adapted to the regime of the Exclusive Economic Zone in a manner that has been anything but dramatic.

The exclusive economic jurisdiction enshrined in Part V of the 1982 Convention has had significant implications for the operations of distant-water fishing fleets. Today, while significant catches are still taken by distant-water or other foreign fishing operators, this is no longer done on an automatic basis

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[53]See Ballah, L.F., The Caribbean and the Emerging Law of the Sea, op. cit., p. 81.

but rather is increasingly subject to quotas and other conditions stipulated and controlled by coastal States.[54]

According to a Report published by the Food and Agriculture Organization,[55] coastal States are currently gaining benefits from extended maritime jurisdiction in a variety of ways in particular by virtue of direct payments in the form of licence fees received from foreign fishing operatives seeking access to their resources. The Report illustrates this point with reference to examples from both developed and developing coastal states. In the United States of America, for example, licence fees are stated to cover the costs involved in the management of the marine resources to which access is granted. Such costs relate to areas such as scientific research, surveillance, and enforcement. In some of the island States of the South Pacific, licence fees, according to the report, account for "a significant portion" of their income. In the case of West Africa, "indirect payment" in the form of technical assistance projects is said to be common.

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[54] See "Review of the State of World Fishery Resources," in FAO Document COFI/83/INF.4 July 1983.

[55] Idem.

With respect to the small developing island states and territories of the Eastern Caribbean, there are, given the less than even distribution of living and non-living marine resources, wide variations in the potential benefits which may be derived from their respective EEZ's. The prospects for the discovery of offshore hydrocarbons are, based on present evidence, rather limited, so that, for the most part, greatest attention will be paid to the development of fisheries and related activities. Further, the overlapping jurisdictions of the sub-region serve only to complicate the delimitation and other management aspects of the respective EEZs for, as has been shown earlier in this thesis, the existence of such a large number of independent countries in the sub-region creates the need for numerous bilateral negotiations aimed at the establishment of maritime boundaries.[56] Added to this, most of the EEZs in the Eastern Caribbean would be relatively small and harbour only limited fisheries resources. In any event, the delimitation of maritime boundaries could be of vital importance in the context of negotiations between the island States of the Eastern Caribbean and foreign fishing companies. It would be also a sine qua non of

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[56]See Lennox Ballah, Keynote Address Delivered at the 36th Annual Session of the Gulf and Caribbean Fisheries Institute, op. cit.

effective monitoring, control, surveillance and enforcement.

With reference to the development of fishing industries in the Eastern Caribbean, it cannot be over-emphasized that the establishment in municipal legislation of an EEZ on the part of the island states and territories, does not of itself guarantee additional economic or other benefits and must be seen as only one, albeit necessary, step toward the establishment of a fishing industry capable of exploiting the resources of the zone. Except to the extent that stock abundance and hence catch-rates will increase as a result of the exclusion of distant-water fleets, the technical problems of catching, processing and marketing the fish would remain. It is for this reason perhaps, that in the Eastern Caribbean, as in many other regions, the adoption of EEZ regimes has not been accompanied by dramatic increases in the levels of fish catches.

Related to this fact is the reality that, for the most part, the types of fisheries in areas within the jurisdiction of the small island states of the Eastern Caribbean, are exceedingly demanding in terms of their development and overall management. The inshore fisheries are largely confined to reef species and are easily over-fished so that any attempts at increased

productivity could have undesirable consequences. In addition, in cases where fishing effort is expanded as a result of the new regime or where, reflecting the increased commercialization of the fisheries, fish previously given away or exchanged is sold, new strains can be placed on management, marketing and other structures.[57] In any event, neither pelagic nor demersal resources are present in sufficient quantities to justify the establishment of any new industrial fishery based entirely on the EEZ of any one island State or territory.[58]

With respect to the offshore fisheries in the waters surrounding the small oceanic island States and territories of the Eastern Caribbean, these consist mostly of highly migratory species. The management of these stocks would be an infinitely complex exercise inasmuch as the exploited species inhabit areas straddling or traversing the EEZ's of other countries and even extending to adjacent high seas areas. The resource-deficient island states and territories of the

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[57]This point is forcibly made by Ballah, "Keynote Address", op. cit.

[58]Moore, G., "The Changing Law of the Sea and its Implication for the Fisheries of the Western Atlantic." Paper presented at the Norwary/FAO/WECAF Seminar on the Changing Law of the Sea and the Fisheries of the Western Central Atlantic Region, Havana, Cuba, 14-17 November, 1980.

Eastern Caribbean are undoubtedly in a position that is less favourable vis-a-vis that of the developed and technologically advanced countries with their distant water tuna fleets combined with their international marketing networks.

From the foregoing, the island states and territories, countries of the Eastern Caribbean, labour under several constraints with respect to the development and overall management of their fishing industries. These constraints include the small size of their EEZ's; limited fisheries resources; limited availability of capital; shortage of skilled manpower, limited and generally uncertain access to markets; limited surveillance and enforcement capability, and the low level of priority assigned to fisheries by many of these States.

It follows, therefore, that the rational, effective and economic exploitation of oceanspace and its resources by these countries dictate the creation of an alternative regime to the national EEZ. Such a regime will not necessarily involve the conversion of the entire 1982 Convention into jetsam. Some important attributes of that regime may have to be retained and it is suggested that the process of substantially modifying the EEZ regime of the 1982 Convention might take place in the Eastern Caribbean context on the

basis of treaties, customary processes and in particular, regional arrangements.[59] The exploration of an alternative regime to either replace or supplement the series of national EEZs is however beyond the scope of this thesis. What is beyond doubt, however, is that the introduction of the EEZ regime in the context of the island states and territories of the Eastern Caribbean, has presented formidable problem areas of a political, legal and economic nature with delimitation, fishing and marine scientific research, the areas on which this thesis has been focussed, representing only some of the more important aspects of the range of ocean-related problems that constitute the "EEZ problematique" of the sub-region.

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[59] See Gamble, Jr. J.K., Where Trends the Law of the Sea? op. cit., p. 87.

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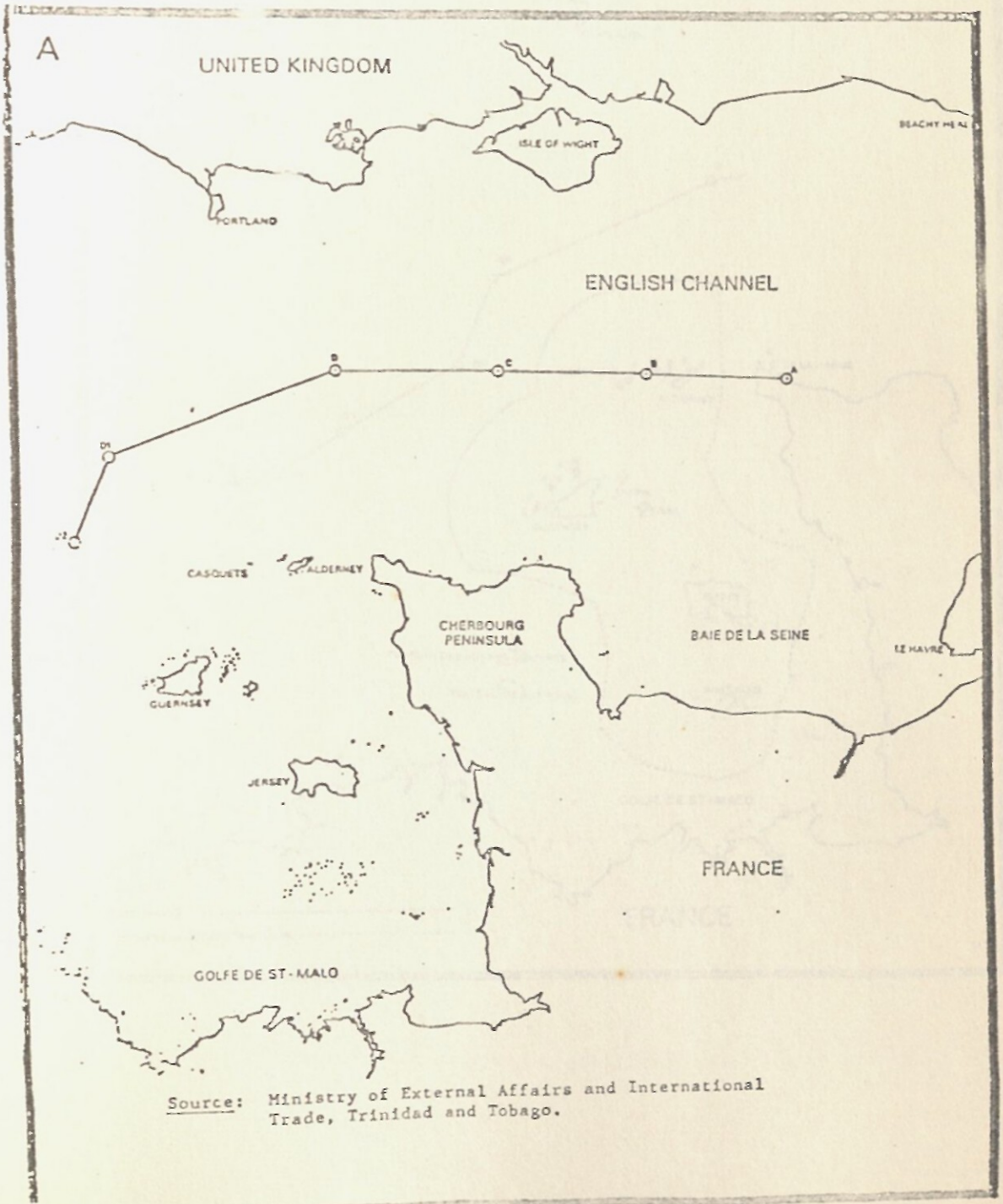
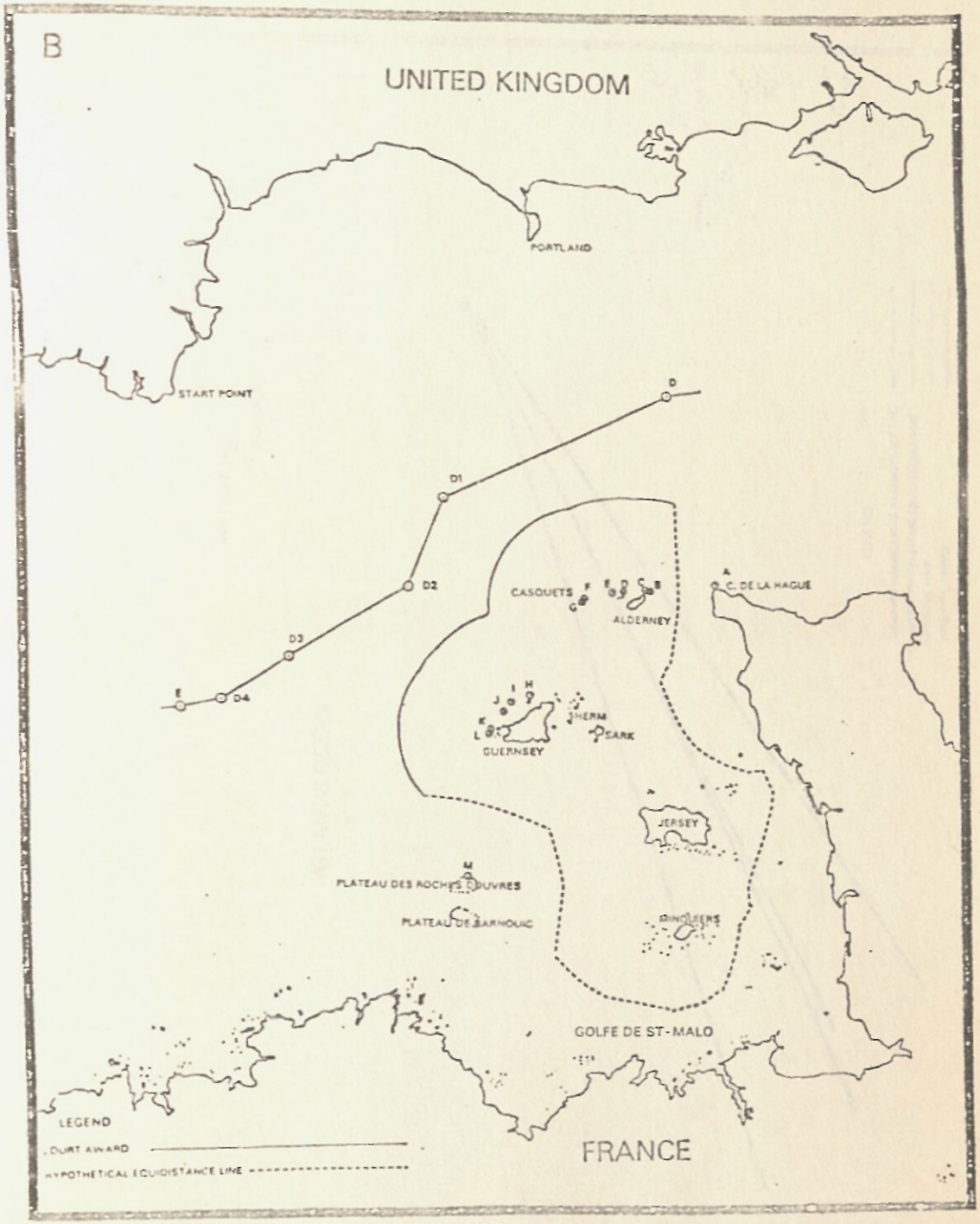
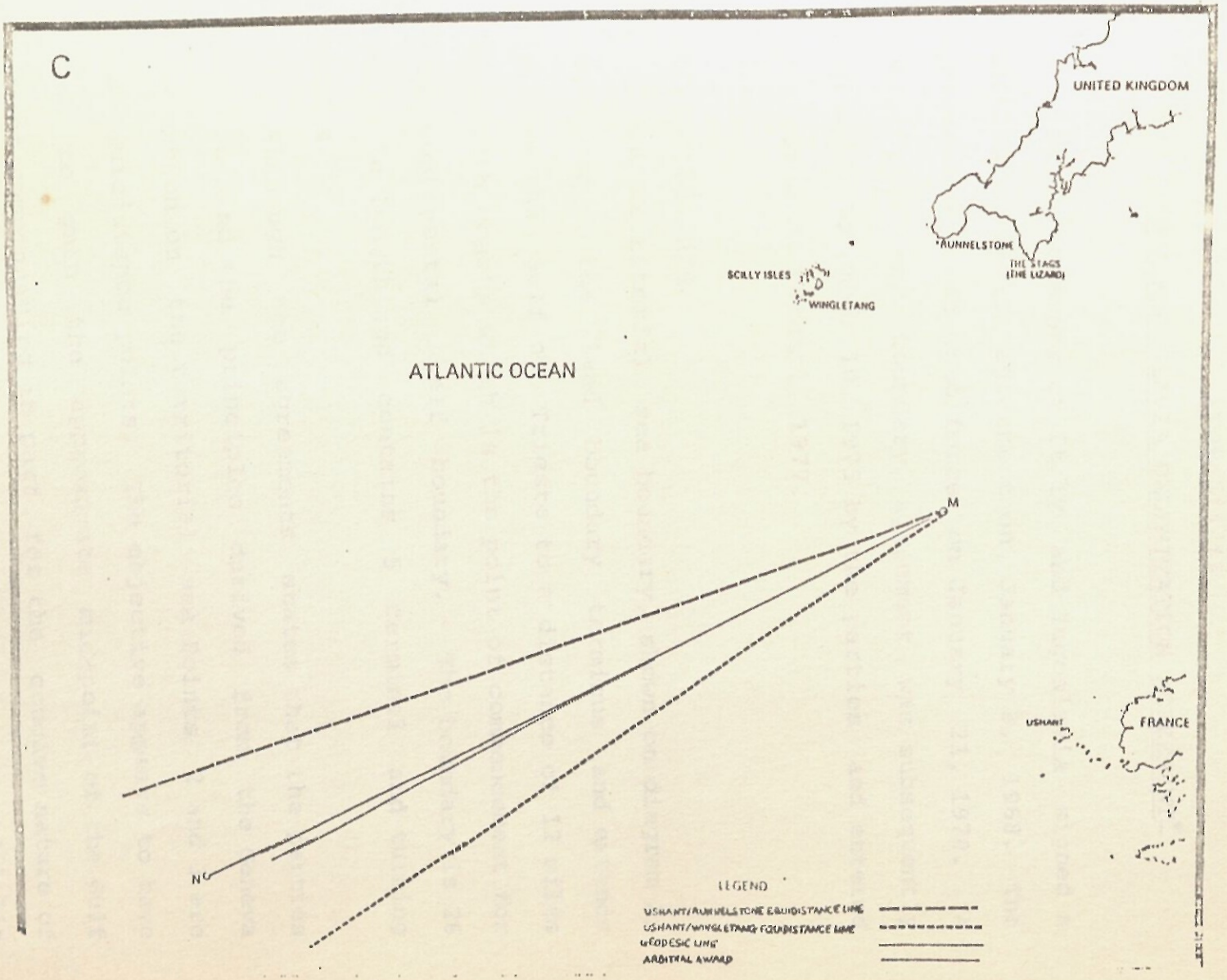
APPENDIX 1

Three Maps Illustrating the United Kingdom/France Delimitation Agreement



Source: Ministry of External Affairs and International Trade, Trinidad and Tobago.


B
UNITED KINGDOM
PORTLAND
START POINT
D
D1
D2
D3
D4
E
CASQUETS
ALDERNEY
C. DE LA HAGUE
HERM
SARK
GUERNSEY
JERSEY
PLATEAU DES ROCHES DOUVRES
PLATEAU DE BARNOUIC
MINQUIERS
GOLFE DE ST-MALO
FRANCE
LEGEND
COURT AWARD
HYPOTHETICAL EQUIDISTANCE LINE


C
UNITED KINGDOM
RUNNELSTONE
THE STAGS
(THE LIZARD)
SCILLY ISLES
WINGLETANG
ATLANTIC OCEAN
M
N
USHANT
FRANCE
LEGEND
USHANT/RUNNELSTONE EQUIDISTANCE LINE
USHANT/WINGLETANG EQUIDISTANCE LINE
GEODESIC LINE
ARBITRAL AWARD

APPENDIX II

THE ITALY/YUGOSLAVIA DELIMITATION AGREEMENT*

The governments of Italy and Yugoslavia signed a continental shelf agreement on January 8, 1968. The agreement entered into force on January 21, 1970. A territorial sea boundary agreement was subsequently signed on November 10, 1975 by the parties and entered into force on March 1, 1977.

Territorial Sea

The territorial sea boundary, shown on diagram A, commences at the land boundary terminus and extends through the Gulf of Trieste to a distance of 12 miles from both coasts which is the point of commencement for the continental shelf boundary. The boundary is 26 miles in length and contains 5 terminal and turning points.

Although the agreements states that the parties kept in mind the principles derived from the Geneva Convention on the territorial sea Points 2 and 3 are not equidistance points. The objective appears to have been to gain the approximate mid-point of the Gulf whilst compensating in part for the concave nature of the Italian coastline. Points 4 and 5 which lie

outside the concave area are equidistance from both coastlines.

Continental Shelf (Diagram B)

At the time of the agreement both states were parties to the Geneva Convention on the Continental Shelf. Yugoslavia claimed a 10-mile territorial sea and a 12-mile contiguous zone while Italy claimed a 6-mile territorial sea and a 6-mile contiguous fishing zone.

Point No.1, situate at the head of the Adriatic sea,m is 12 miles distant from both coastlines. Point No.43 terminates the boundary, in water depths exceeding 1000 metres, three miles short of an Albania/Yugoslavia/Italy tripoint.

The equidistance method was tempered by three considera- tions: the presence of islands in the boundary area; the effect of small islands of little economic importance lying well offshore and; the effect of the Yugoslav islands enclosed by a straight baseline system.

Yugoslavia implemented straight baselines, based ont he Norwegian system, which enclosed the main coastal fringe of islands on December 8, 1948. Italy did not establish straight baselines until September 2, 1978. As a consequence the parties agreed to disregard

the effects of the Yugoslav baseline on a continental shelf boundary.

Between Points 1 and 25 the boundary is an equidistance line computed between the Italian mainland and the Yugoslav mainland and islands within the baseline system. The small, off-lying, Yugoslav islands of Jubaka and Svetac were disregarded as basepoints between turning points 26 to 30 and islands enclosed by the baseline system were substituted.

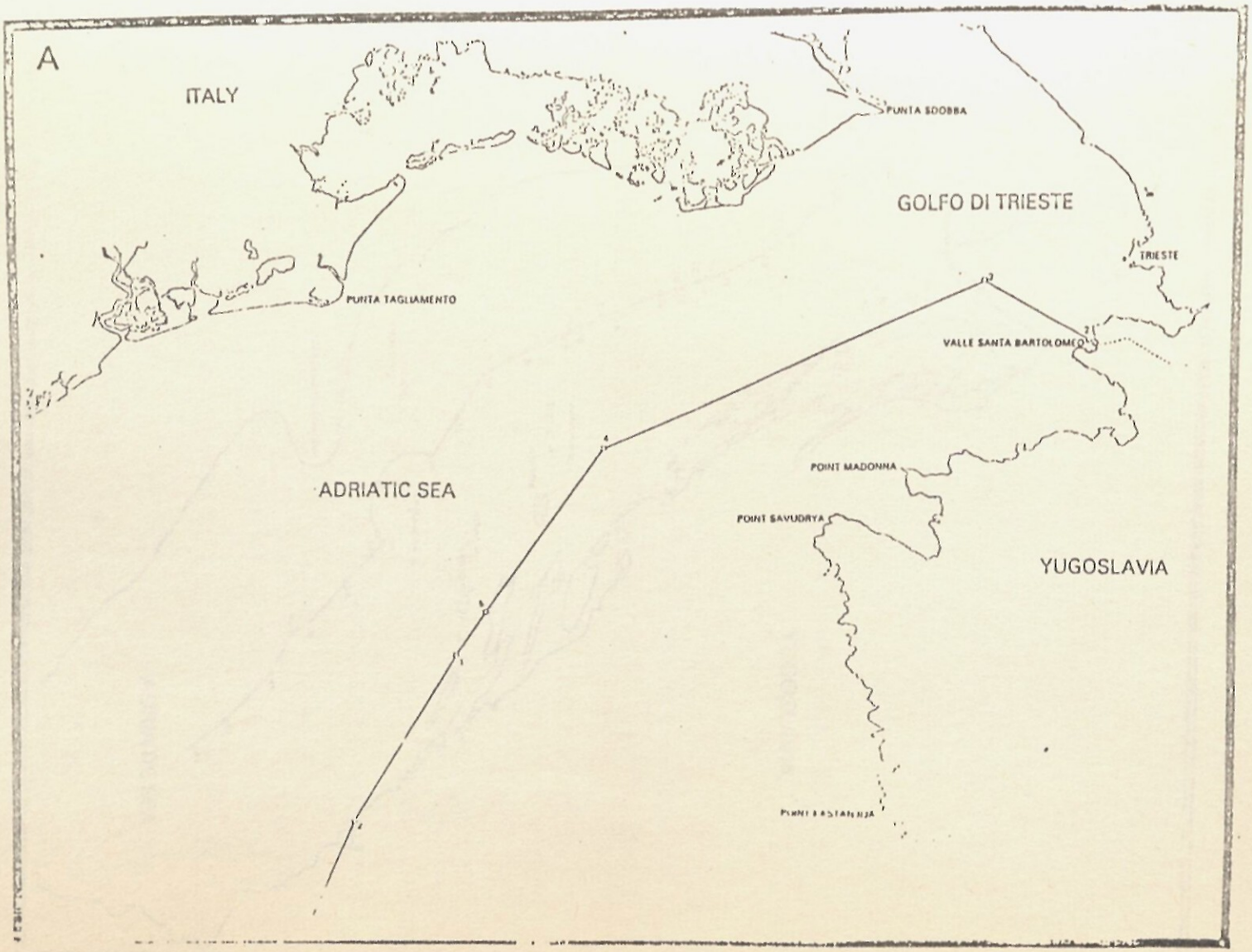
Points 31 to 34 utilized the 18-mile long islands of Vis, situated seaward of the Yugoslav baseline system, but disregarded the small Italian islands of Pianosa and Tremiti as basepoints.

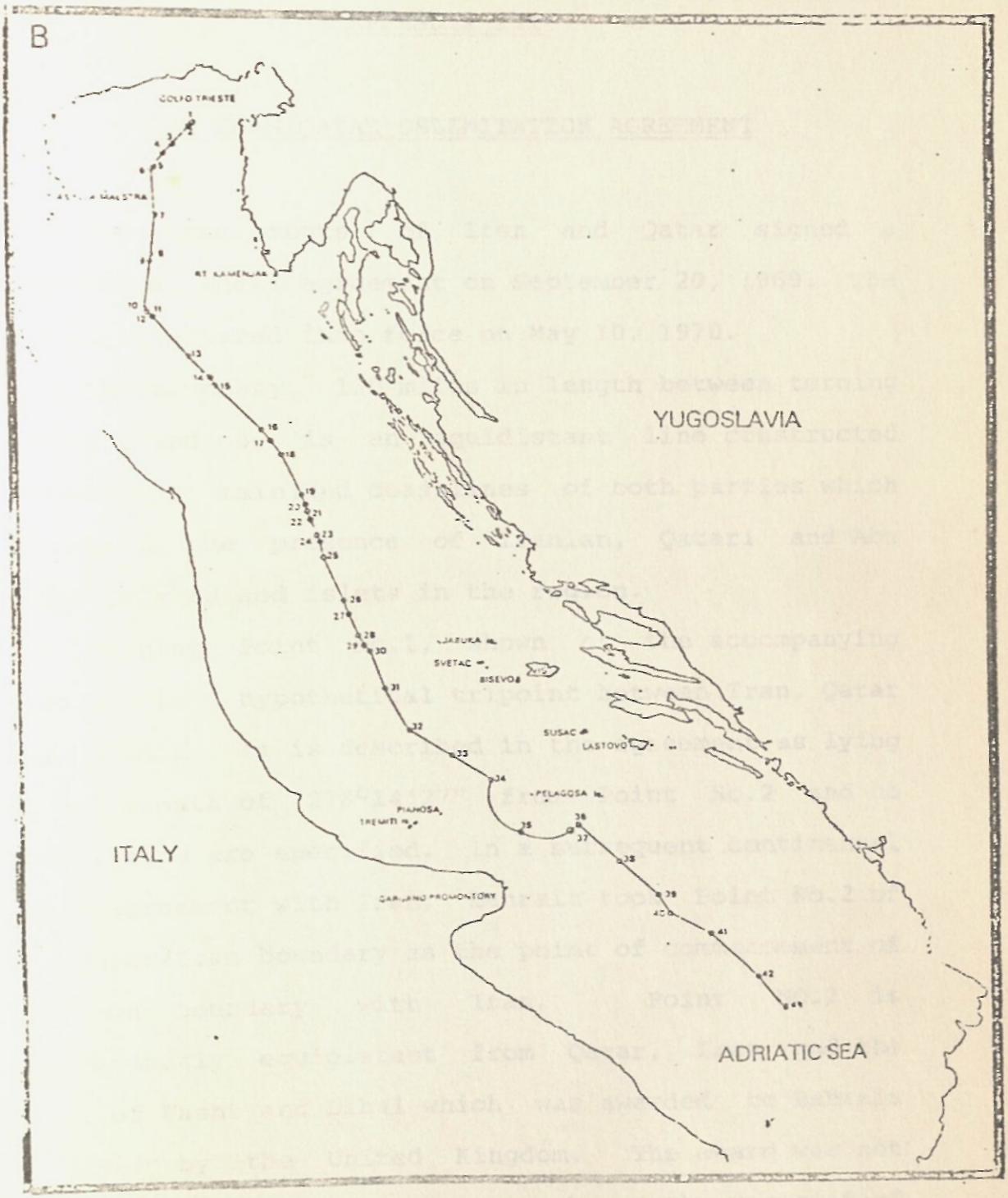
Between Points 34 and 36 the boundary is not equidistant but has been diverted to award the Pelagosa Islands, situated in the boundary area,a combined 12-mile belt of territorial sea and contiguous zone. The Pelagosa Islands have no effect for determining the equidistance line.

From Point 37 to 43 the boundary is an equidistance line computed between the Italian mainland

and the Yugoslav mainland and the islands lying close offshore.

*SOURCE: Library of the Ministry of External Affairs and International Trade, Trinidad and Tobago. (Accessible to the Public subject upon request)


A
ITALY
PUNTA SDOBBA
GOLFO DI TRIESTE
TRIESTE
PUNTA TAGLIAMENTO
VALLE SANTA BARTOLOMEO
POINT MADONNA
ADRIATIC SEA
POINT SAVUDRYA
YUGOSLAVIA


B
GOLFO TRIESTE
PUNTA MALESTRA
RT KAMENJAK
YUGOSLAVIA
JABUKA
SVETAC
BISEVO
SUSAC
LASTOVO
PELAGOSA
PIANOSA
TREMITI
ITALY
GARGANO PROMONTORY
ADRIATIC SEA

APPENDIX III

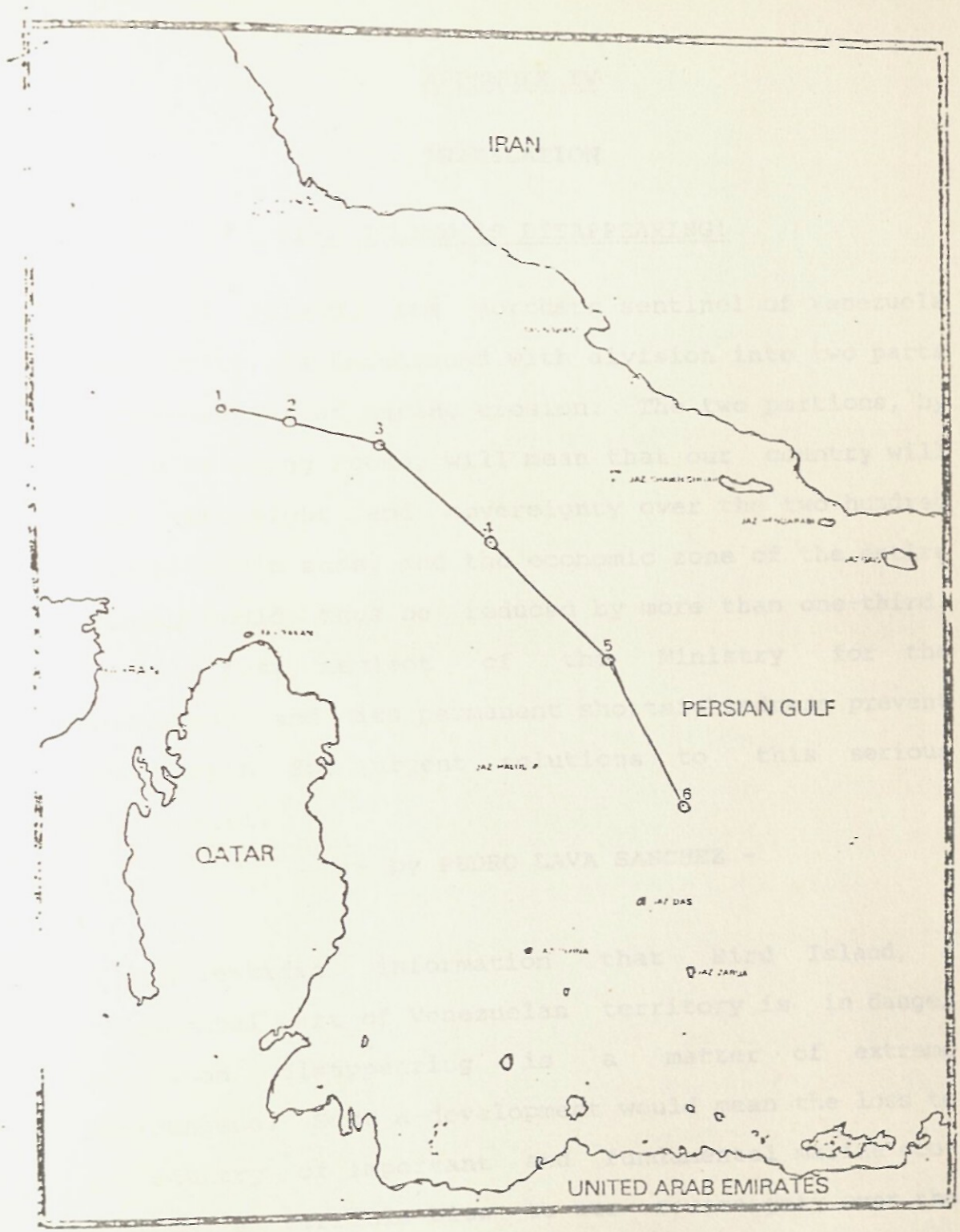
THE IRAN/QATAR DELIMITATION AGREEMENT

The Governments of Iran and Qatar signed a continental shelf agreement on September 20, 1969. The agreement entered into force on May 10, 1970.

The boundary, 130 miles in length between turning points 2 and 6, is an equidistant line constructed between the mainland coastlines of both parties which disregards the presence of Iranian, Qatari and Abu Dhabi Islands and islets in the region.

Turning Point No.1, shown on the accompanying diagram, is a hypothetical tripoint between Iran, Qatar and Bahrain. It is described in the agreement as lying on an azimuth of 278°14'27" from Point No.2 and no coordinates are specified. In a subsequent continental shelf agreement with Iran, Bahrain took Point No.2 of the Qatar/Iran boundary as the point of commencement of her own boundary with Iran. Point NO.2 is approximately equidistant from Qatar, Iran and the islet of Fasht and Dibal which was awarded to Bahrain in 1947 by the United Kingdom. The award was not accepted by the Ruler of Qatar hence the unspecified position of Point NO.1 in the Iran/Qatar agreement.

Point No.6 is coincident with Point A of the Qatar/Abu Dhabi continental shelf agreement.


IRAN
PERSIAN GULF
QATAR
UNITED ARAB EMIRATES
1
2
3
4
5
6

APPENDIX IV

TRANSLATION

BIRD ISLAND IS DISAPPEARING!

Bird Island, the northern sentinel of Venezuela sovereignty, is threatened with division into two parts by the effect of marine erosion. The two portions, by virtue of being rocks, will mean that our country will lose the right and sovereignty over the two hundred mile economic zone, and the economic zone of the entire country would thus be reduced by more than one-third. The manifest neglect of the Ministry for the Environment and its permanent shortsightedness prevent the search for urgent solutions to this serious development.

- by PEDRO LAVA SANCHEZ -

Scientific information that Bird Island, a fundamental part of Venezuelan territory is in danger of soon disappearing is a matter of extreme seriousness. Such a development would mean the loss to our country of important and fundamental marine eco-systems, a terrible blow to our sovereignty over the 200 mile economic zone, and the economic zone of the entire country will be reduced by more than one-third.

It is difficult to understand how the Government has tried to minimize the importance of this serious situation when it ought to act efficiently, rapidly and decisively in the search for short-term scientific solutions to avoid, as appears to be unmistakably happening, the splitting of Bird Island, through the centre, as a result of marine erosion thus losing its status as an island and changing to the category of `rock' with dangerous geo-political effects for Venezuela.

THE LIGHTHOUSE IN THE CARIBBEAN

Bird Island is situated in the northern area of Venezuelan territory, more than 200 kilometres to the west of the Island of Dominica (Barlovento Island) and approximately 500 kilometres to the north of the Island of Margarita and south of the Virgin Islands. (Its location can be seen in the map attached to this report, and should not be confused with the archipelago of Bird Islands, which are close to the Venezuelan coast opposite Puerto Cabello and south of the Island of Bonaire). This Venezuelan possession, 580 metres long and 150 metres wide, has been under Venezuelan sovereignty as a result of the arbitration which was entrusted to Queen Elizabeth II of Spain by agreement

concluded in 1857. Before that time Holland had systematically tried to take possession of this territory and to integrate it into the so-called islands of the Lesser Antilles (St. Eustatius, Saba and half of the island of St. Martin situate between the Islands of Antigua and Puerto Rico). The decision of the Queen of Spain was made on 30th June 1865. Litigation over the possession of the island continued during the whole of the last century because of the exploitation of guano, which is one of the primary resources of the island, as well as the Green Turtle (Chelenia Mydas) an animal which weighs 125 to 180 kilos and spawns in the Caribbean mainly on Bird Island. This important animal, currently threatened with extinction, inhabits the Island and reproduces basically between June and November and became in the past a prey for human visitors, which was the reason for the installation on the island of a small Station with navy personnel to protect the island as well as in order to obtain on a daily basis information relating to the climatological changes in the region. This Station is directly responsible to the Division of Hydrography and Navigation and is known as Naval Scientific Base "Simon Bolivar".

The name of the island comes from the large numbers of marine birds which nest and reproduce on the

island, mainly the Tijareta de Mar, El Guanaguanare, Tinosa and Playeros, which number more than half a million.

The origin of this landmark in the Caribbean is basically volcanic and coral formation; the part which rises out towards the high Central Region north and south of the Island. This coralline formation is covered with concretions from the effect of the action of the phosphates from the excretion of the animals and through the effect of rain on the phosphate from the guano and the dissolution of calcium carbonate of the sand, coral and shell which act together to form a cement.

The submarine platform of the island consists of rock produced by cementation of sand and coral fragments and is covered with coral reefs and multiple algae.

THE ORIGINS OF THE CONFLICT

Numerous scientific studies give proof of the fact that as a result of marine erosion the Island is being progressively eroded, giving rise to the conclusion according to studies done by Maloney and Schubert (1968), that the Island may disappear within approximately 30 years. Data regarding the diminution

of Bird Island has been the source of constant controversy. What is definite in accordance with Research carried out by the Venezuelan Foundation for Seismological Research (FUNVIS) in its important study entitled "New Material on the Problem of Bird Island and the scope of future investigation" published by the seismologist Yash P. Aggarwal, is the conclusion that "the immediate width of the central part of the Island can reach zero by the year 2,000 which implies that the Island can separate into two before disappearing". Further on the same study adds "these curves predict that the southern part can disappear before the northern part". The conclusions of the FUNVIS study are extremely important; "it is very probable that the Island may disappear in the near future unless the necessary measures are taken to arrest or retard the erosion of the Island. Available data suggest that by the end of this century the Island can be separated into two or at least half of the actual area will have disappeared". This alarming conclusion of the Scientific Professionals strongly suggests that a decision should be taken as soon as possible to undertake a multi-disciplinary study in order to determine the exact cause of the phenomenon. Unfortunately, Government with its usual inertia and considerable indecision has not provided funds in order

to determine scientifically what engineering works are needed in order to arrest the erosion and to provide the fundamental sentinel of our sovereignty from being irretrievably lost.

EFFECT ON OUR SOVEREIGNTY

According to the United Nations Conference on the Law of the Sea, it is established that an Island generates territorial sea and a contiguous zone (Articles 10 and 11) and continental shelf (Article 1); however, a rock, according to the provisions of Article 121 does not generate either continental shelf or Exclusive Zone--that is to say patrimonial sea up to 200 miles. According to these criteria, unless a programme is developed to resolve the problem of the diminution of the Island and the effects of marine erosion, Bird Island will be divided into two sections losing more than half of its actual surface area (less than 4 hectares). Not only will there be the loss of an eco-system which is a source of important protein resources of maritime origin, as well as a refuge for wild fauna vital for the reproduction and conservation of multiple species, including migratory birds, but our country will also lose its sovereignty over the 200

mile exclusive Economic Zone and the Venezuelan Economic Zone will be reduced by more than one-third.

The seriousness of the developments referred to, according to scientific analysis, is not intended to create alarm but in order to provide a rational criterion for the Institutions whose duty it is to defend our territorial sovereignty and the resources of the environment, sources of renewable natural resources, to intervene at once. It should be added that conflict over Bird Island would add new elements which would seriously prejudice not only the ecology of Venezuela, but also our boundaries policy in relation to which we already have sufficient conflict with neighboring countries. The drama of Bird Island will be more dangerous than the conflict with Guyana and the dispute over the Gulf of Venezuela. The reason is simple; it would represent the loss of a transcendal area of Caribbean Sea and continental shelf full of riches of all kinds.

It is time to take action so that tomorrow we are not accused by our children of being eunuchs.

Source: Magazine ZETA No.491, Caracas, Venezuela, 2nd October, 1983.

APPENDIX V

Treaty between His Britannic Majesty and the President of the United States of Venezuela relating to the Submarine Areas of the Gulf of Paria, signed on the 26th of February, 1942.

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and the President of the United States of Venezuela.

Desiring in a spirit of goodwill to make provisions for and to define as between themselves their respective interests in the submarine areas of the Gulf of Paria.

Have decided to conclude a Treaty for that purpose and, to that end, have named as their Plenipotentiaries.

HIS MAJESTY THE KING OF GREAT BRITAIN, IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA (hereinafter referred to as His Majesty the King) for the United Kingdom of Great Britain and Northern Ireland:

Mr. DONALD ST. CLAIR GAINER, C.M.G., O.B.E., His Envoy Extraordinary and Minister Plenipotentiary at Caracas.

THE PRESIDENT OF THE UNITED STATES OF VENEZUELA: Dr,.CARACCIOLO PARRA-PEREZ, Minister of Foreign Relations:

Who, having communicated to each other their full powers, found in good and due form, have agreed as follows:

ARTICLE 1

In this Treaty the term "submarine ares of the Gulf of Paria" denotes the sea-bed and sub-soil outside of the territorial waters of the High Contracting Parties to one or the other side of the lines A-B, B-Y and Y-X.

ARTICLE 2

1. His Majesty the King declares that he for his part will not assert any claim to sovereignty or control over those parts of the sub-marine areas of the Gulf of Paria which lie westerly of the line A-B, or southerly of the lines B-Y and Y-X respectively, described in Article 3, of the present Treaty, and that he will recognise any rights of sovereignty or control which have been or may hereafter be lawfully acquired by the United States of Venezuela over the said parts of the submarine areas of the Gulf of Paria.

2. The President of the United States of Venezuela declares that he for his part will not assert any claim to sovereignty or control over those parts of the submarine areas of the Gulf of Paria which lie easterly of the line A-B or northerly of the lines B-Y and Y-X respectively, described in Article 3 of the present Treaty, and that he will recognise any rights of sovereignty or control which have been or may hereafter be lawfully acquired by His Majesty the King over the said parts of the submarine areas of the Gulf of Paria.

ARTICLE 3

The lines A-B, B-Y and Y-X mentioned in the preceding Article are drawn on the annexed map and are defined as follows:

Line A-B runs from Point A, which is the intersection of the central meridian of the Island of Patos with the Southern limit of the territorial waters of the said Island, the approximate coordinates of which are: Latitude 10°35'04"N. Longitude 61°51'53"W. From there the line runs straight to Point B which is situated at the limit of the territorial waters of Venezuela at the point of their intersection with the meridian of 62°05'08"W, the approximate latitude of which is 10°02'24"N.

Line B-Y runs from Point B, already established, and follows the limits of the territorial waters of Venezuela to Point Y, where the said limits intersect the parallel of 9°57'30"N, the approximate longitude of which is 61°56'40"W.

Line Y-X runs from Point Y, already established, and follows the said parallel of 9°57'30"N. to Point X, situated on the meridian of 61°30'00"W.

The longitude of the central meridian of the Island of Patos to which this Article refers shall be determined by taking the mathematical half of the most eastern and the most western longitudes of the said Island.

Should the straight lines A-B, or Y-X described in this Article intersect in their course the outside limit of the territorial waters of either of the two High Contracting Parties, the dividing line shall follow along the said limit until it reaches again the intersecting straight line in conformity with the stipulations in Article 1 and 5 of this Treaty, which exclude the bed of the sea and the subsoil of territorial waters.

The coordinates of points A, B and Y which are here given approximately shall be determined with exactness by the Commission provided for in Article 4 of this Treaty.

ARTICLE 4

1. The HIgh Contracting Parties shall, as soon as practicable after the coming into force of this Treaty, appoint a mixed Commission to take all necessary steps to demarcate the lines A-B, B-Y, and Y-X by means of buoys or other visible methods on the surface of the sea or on the land as the case may be. Any buoys or other means employed shall, however, conform in all respects to the provisions of Article 6 of this Treaty.

2. The manner in which this mixed Commission shall be constituted and the instructions to which it shall be subject for the fulfillment of its duties shall be laid down in a special protocol or by an exchange of notes.

ARTICLE 5

This Treaty refers solely to the submarine areas of the Gulf of Paria, and nothing herein shall be held to affect in any way the status of the islands, islets or rocks above the surface of the sea together with the territorial waters thereof.

ARTICLE 6

Nothing in this Treaty shall be held to affect in any way the status of the waters of the Gulf of Paria or any rights of passage or navigation on the surface

of the seas outside the territorial waters of the Contracting Parties. In particular passage or navigation shall not be closed or be impeded by any works or installations which may be erected, which shall be of such a nature and shall be so constructed, placed, marked, buoyed and lighted, as not to constitute a danger or obstruction to shipping.

ARTICLE 7

Each of the High Contracting Parties shall take all practical measures to prevent the exploitation of any submarine areas claimed or occupied by him in the Gulf from causing the pollution of the territorial waters of the other by oil, mud or any other fluid or substance liable to contaminate the navigable waters of the foreshore and shall concert with the other to make the said measures as effective as possible.

ARTICLE 8

Each of the High Contracting Parties shall cause to be inserted in any concession which may be granted for the exploitation of submarine areas in the Gulf of Paria stipulations for securing the effective observance of the two preceding Articles, including a requirement for the use by the concessionaire of modern equipment, and shall cause the operation of any such

concession to be supervised in order to ensure that the provisions of the present Treaty are complied with.

ARTICLE 9

All differences between the High Contracting Parties relating to the interpretation of this Treaty shall be settled by such peaceful means as are recognised in International Law.

ARTICLE 10

The present Treaty shall be ratified in conformity with the respective laws of the High Contracting Parties and shall come into force upon the exchange of ratifications which shall take place in London.

IN WITNESS WHEREOF the above named Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

DONE in duplicate in the English and Spanish languages at Caracas the 20th day of February of 1942.

SEAL (Signed) D. ST. CLAIR GAINER

SEAL (Signed) C. PARRA-PEREZ

SOURCE: United Kingdom Treaty Series No.10 (1942) Command Paper No.6400 published by Her Majesty's Stationery Office, London, England.

MAP No. 5 - Official Map Referred to Article 3 of Gulf of Paria Treaty

Source: Official Gazette of the United States of Venezuela, No. 20, 1977, 20 November, 1942. p. 139.643

Colonial Secretary's Office,
Port of Spain

29th October, 1942.

The following Order-in-Council is published hereunder for information:-

The Submarine Areas of the Gulf of Paria (Annexation) Order, 1942

By Command,

ERROL L. Dos Santos
No. 569 Acting Colonial Secretary.

AT THE COURT AT BUCKINGHAM PALACE

The 6th Day of August, 1942

Present

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

Whereas the Gulf of Paria and the adjacent waters are bounded by the Coasts of Venezuela and the island of Trinidad respectively:

And whereas the Government of the Republic of Venezuela have annexed to Venezuela certain parts of the submarine areas of the Gulf of Paria;

And whereas it is expedient that the rest of the submarine areas of the Gulf should be annexed to and form part of His Majesty's dominions and should be

attached to the Colony of Trinidad and Tobago for administrative purposes:

Now therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:-

1. This Order may be cited as the Submarine areas of the Gulf of Paria (Annexation) Order 1942.

2. "The Submarine areas of the Gulf of Paria" means the sea bed and subsoil situated beneath the waters, excluding territorial waters, bounded as follows:-

(a) by the parallel of 10°44'N. from its intersection with the coast of Venezuela in the Bocas del Dragon to its intersection with the Coast of the Island of Trinidad.

(b) thence southward by the coast of the island of Trinidad to Roja Point; latitude 10°04'N. Longitude 61°30'W;

(c) thence by the meridian of 61°30'W. to its intersection with the coast of Venezuela;

(d) thence by the coast of Venezuela to the point where it is intersected by the parallel of 10°44'N. in the Bocas del Dragon.

3. As from the date of this Order all the submarine areas of the Gulf of Paria which lie to the eastward and northward of the line drawn -

Point A from a point 10°35'04"N, 61°51'53"W.

Point B to a point 10°02'24"N., 62°05'08"W.

thence along the limit of Venezuelan territorial waters.

Point Y to a point 9°57'30"N., 61°56'40"W.

Point X thence to a point 9°57'30"N., 61°31'00"W.

shall be annexed to and form part of His Majesty's dominions and shall be attached to the colony of Trinidad and Tobago for administrative purposes, and the said submarine areas are annexed and attached accordingly.

4. Nothing in this Order shall:-

(a) affect, or imply any claim, to any territory above the surface of the sea or any part of the high seas, or

(b) prejudice any rights of passage or navigation on the surface of the sea.

5. The Governor of the said Colony shall, as soon as may be after the date of this Order, make regulations to ensure:-

(1) that the marine areas within the limits specified in Section 2 of this Order shall not

be closed to navigation, and that any works or installations which may be erected shall be of such nature and shall be so constructed, placed, marked, buoyed and lighted as not to constitute a danger or obstruction to shipping.

(2) that all practicable measures shall be taken to prevent the exploitation of any of the said submarine areas from causing the pollution of coastal waters by oil, mud or any other fluid or substance calculated to contaminate the sea water or shore line.

6. His Majesty may at any time revoke, alter, add to or amend this Order.

E.C.E. LEADBITTER.

APPENDIX VI

TREATY BETWEEN HIS BRITANNIC MAJESTY AND THE PRESIDENT OF THE UNITED STATES OF VENEZUELA RELATING TO THE ISLAND OF PATOS.

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and the President of the United States of Venezuela.

Desiring to regulate in a spirit of goodwill certain questions concerning the status of the Island of Patos,

Have decided to conclude a Treaty for that purpose and, to that end, have named as their Plenipotentiaries

HIS MAJESTY THE KING OF GREAT BRITAIN, IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA (hereinafter referred to as His Majesty The King) for the United KIngdom of Great Britain and Northern Ireland: MR. DONALD ST. CLAIR GAINER, C.M.G.., O.B.E., His Envoy Extraordinary and Minister Plenipotentiary in Caracas:

THE PRESIDENT OF THE UNITED STATES OF VENEZUELA: Dr. Caracciolo Parra-Perez, Minister of Foreign Relations:

Who, having communicated to each other their full powers, found in good due form, have agreed as follows:

ARTICLE 1

His Majesty the King renounces in favour of the United States of Venezuela all sovereign rights and title over the Island of Patos and transfers to the United States of Venezuela all sovereign rights and title over the said Island which shall thereafter be considered as part of the territory of Venezuela.

ARTICLE 2

If at any time the Venezuelan Government think it necessary to install on the Island of Patos military or naval defence works, whether temporarily or permanently, they shall give timely notice of their intention to His Majesty's Government in the United Kingdom.

ARTICLE 3

All differences between the High Contracting Parties relating to the interpretation or execution of this Treaty shall be treated by such peaceful means as are recognised in International Law.

ARTICLE 4

The present Treaty shall be ratified in conformity

with the laws of the High Contracting Parties and the ratifications shall be exchanged in London.

The Treaty shall come into force on the date upon which ratifications are exchanged.

IN WITNESS WHEREOF the above named Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

DONE in duplicate in the English and Spanish languages at Caracas the 26th day of February of 1942.

SOURCE; Trinidad Royal Gazette October 15, 1942. pp.1279-1280.

APPENDIX VII

Venezuelan Presidential Decree of 10th July, 1968 Proclaiming a Straight Baseline Extending From Punta Araguapiche on the Venezuelan Coast to a Point on the Guyanese Coast, East of Waini Point (Unofficial Translation)

Raul Leoni President of the Republic employing the attributions conferred on him by the National Constitution and in conformity with the Law of the Territorial Sea, Continental Shelf, Protection of Fishing and Air Space and with the Ratifying Law of the Convention of the Continental Shelf:

Considering that Article Two of the Law of the Territorial Sea, Continental Shelf, Protection of Fishing and Air Space and Article Four and following of the Ratifying Law of the Convention on the Continental Shelf wherein the places where the conditions of the Continental seaboard and islands require it to foresee the drawing of straight base lines from the Territorial Sea is measured:

Considering that in various zones of the Venezuelan seaboard there exist geographic conditions requiring the drawing of straight base lines;

Considering that it is appropriate to commence the

drawing of the said lines in sectors of the seaboard of the Republic it is decreed:

Article One - the following straight base line is drawn in the sector of the Venezuelan seaboard lying between the dividing line of the River Essequibo and Punta Araguapiche in the Federal Territory Delta Amacuro: from a point with the coordinates nine degrees, twenty-seven minutes and thirty seconds North Latitude and sixty degrees and fifty-two minutes West Longitude to another point whose coordinates are eight degrees and twenty-six minutes North Latitude and fifty-nine degrees, thirty-four minutes and thirty seconds West Longitude.

Article Two - the Territorial Sea and the Contiguous Zone appertaining to Venezuela in the sector is measured from the straight base line where it has been drawn and from the low water mark in the remainder of its length with the exception contained in Article Four.

Article Three - the rights of Sovereignty of Venezuela over the territorial waters whose restoration is claimed from Guyana are expressly reserved, that is to say, the strip three miles wide along the coasts of the territory included between the mouth of the River Essequibo and the mouth of the River Guainia as well as

the internal waters in the said zone defined by the straight base line as drawn in the present decree.

Article Four - the straight base line at the mouth of the River Essequibo will be in accordance with agreement in due time with the neighboring State.

Article Five - Official maps that are published hereafter will make clear the measure adopted by the present decree.

Article Six - the Ministers of External Relations, Defence, Public Works, Agriculture and Livestock and Communications are charged with the execution of the present decree.

VENEZUELAN EXPLANATORY NOTE

This decree of the National Executive according to official information has the following significance: the territorial sea of Venezuela is twelve miles wide in accordance with Venezuelan law and that of Guyana only three miles, that is to say, the band three miles measured from the seaboard of the territory in dispute corresponding at the moment to Guyana and the adjoining band of nine miles considered as the high sea by the State of Guyana. For Venezuela, as a consequence of its claim, the said band is Venezuelan in which her Sovereignty may be exercised but before making any material act of possession Venezuelan must make public

her title of dominion to the said sea. Also, Venezuela can do it on the basis of the treatise of the straight base line in the zone and in accordance with Venezuelan law and international conventions. In this way, the Venezuelan State will be able to take concrete steps of dominion in relation, for example, to the oil concessions that the State of Guyana have conceded in the zone.

Source: Embassy of the Republic of Venezuela, Port of Spain, Trinidad and Tobago.

APPENDIX VIII

FISHING AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA (1977).

The Governments of the Republic of Venezuela and Trinidad and Tobago herein referred to as the Contracting Parties:

RECOGNIZING

that the relations between both countries are based on mutual respect and observance of the principles of sovereignty and national independence, on the equality of rights, and non-interference in each other's affairs.

REAFFIRMING

the excellent relations which have always existed between both countries and the desirability of maintaining and reaffirming these relations for the mutual benefit of their people;

DESIROUS

of adopting effective measures so as to obtain the maximum productivity of the fishing resources situated in the Gulf of Paria and other marine areas adjacent to both countries;

CONSCIOUS

of the need to apply measures for the preservation of the marine environment and the conservation of living

resources, particularly in their natural nursery grounds;

IMBUED

with the spirit of cooperation necessary for effective control of pollution and for preventing, reducing and eliminating harmful effects on the environment; and

CONVINCED

of the need to carry out joint oceanographic research in the area;

HAVE AGREED TO THE FOLLOWING ARTICLES:

Article I: The Governments of both countries shall, in accordance with the present Agreement, grant fishing boats flying the flags of, or registered either in Venezuela or in Trinidad and Tobago, and duly authorized by their respective Governments access to the waters of the areas specified in Article III of this Agreement for the purpose of exploitation of their living resources.

2. - The access referred to in paragraph (1) of this Article shall be granted only to boats which are the property of nationals of the Contracting Parties.

3. - Fishing boats granted access to fishing areas under this Agreement shall not engage in activities other than fishing.

Article II:

1. - The fishing boats and crews of either Contracting Party when operating in the waters of the other contracting Party shall comply with the laws and regulations of the country in whose territory and waters they may be.

2. - The Contracting Parties undertake to make available to each other the text of their laws and regulations pertaining to fishing.

3. - These laws and regulations shall be enforced by the authorities in whose territory and waters the fishing activities take place.

AREAS AUTHORIZED FOR FISHING

Article III:

The fishing activities which are the subject of this Agreement shall take place exclusively in the following areas:

a) AREA NORTH OF TRINIDAD: This the area between two straight lines projecting northwards, drawn respectively from a point of the coast of Chacachacare Island, whose approximate coordinates are Latitude 10°41'50"N and Longitude 61°45'00"W and from Point Galera on the coast of Trinidad and whose approximate coordinates are Latitude 10°50'00"N and Longitude 60°54'30"W.

b) AREA SOUTH OF TRINIDAD AND NORTH OF VENEZUELA: This is the area between, on one side, a straight line

which, starting from Point Cedros on the coast of Trinidad and whose approximate coordinates are Latitude 10°08'15"N and Longitude 61°49'30"W, goes up to the point of the coast of the Island of Los Islotes and whose approximate coordinates are Latitude 10°03'21"N and Longitude 62°26'15"W and, on the other side, a straight line which, starting from Point Galeota on the coast of Trinidad and whose approximate coordinates are Latitude 10°08'07"N and Longitude 60°59'27"W goes up to Point Araguapiche on the coast of Venezuela and whose approximate coordinates are Latitude 9°20'30"N and Longitude 60°56'00"W, excluding the special areas described at (c) below.

c) SPECIAL AREAS: The special fishing areas, in Venezuelan internal waters, are the following:

- Bahia de Bombeadores, in the area between a straight line beginning at Punta Bombeadores whose approximate coordinates are Latitude 9°54'22"N and Longitude 61°40'07"W, and going up to Punta del Morro whose approximate coordinates are Latitude 9°49'52"N and Longitude 61°49'30"W and the coast line.

- Bahia de Coguin, in the area between the parallel which, starting at Punta del Morro, as mentioned before, goes westward to a point on the coast whose approximate coordinates are Latitude 9°49'52"N and Longitude 61°52'45"W and the coast line.

- Boca de Pedernales, in the area between the coast line and a polygonal made up of the following segments: a straight line which, starting at Punta Tolete, whose approximate coordinates are Latitude 10°01'30"N and Longitude 62°11'43"W goes up to Punta Barrial on Cotorra Island, whose approximate coordinates are Latitude 10°03'32"N and Longitude 62°14'30"W; form this point another straight line begins and goes up to a point on Los Islotes Island whose approximate coordinates are Latitude 10°03'21"N and Longitude 62°26'15"W; from there a parallel up to a point on the coast whose approximate coordinates are Latitude 10°03'21"N and Longitude 62°27'07"W.

Article IV:

With the exception of the special areas referred to in Article II (c), fishing activities in other areas authorized for fishing under this Agreement shall only be allowed two miles from the coast of each country.

Article V:

1.- Venezuelan artesanal fishing boats shall be permitted to fish in the Northern area as defined in Article III (a). The Fisheries Commission to be established under Article XIII of this Agreement may, however, propose to the Contracting Parties conditions of access to this area for non-artesanal fishing boats.

2.- The Government of Trinidad and Tobago shall grant permits to Venezuelan boats in conformity with the provisions of the present Agreement. A percentage of the fish taken in this area by Venezuelan boats shall be sold to Trinidad and Tobago; the percentage, price, venue for sales and other details to be worked out by the Fisheries Commission to be established under Article XIII. These details shall be submitted to the Contracting Parties for their approval.

3.- With the exception of the special areas referred to in Article III (c), Venezuela and Trinidad and Tobago fishing boats shall be permitted to fish in the Southern Area defined in Article III (b).

Article VI:

The maximum length and number of fishing boats in authorized fishing areas of Venezuela and Trinidad and Tobago, shall be determined by the respective Governments upon the recommendation of the Fisheries Commission to be established under Article XIII of this Agreement.

Article VII:

SPECIAL FISHING AREAS

1.- In the special fishing areas described in Article III (c), the Venezuelan Government shall, in exercise of its sovereignty, issue the relevant permits in accordance with the provisions of the present

Agreement and in compliance with the applicable legal provisions under the following conditions:

i) Permission will be granted only for the use of fishing boats that do not exceed twelve metres in length, that are of artesanal type and that have a maximum storage capacity of one ton.

ii) The trawl nets shall be of artesanal type with a minimum diameter of mesh opening of 3.5 cm that is to say, 1.75 cm between knots at the cod end.

iii) Each boat shall have a crew of not more than four.

iv) No fishing whatsoever shall be permitted in the distributaries of the Orinoco River, and

v) The Government of Venezuela may alter the diameter of fishing nets referred to immediately above at any such time as technical studies indicate a need for change in the interest of the conservation of the species. The Government of Venezuela will keep the Government of Trinidad and Tobago duly informed of the factors justifying such a change.

2. Fifty per cent (50%) of the catch made by Trinidad and Tobago boats shall be sold to Venezuela. In this connection, the Fisheries Commission to be

established under Article XIII will make the relevant recommendations on date, price and place where the product will be disposed of.

COOPERATION AND ESTABLISHMENT OF JOINT ENTERPRISES

Article VIII:

The Contracting Parties shall cooperate actively in fishing matters with a view to promoting the establishment of joint fishing enterprises for catching, processing and marketing of fish.

OCEANOGRAPHIC RESEARCH

Article IX:

1.- To achieve the objectives outlined in this Agreement, the Contracting Parties agree to coordinate oceanographic research programmes in the Gulf of Paria and adjacent marine areas, especially in the following fields: conservation, mariculture, and marine biology; development of scientific and technological research in relation to living resources, as well as identification of the physical, chemical and biological characteristics of these resources.

2.- The Contracting Parties agree to exchange information obtained in the carrying out of the aforementioned activities.

Article X:

The Contracting Parties agree to the joint conduct of fishery research and exploratory fishing in the

waters of both countries subject to the following conditions:

1.- The consent of the Government of the country in whose waters such fishery research and exploratory fishing will be conducted shall be obtained particularly in respect of the vessels to be used.

2.- Scientists and technicians of both countries shall be included on such vessels.

3.- Both contracting parties shall be entitled to all the information obtained as a result of such research and exploration and agree to share all catches equally.

PRESERVATION OF THE MARINE ENVIRONMENT

Article XI:

1.- Each Contracting Party shall adopt the measures necessary for the preservation of the marine environment from pollution. As a result each Contracting Party undertakes:

i) To provide information to the other Contracting Party concerning its legislation on and experience with the preservation of the marine environment.

ii) To supply information on the competent authorities who are aware of and make decisions in matters concerned with pollution.

iii) To inform each other of any indications of actual or potential pollution of a grave and imminent nature originating in the territory and waters of either Contracting Party. On the basis of the information received, the contracting Party, in whose territory or waters the pollution problem originated, shall immediately take appropriate measures to avoid or eliminate such pollution as to preserve the marine environment. The measures adopted shall be communicated immediately to the other Contracting Party.

iv) To give technical assistance to the other Contracting Party upon request in the event of serious pollution of the marine frontier zone.

v) To work out as early as possible a joint contingency plan to be implemented in cases of pollution caused by serious oil spills or other accidents of similar magnitude in the area.

Article XII:

1.- For the proper management and conservation of living resources in the waters adjacent to both

countries, the Contracting Parties agree to take appropriate steps to protect such resources. Those measures shall be executed by each Government, bearing in mind the recommendations of the Fisheries Commission to be established under Article XIII and may include restrictions relating to the number and size of fishing boats catch and size of certain types of fish, fishing zones, seasons, methods and equipment.

2.- No fishing boat shall keep on board species which are not of the minimum size of catch to be specified on the recommendation of the Fisheries Commission. When such fish are caught they shall be thrown back into the sea without delay.

FISHERIES COMMISSION

Article XIII:

1.- For the purposes of this Agreement, the Contracting Parties agree to create a Trinidad and Tobago-Venezuela Fisheries Commission consisting of three (3) representatives of each country whose names will be duly communicated through diplomatic channels and which will meet at least once every six months or at any time on the request of either of the Contracting Parties. Meetings will be held alternately in Trinidad and Venezuela,

2.- The Fisheries Commission shall present recommendations to both Governments on measures

necessary for the proper management and conservation of living resources in the waters of both Contracting Parties.

3.- The Fisheries Commission shall consider amendments to this Agreement proposed by either Contracting Party and its recommendations shall be submitted to the respective Governments for their consideration.

Article XIV:

No provision in the present Agreement is to be considered as a diminution or limitation of the rights of either Contracting Party in relation to the limits of its internal waters, territorial waters, continental shelf and exclusive economic zone.

Article XV:

None of the provisions contained in this Agreement in respect of fishing in the waters of either Contracting Party shall either be invoked or claimed as a precedent.

Article XVI:

The Contracting Parties to adopt in their respective territories the appropriate legislative and administrative measures to ensure compliance with the provisions of this Agreement as well as to impose sanctions on those who break them.

Article XVII:

Whatever controversies might arise in the interpretation or application of this Agreement shall be resolved through direct negotiations between the Contracting Parties.

Article XVIII:

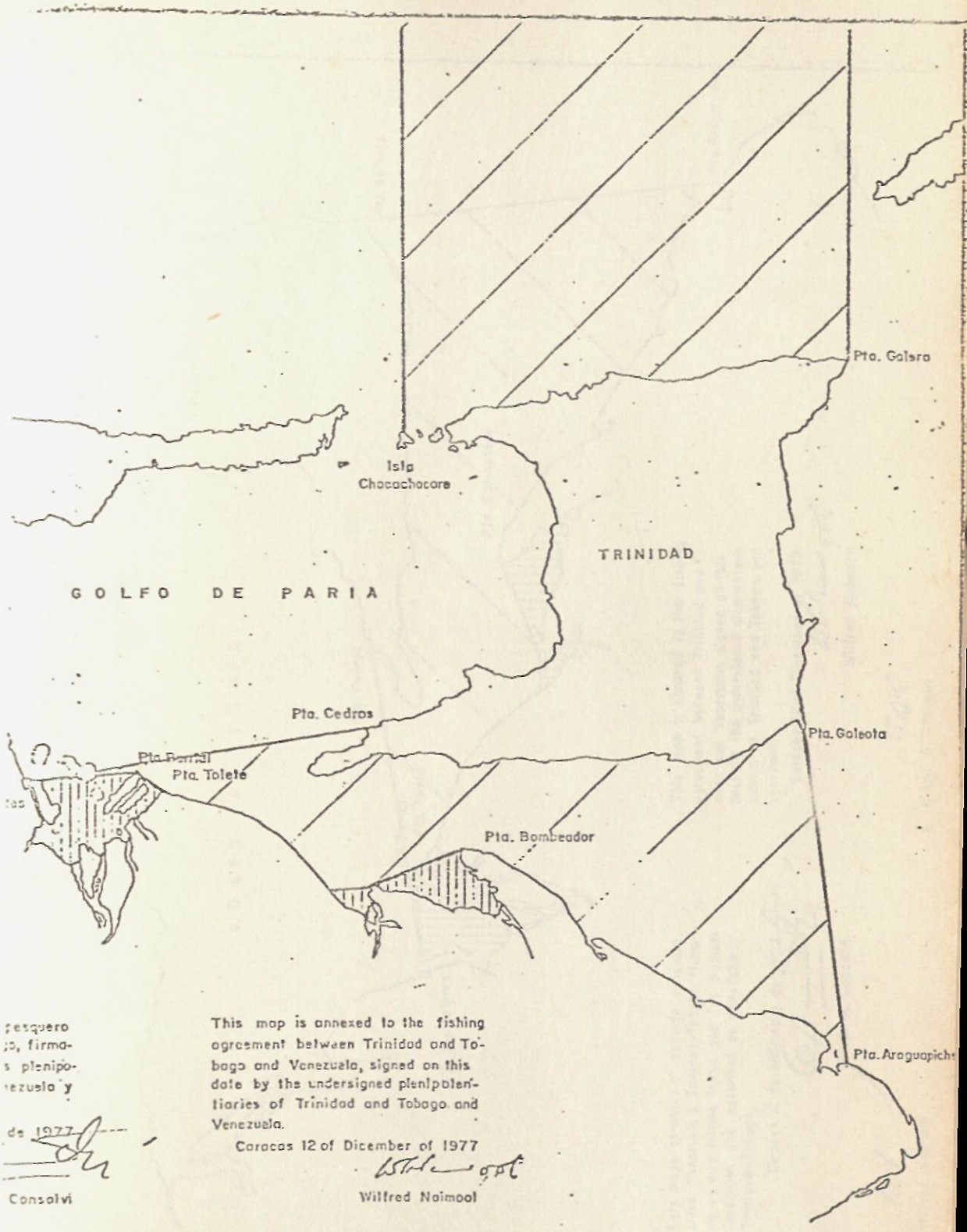
1.- The present Agreement shall enter into force on the date on which an exchange is made of diplomatic notes which indicate compliance with the legal formalities required by the constitutional procedures of each Contracting Party.

2.- The Contracting Parties shall, after a period of two years from the date this Agreement enters into force, review the experiences deriving from the implementation of this Agreement with a view either to its continuation or to negotiation of the terms and conditions of a new Agreement.

3.- The Contracting Parties agree that they shall commence their review three months before the expiry of the two-year period under reference in paragraph (2).

4.- If no agreement is reached within the three-month period under reference in Paragraph (3) above, the present Agreement shall continue provisionally for one year after the commencement of the review, provided that a new Agreement is not reached before the end of the one year period.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement. DONE in duplicate at Caracas this twelve day of December of the year one thousand nine hundred seventy seven.



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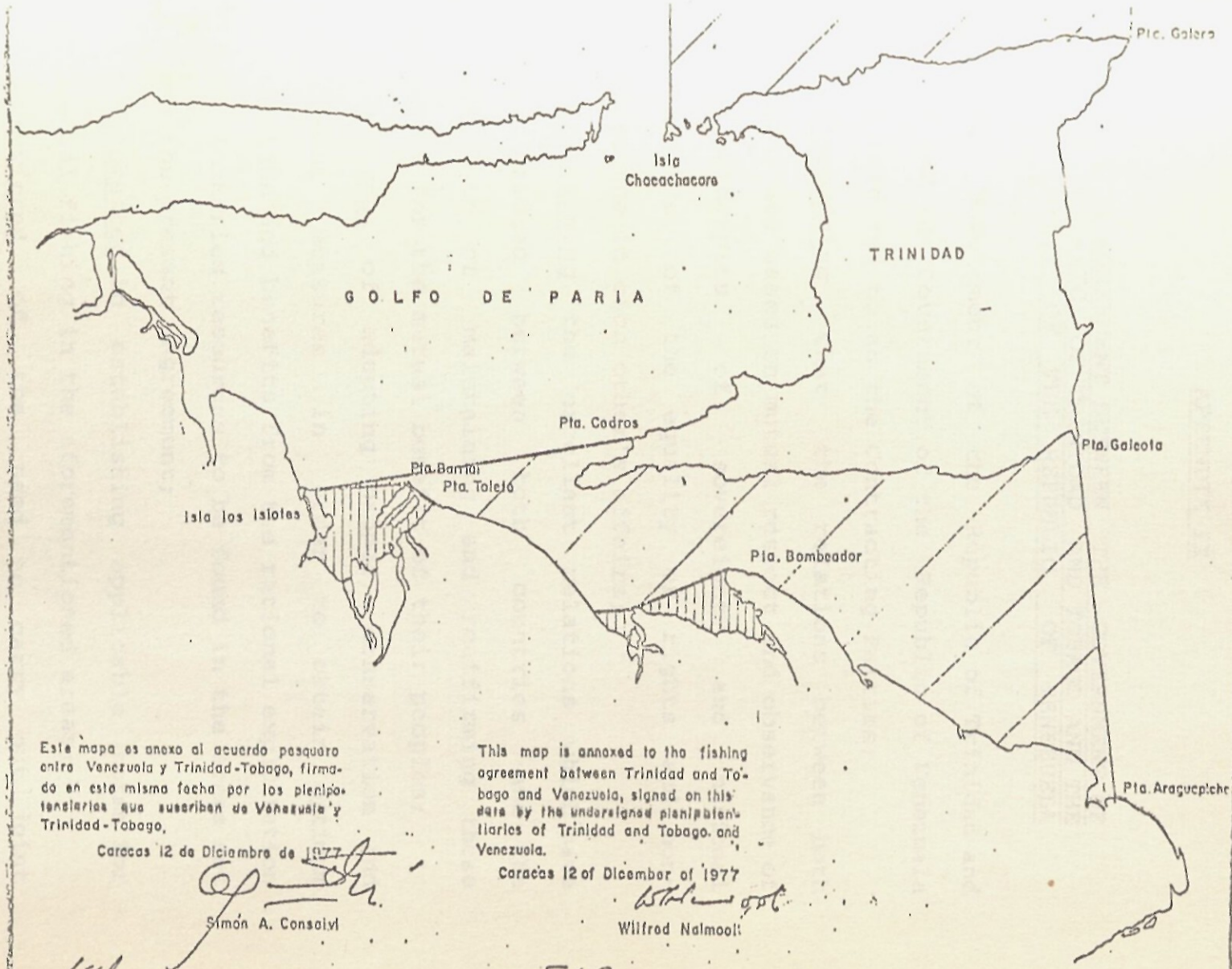
This map is annexed to the fishing agreement between Trinidad and Tobago and Venezuela, signed on this date by the undersigned plenipotentiaries of Trinidad and Tobago and Venezuela.

Caracas 12 of Dicember of 1977

Wilfred Naimool

S.A.S.

Simón A. Consalvi



Este mapa es anexo al acuerdo pesquero entre Venezuela y Trinidad-Tobago, firmado en esta misma fecha por los plenipotenciarios que suscriben de Venezuela y Trinidad-Tobago.

Caracas 12 de Diciembre de 1977

Simón A. Consalvi

Wilfred Nalmool

This map is annexed to the fishing agreement between Trinidad and Tobago and Venezuela, signed on this date by the undersigned plenipotentiaries of Trinidad and Tobago and Venezuela.

Caracas 12 of Dicember of 1977

Wilfred Nalmool

Simón A. Consalvi

APPENDIX IX

FISHING AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA (1985).

The Government of the Republic of Trinidad and Tobago and the Government of the Republic of Venezuela herein referred to as the Contracting Parties;

Recognizing that the relations between both countries are based on mutual respect and observance of the principles of sovereignty and national independence, of the equality or rights and non-interference in each other's affairs;

Reaffirming the excellent relations which have always existed between both countries and the desirability of maintaining and reaffirming these relations for the mutual benefit of their peoples;

Desirous of adopting proper conservation and management measures in order to obtain optimum utilization and benefits from the rational exploitation of the fisheries resources to be found in the areas set out in the present Agreement;

Interested in establishing applicable norms for commercial fishing in the aforementioned areas;

Convinced of the need to carry out joint

programmes of fisheries research and exploratory fishing in the marine areas adjacent to both countries;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

1. Fishing boats flying the flag of or which are registered in Trinidad and Tobago or in Venezuela, and which are duly authorized by their respective governments shall have access to the areas specified in Articles II, III, IV and V of this Agreement for the purpose of exploiting the fisheries resources. This access shall be undertaken in accordance with Articles II, III, IV and V of this Agreement.

2. The access referred to in paragraph 1 of this Article shall be permitted only to boats which are the property of nationals of the Contracting Parties.

3. With the exception of activities undertaken in connection with fisheries research carried out in accordance with Article X of this Agreement, fishing boats enjoying access to fishing areas, in accordance with the present Agreement, shall not engage in activities other than fishing.

ARTICLE II

AREA SOUTH OF TRINIDAD AND NORTH OF VENEZUELA

1. Artisanal and non-artisanal fishing boats of Trinidad and Tobago as well as of Venezuela referred to in Article I of this Agreement shall, without prejudice to paragraph 3 of this Article, have freedom of access to the following area South of Trinidad and North of Venezuela:

The area South of Trinidad and North of Venezuela is the area encompassed between, on the one side, a straight line drawn from Punta del Arenal on the coast of Trinidad and whose approximate coordinates are Latitude 10°02'47"N and Longitude 61°55'47"W to Punta Tolete on the coast of Venezuela and whose approximate coordinates are Latitude 10°01'15"N and Longitude 62°11'52"W and on the other side, a straight line drawn from Point Galeota on the coast of Trinidad and whose approximate coordinates are Latitude 10°08'07"N and Longitude 60°59'27"W to Punta Araguapiche on the coast of Venezuela and whose approximate coordinates are Latitude 09°29'30"N and Longitude 60°56'00"W.

Excluded from the area South of Trinidad and North of Venezuela is the Special Fishing Area described in Article III of the present

Agreement as well as a zone two miles wide from the coast of either country.

2. Without prejudice to paragraph 3 of this Article, fishing boats of Trinidad and Tobago and of Venezuela, in carrying out their fishing activities in the area South of Trinidad and North of Venezuela, shall comply with the relevant laws and regulations adopted by the State of their nationality.

3. (a) For the purpose of harmonizing the rules and measures adopted by each government and in order to obtain the optimum benefits from the rational exploitation of the fisheries resources of the area South of Trinidad and North of Venezuela, the Fisheries Commission established in accordance with Article VIII of this Agreement shall recommend to the respective Governments the adoption of rules and measures relating to the management and conservation of these resources.

(b) These rules and measures may be adopted by each Government and applied to boats of its nationality envisaged in Article I of this Agreement. They may include, inter alia, regulations relating to the number and structural characteristics of the fishing boats, size or weight of the species under exploitation, zones and fishing seasons, catch quotas, fishing gear and methods.

ARTICLE III

SPECIAL FISHING AREA

1. The Special Fishing Area in Venezuelan internal waters is the area between, on the one side, a straight line drawn from Punta Bombeadores whose approximate coordinates are Latitude 09°54'22"N and Longitude 61°40'07"W up to Punta Tolete whose approximate coordinates are Latitude 10°01'15"N and Longitude 62°11'52"W and on the other side, the Venezuelan coastline.

2. In the Special Fishing Area described in paragraph 1 of this Article, the Government of Venezuela in the exercise of its sovereignty, shall grant for the purpose of exploiting the shrimp resources, the relevant permits to Trinidad and Tobago fishing boats envisaged in Article I of the present Agreement, and which comply with the following characteristics:

(i) A maximum length of twelve (12) metres.

(ii) Construction of hull in wood and/or fibre glass.

(iii) Propulsion: a maximum of two outboard motors with a maximum power for the two of 110 H.P. (No one motor shall exceed 60 H.P.) or an internal diesel engine with maximum power of 110 H.P.

(iv) Storage capacity shall not exceed five hundred (500) kilograms net effective catch.

(v) The trawling nets shall have a maximum length of 15 metres and a maximum breadth of 15 metres taking as the measurement of this breadth the distance between the ends of the head rope. The trawl nets shall be of artisanal type with a mesh opening whose diameter shall be equal to or greater than 3.5 centimetres, that is to say, equal to or grater than 1.75 centimetres between knots at the cod end.

(vi) The fishing boats shall use only one net at a time which shall be operated manually without the aid of any electrical or mechanical equipment for the casting or retrieval of same.

(vii) Each boat shall have a maximum crew of four (4) persons, including the Captain.

(viii) The Government of Venezuela, after consultation with the Fisheries Commission established in accordance with Article VIII of this Agreement may modify the structural characteristics of the permitted fishing boats as well as those of the permitted gear indicated in the previous sub-paragraphs, at

any time that reasons of national interest may so justify. The Government of Venezuela shall duly inform the Government of Trinidad and Tobago of its reasons.

3. The operating conditions of the fishing boats which have been permitted to trawl, shall be, inter alia, the following:

(i) No fishing activity shall be permitted in the tributaries of the Orinoco River.

(ii) No fishing other than shrimp trawling shall be done. This prohibition does not include, however, the By-Catch from shrimp-trawling.

(iii) Shrimp trawling shall be allowed only on the basis of operations of an individual character.

(iv) Shrimp trawling shall be done only from December 1 to June 30.

(v) The Fisheries Commission established in accordance with Article VIII of this Agreement will recommend appropriate procedures for the supply of information with respect to the arrival of vessels in the Special Fishing Area.

4. Fifty per cent (50%) of the catch by Trinidad and Tobago boats shall be sold in Venezuela to Venezuelan Companies authorized by the Government of Venezuela or

to Joint Ventures envisaged in Article IX of the present Agreement. This sale shall take place in the Orinoco Delta Zone in close proximity to the Special Fishing Area referred to in the present Article and will have as a reference the International Price in U.S. dollars.

5. The Government of Venezuela shall grant access to sixty (60) boats with the characteristics stipulated in paragraph 2 of the present Article.

6. The Government of Venezuela shall stipulate the conditions required for the grant of the relevant permits such as the supply of information and documents.

7. The possession of the fishing permits shall be of an individual character and no more than one (1) permit shall be allowed to each natural or juridical person.

ARTICLE IV

AREA NORTH OF TRINIDAD

1. (a) The area North of Trinidad is the area included, on one side, in the West by a line drawn by joining points whose respective coordinates are:

10°44'31"N 61°47'31"W

10°45'30"N 61°47'06"W

10°47'53"N 61°46'02"W and

10°53'42"N 61°43'53"W

and on the other side, in the East, the meridian of Point Galera on the coast of Trinidad, whose approximate coordinates are 10°49'56"N and 60°54'41"W.

(b) The Southern limit of the area North of Trinidad is the parallel of Corozal Point on the coast of Trinidad, and whose value is 10°44'31"N.

(c) Excluded from the area North of Trinidad is a zone two miles wide from the coast of Trinidad as well as the area beyond the twelve mile limit as measured from this coast.

2. In the area North of Trinidad described in paragraph 1 of this Article, the Government of Trinidad and Tobago in the exercise of its sovereignty shall grant for the purpose of exploiting the demersal and pelagic fishes the relevant permits to Venezuelan fishing boats envisaged in Article I of this Agreement and which comply with the following characteristics:

(i) A maximum length of thirteen (13) metres.

(ii) Construction of hull in wood and/or fibre glass.

(iii) Storage capacity shall not exceed two (2) metric tonnes net effective catch.

(iv) Fishing shall be by line, cordel and palangre.

(v) All lines, cordels and palangres shall be manually operated.

(vi) The maximum number of hooks on a palangre line shall be 100 and the maximum for other forms of line fishing shall be 10.

(vii) Electrical and electronic equipment shall only be used for navigation.

(viii) Each boat shall have a maximum crew of six (6) persons including the Captain.

(ix) The Government of Trinidad and Tobago, after consultation with the Fisheries Commission established in accordance with Article VIII of this Agreement, may modify the structural characteristics of the permitted fishing boats as well as those of the permitted gear indicated in the previous sub-paragraphs, at any time that reasons of national interest may so justify. The Government of Trinidad and Tobago shall duly inform the Government of Venezuela of its reasons.

3. The operating conditions of the fishing boats which have been permitted to fish by line, cordel and palangre shall be, inter alia, the following:

(i) No fishing activity shall be permitted within two miles or beyond twelve miles from the coast.

(ii) No fishing other than for pelagic and demersal

fishing by palangre, cordel and line shall be permitted.

(iii) Fishing shall be allowed only on the basis of operations of an individual character,

(iv) The use of mother ships or of ships to supply bait, replenish supplies or crew, or for the transport of catches, is prohibited.

(v) The Fisheries Commission established in accordance with Article VIII of this Agreement will recommend appropriate procedures for the supply of information with respect to the arrival of vessels in the Area North of Trinidad.

4. Fifty per cent (50%) of the catch made by Venezuelan boats shall be sold in Trinidad and Tobago and Tobago Companies authorized by the Government of Trinidad and Tobago or to Joint Ventures envisaged in Article IX of the present Agreement. This sale shall be carried out in a zone in close proximity to the area North of Trinidad referred to in the present Article and will have as a reference the International price in U.S. dollars.

5. The Government of Trinidad and Tobago shall grant access to forty (40) boats with the characteristics stipulated in paragraph 2 of this Article.

6. The Government of Trinidad and Tobago shall stipulate the conditions required for the granting of the relevant permits such as the supply of information and documents.

7. The possession of the fishing permits shall be on an individual basis and no more than one (1) permit shall be allowed to each natural or juridical person.

ARTICLE V

AREA NORTH AND EAST OF TRINIDAD

1. The area North and East of Trinidad is the following:

(a) The area between, on the one side, the meridian line, 60°43'53" on the West, and on the other side the meridian of Point Galera on the coast of Trinidad in the East and whose approximate coordinates are Latitude 10°49'56"N and Longitude 60°54'41"W.

(b) The area to the south of the parallel of Point Galera on the coast of Trinidad.

(c) Excluded from the area North and East of Trinidad is an area twelve miles wide from the coast of Trinidad.

2. In the area North and East of Trinidad described in paragraph 1 of the present Article the Government of

Trinidad and Tobago, in the exercise of its sovereignty or national jurisdiction shall grant for the exploitation of demersal and pelagic fishes the relevant permits to Venezuelan boats envisaged in Article I of the present Agreement and which comply with the following characteristics:

(i) A maximum length of twenty-five (25) metres.

(ii) Construction of hull shall be wood and/or fibre glass and/or steel.

(iii) Propulsion: engines up to a maximum power of 400 H.P.

(iv) Storage capacity shall not exceed forty (40) metric tonnes including catch and ice.

(v) Fishing shall be by line, palangre and cordel.

(vi) The use of equipment for line shooting and retrieval of line, palangre and cordel is permitted.

(vii) A maximum of 550 hooks may be used on palangre lines and a maximum of 10 hooks on other lines. A maximum of 5 lines may be used at any one time.

(viii) each boat shall have a maximum crew of seven (7) including the Captain.

(ix) The Government of Trinidad and Tobago after consultation with the Fisheries Commission established in accordance with Article VIII of

this Agreement, may modify the structural characteristics of the permitted fishing boats as well as those of the permitted fishing boats as well as those of the permitted gear indicated in the previous sub-paragraphs at any time that reasons of national interest may so justify. The Government of Trinidad and Tobago shall duly inform the Government of Venezuela of its reasons.

3. The operating conditions of the fishing boats which have been permitted to fish by line, cordel and palangre shall, be inter alia, the following:

(i) No fishing activity shall be allowed within twelve miles from the coast

(ii) No fishing other than for pelagic and demersal fishes by palangre, cordel and line shall be permitted.

(iii) Fishing shall be allowed only on the basis of operations of an individual character.

(iv) The use of mother ships or ships to supply bait, replenish supplies or crew or for the transport of catches is prohibited.

(v) Fishing is prohibited during the months of October, November and December.

(vi) The boats shall report their arrival in the fishing area.

4. Fifty per cent (50%) of the catch made by Venezuelan boats shall be sold in Trinidad and Tobago to Trinidad and Tobago Companies authorized by the Government of Trinidad and Tobago or to Joint Ventures envisaged in Article IX of the present Agreement. This sale shall be carried out at the National Fisheries Company Ltd., or at any other recognized port designated by the Government of Trinidad and Tobago after consultation with the Fisheries Commission and will have as a reference the International Price in U.S. dollars.

5. The Government of Trinidad and Tobago shall grant access to thirty (30) boats with the characteristics stipulated in paragraph 2 of the present Agreement.

6. Each permitted Venezuelan boat shall pay each year before receiving the fishing permit the sum of US$200 to the Public Entity designated by the Government of Trinidad and Tobago.

7. The Government of Trinidad and Tobago shall stipulate the conditions required for the granting of the relevant permits such as the supply of information and documents.

8. The possession of fishing permits shall be on an individual basis and no more than one (1) permit shall be allowed to each natural or juridical person.

ARTICLE VI

ACCESS OF ADDITIONAL BOATS INCLUDING BOATS WITH CHARACTERISTICS OTHER THAN THOSE ENVISAGED IN THE PRESENT AGREEMENT.

1. Both Governments may consider on the recommendations of the Fisheries Commission, granting, access, on such terms an conditions to be agreed, to additional boats referred to in Article I of the present Agreement in the Special Fishing Area as described in Article III of the present Agreement , and in the Area North and East of Trinidad as described in Article V of the present Agreement, including boats with characteristics other than those specified in the said Articles III and V of the present Agreement.

2. Recommendations of the Fisheries Commission in this regard shall take fully into account, the resource capability of the respective areas and the need for proper conservation and management of such resources.

ARTICLE VII

REFERENCE DATUM

1. The positions of the points described in the present Agreement have been defined by Latitudes and Longitudes according to 1927 North American Datum, Clarke Ellipsoid 1866.

2. The lines describing the several fishing zones have been drawn for illustrative purposes on the attached map which forms an integral part of the present Agreement.

ARTICLE VIII

THE FISHERIES COMMISSION

1. For the purpose of this Agreement, the Contracting Parties agree to create a Trinidad and Tobago/Venezuela Fisheries Commission, consisting of three (3) representatives of each country together with such advisers as may be deemed necessary and whose names shall be duly communicated through diplomatic channels, and which shall meet al least once every six months or any time at the request of either of the Contracting Parties. Meetings shall be held alternatively in Trinidad and Tobago and Venezuela.

2. The functions of the Fisheries Commission created in accordance with paragraph 1 of this Article shall be inter alia:

(a) To supervise the implementation of the present Agreement;

(b) To establish the modalities of the joint undertaking of programmes of bio-economic and

Fisheries Research in the area South of Trinidad and North of Venezuela referred to in Article II of this Agreement;

(c) To recommend to the Government of Trinidad and Tobago and of Venezuela, the adoption of rules and measures relating to the management and conservation of the fisheries resources of the area South of Trinidad and North of Venezuela;

(d) To coordinate, in accordance with Article X the exchange of data resulting from research programmes and/or fishing activities;

(e) To submit to the Contracting Parties, prior to the termination of the present Agreement its recommendations regarding the extension of the said Agreement or the negotiation of a new Agreement;

(f) To deal with all matters specifically referred to the Fisheries Commission in this Agreement and to do all such other things consistent with the aims and purposes of the present Agreement as may be necessary for the proper and effective implementation by the Contracting Parties, of the provisions of the said Agreement; and

(g) Any other functions that the Parties may deem necessary to refer to the Commission.

ARTICLE IX

JOINT VENTURES

1. The Contracting Parties shall promote the establishment of Joint Ventures or other cooperative arrangements for catching, processing and marketing of fisheries products.

ARTICLE X

FISHERIES RESEARCH

1. The Contracting Parties agree to jointly undertake, using commercial or other vessels, programmes of bio-economic and fisheries research in the area South of Trinidad and North of Venezuela as defined in Article II of this Agreement in accordance with the modalities established by the Trinidad and Tobago/Venezuela Fisheries Commission.

2. Each Contracting Party agrees to undertake programmes of fisheries research in the fishing areas falling under its sovereignty and/or jurisdiction in order to provide the basic information necessary for the definition of more appropriate management regimes for the fisheries resources of each country.

3. Results obtained from Research Programmes and fishing activities in the areas referred to in paragraphs 1 and 2 of this Article shall be exchanged by the Contracting Parties within a reasonable period, whether in the form of raw or processed data or by means of joint publications of technical reports. The Fisheries Commission shall be entrusted with the coordination of such activities.

ARTICLE XI

PRESERVATION OF RIGHTS

Nothing in this Agreement is to be considered as a diminution or limitation of the rights of either Contracting Party in relation to the limits of its internal waters, archipelagic waters, territorial sea, continental shelf or exclusive economic zone nor shall anything contained in this Agreement in respect of fishing in the marine areas of either Contracting Party be invoked or claimed as a precedent.

ARTICLE XII

DISPUTE SETTLEMENT

Any dispute between the Contracting Parties concerning the interpretation or application of this

Agreement shall be settled through direct negotiations or through diplomatic channels.

ARTICLE XIII

FINAL CLAUSES

1. The Present Agreement shall enter into force on the date the exchange of notes takes place which indicates compliance with the legal formalities required by the constitutional procedures of each Contracting Party.

2. The Present Agreement shall have a duration of two (2) years.

3. The Contracting Parties shall initiate contacts three months before the termination of the period of two (2) years stipulated in paragraph 2 of the present Article, with a view to the negotiation of a new Fishing Agreement or the continuation of the present Agreement for an additional period of one (1) year.

4. In the event that before the termination of the period of two (2) years referred to in paragraph 2 of this Article, the Contracting Parties have decided to begin negotiations with a view to adopting a new Fishing Agreement the Contracting Parties considered it desirable that the existing Agreement shall continue in effect for a period not exceeding one (1) year, except

in the event that during this period the new Fishing Agreement has been signed. In this case, the Contracting Parties may decide that the Fishing Agreement continue in effect on a provisional basis for an additional period not exceeding the time deemed necessary for completing the necessary formalities for the entry into force of the new Fishing Agreement.

In Witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

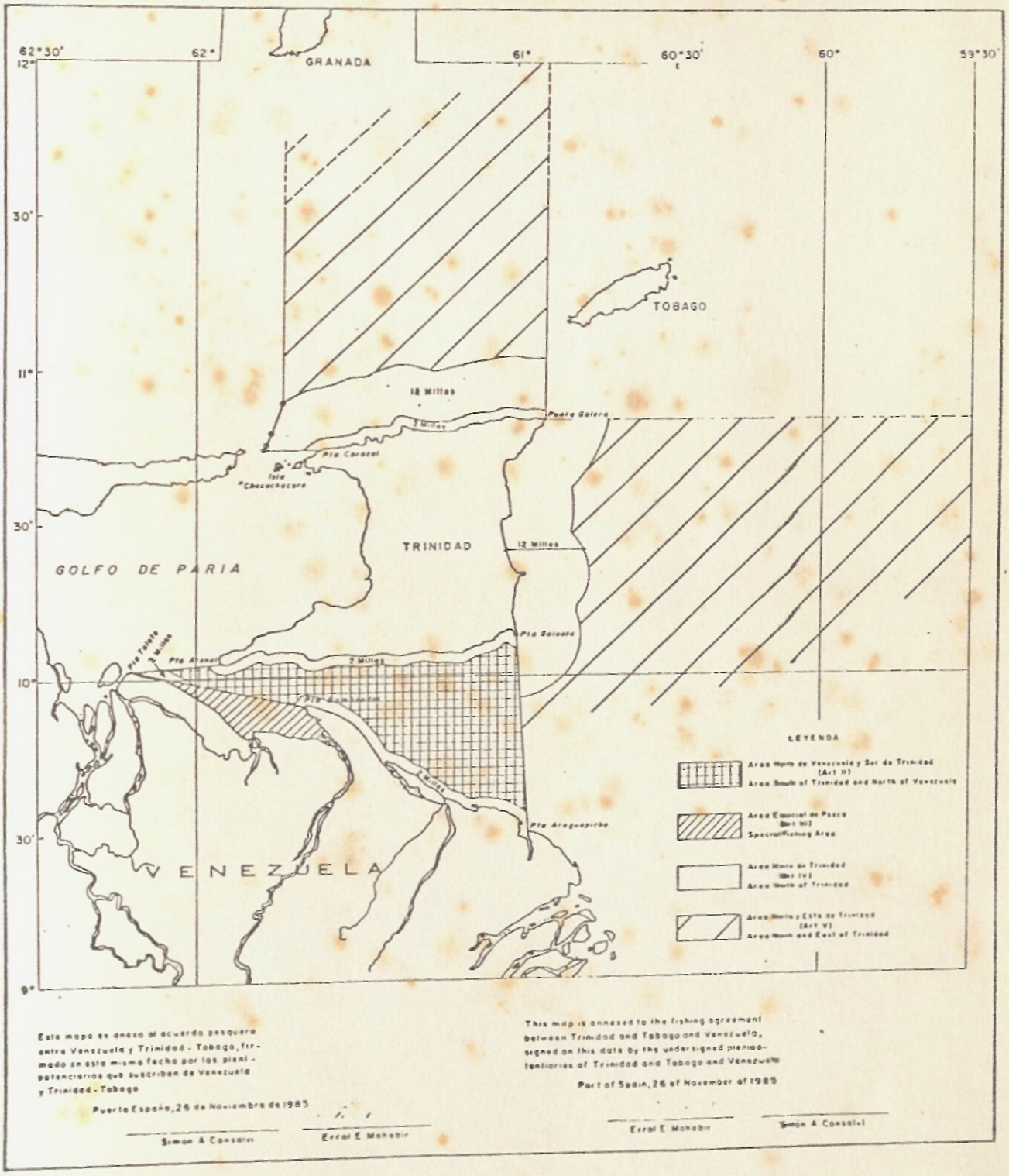
Done in duplicate in the English and Spanish languages both texts being equally authentic, at Port of Spain on the 26th day of November, Nineteen Hundred and Eighty-five.

For the Government of the Republic of Trinidad and Tobago:

Errol E. Mahabir
Minister of External Affairs

For the Government of the Republic of Venezuela:

Simon A. Consalvi
Minister of External Relations



Este mapa es anexo al acuerdo pesquero entre Venezuela y Trinidad - Tobago, firmado en esta misma fecha por los plenipotenciarios que suscriben de Venezuela y Trinidad - Tobago

Puerto España, 26 de Noviembre de 1985

Simon A Consalvi

Errol E Mahabir

This map is annexed to the fishing agreement between Trinidad and Tobago and Venezuela, signed on this date by the undersigned plenipotentiaries of Trinidad and Tobago and Venezuela

Port of Spain, 26 of November of 1985

Errol E Mahabir

Simón A Consalvi