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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2012

Public sitting

held on Monday 3 December 2012, at 3 p.m., at the Peace Palace,

President Tomka presiding,

***in the case concerning the* Maritime Dispute**
(Peru *v.* Chile)

VERBATIM RECORD

ANNÉE 2012

Audience publique

tenue le lundi 3 décembre 2012, à 15 heures, au Palais de la Paix,

sous la présidence de M. Tomka, président,

***en l'affaire du* Différend maritime**
(Pérou c. Chili)

COMPTE RENDU

Present:	President	Tomka
	Vice-President	Sepúlveda-Amor
	Judges	Owada
		Abraham
		Keith
		Bennouna
		Skotnikov
		Cançado Trindade
		Xue
		Donoghue
		Gaja
		Sebutinde
		Bhandari
	Judges *ad hoc*	Guillaume
		Orrego Vicuña
	Registrar	Couvreur

Présents : M. Tomka, président
M. Sepúlveda-Amor, vice-président
MM. Owada
Abraham
Keith
Bennouna
Skotnikov
Cançado Trindade
Mmes Xue
Donoghue
M. Gaja
Mme Sebutinde
M. Bhandari, juges
MM. Guillaume
Orrego Vicuña, juges *ad hoc*

M. Couvreur, greffier

The Government of the Republic of Peru is represented by:

H.E. Mr. Allan Wagner, Ambassador, former Minister for Foreign Affairs, former Minister of Defence, former Secretary-General of the Andean Community, Ambassador of Peru to the Kingdom of the Netherlands,

as Agent;

H.E. Mr. Rafael Roncagliolo, Minister for Foreign Affairs,

as Special Envoy;

H.E. Mr. José Antonio García Belaunde, Ambassador, former Minister for Foreign Affairs,

H.E. Mr. Jorge Chávez Soto, Ambassador, member of the Peruvian Delegation to the Third UN Conference on the Law of the Sea, former Adviser of the Minister for Foreign Affairs on Law of the Sea Matters,

as Co-Agents;

Mr. Rodman Bundy, avocat à la Cour d'appel de Paris, member of the New York Bar, Eversheds LLP, Paris,

Mr. Vaughan Lowe, Q.C., member of the English Bar, Emeritus Professor of International Law, Oxford University, associate member of the Institut de Droit International,

Mr. Alain Pellet, Professor at the University Paris Ouest, Nanterre-La Défense, former Member and former Chairman of the International Law Commission, associate member of the Institut de Droit International,

Mr. Tullio Treves, Professor at the Faculty of Law, State University of Milan, former judge of the International Tribunal for the Law of the Sea,

Sir Michael Wood, K.C.M.G., member of the English Bar, Member of the International Law Commission,

as Counsel and Advocates;

Mr. Eduardo Ferrero, member of the Permanent Court of Arbitration, former Minister for Foreign Affairs, member of the Peruvian Delegation to the Third UN Conference on the Law of the Sea,

Mr. Vicente Ugarte del Pino, former President of the Supreme Court of Justice, former President of the Court of Justice of the Andean Community, former Dean of the Lima Bar Association,

Mr. Roberto Mac Lean, former judge of the Supreme Court of Justice, former member of the Permanent Court of Arbitration,

H.E. Mr. Manuel Rodríguez Cuadros, Ambassador, former Minister for Foreign Affairs, Ambassador of Peru to Unesco,

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S. Exc. M. Rafael Roncagliolo, ministre des relations extérieures,

comme envoyé spécial ;

S. Exc. M. José Antonio García Belaunde, ambassadeur, ancien ministre des relations extérieures,

S. Exc. M. Jorge Chávez Soto, ambassadeur, membre de la délégation péruvienne à la troisième conférence des Nations Unies sur le droit de la mer, ancien conseiller du ministre des relations extérieures sur les questions relatives au droit de la mer,

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M. Roberto Mac Lean, ancien juge de la Cour suprême de justice, ancien membre de la Cour permanente d'arbitrage,

S. Exc. M. Manuel Rodríguez Cuadros, ambassadeur, ancien ministre des relations extérieures, ambassadeur du Pérou auprès de l'Unesco,

comme avocats de l'Etat ;

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Mr. Alejandro Deustua, M.A., Advisory Office for the Law of the Sea of the Ministry of Foreign Affairs,

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Mr. Jaime Valdez, Lieutenant Commander (retired), National Cartographer of the Peruvian Delegation,

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Le capitaine de corvette (en retraite) Jaime Valdez, cartographe de la délégation péruvienne,

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M. Luigi Condorelli, professeur de droit international à l'Université de Florence,

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H.E. Mr. Luis Winter, Ambassador, Ministry of Foreign Affairs,

Mr. Enrique Barros Bourie, Professor, University of Chile,

Mr. Julio Faúndez, Professor, University of Warwick,

Ms Ximena Fuentes Torrijo, Professor, University of Chile,

Mr. Claudio Troncoso Repetto, Professor, University of Chile,

Mr. Andres Jana, Professor, University of Chile,

Ms Mariana Durney, Legal Officer, Ministry of Foreign Affairs,

Mr. John Ranson, Legal Officer, Professor of International Law, Chilean Navy,

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Mr. Motohiro Maeda, Solicitor admitted in England and Wales, Freshfields Bruckhaus Deringer LLP,

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H.E. Mr. Luis Goycoolea, Ministry of Foreign Affairs,

Mr. Antonio Correa Olbrich, Counsellor, Embassy of Chile in the Kingdom of the Netherlands,

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Ms Nienke Grossman, Assistant Professor, University of Baltimore, Maryland, member of the Bars of Virginia and the District of Columbia,

Ms Alexandra van der Meulen, Avocat à la Cour and member of the Bar of the State of New York,

Mr. Francisco Abriani, member of the Buenos Aires Bar,

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S. Exc. M. Luis Winter, ambassadeur, ministère des relations extérieures,

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M. Julio Faúndez, professeur à l'Université de Warwick,

Mme Ximena Fuentes Torrijo, professeur à l'Université du Chili,

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M. Andres Jana, professeur à l'Université du Chili,

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M. John Ranson, conseiller juridique, professeur de droit international, marine chilienne,

M. Ben Juratowitch, *solicitor* (Angleterre et pays de Galles), cabinet Freshfields Bruckhaus Deringer LLP,

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S. Exc. M. Luis Goycoolea, ministère des relations extérieures,

M. Antonio Correa Olbrich, conseiller à l'ambassade du Chili au Royaume des Pays-Bas,

M. Javier Gorostegui Obanoz, deuxième secrétaire de l'ambassade du Chili au Royaume des Pays-Bas,

Mme Kate Parlett, *solicitor* (Angleterre et pays de Galles, et Queensland (Australie)),

Mme Nienke Grossman, professeur adjoint à l'Université de Baltimore, Maryland, membre des barreaux de l'Etat de Virginie et du district de Columbia,

Mme Alexandra van der Meulen, avocat à la Cour et membre du barreau de l'Etat de New York,

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M. Paolo Palchetti, professeur associé de droit international à l'Université de Macerata,

comme conseillers ;

M. Julio Poblete, division nationale des frontières et des limites, ministère des relations extérieures,

Mme Fiona Bloor, services hydrographiques du Royaume-Uni,

M. Dick Gent, Marine Delimitation Ltd,

comme conseillers techniques.

The PRESIDENT: Please be seated. The sitting is open. The Court meets today to hear the oral arguments of the Parties in the case concerning the *Maritime Dispute (Peru* v. *Chile)*. Judge Greenwood has recused himself from the case in accordance with Article 17, paragraph 2, of the Statute of the Court.

I note initially that Judge Yusuf, for reasons made known to me, is unable to take his seat on the Bench today.

I further note that, since the Court does not include upon the Bench a judge of the nationality of either of the Parties, both Parties have availed themselves of the right, under Article 31, paragraph 2, of the Statute, to choose a judge *ad hoc*. Peru chose Mr. Gilbert Guillaume and Chile Mr. Francisco Orrego Vicuña.

Article 20 of the Statute provides that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". Pursuant to Article 31, paragraph 6, of the Statute, that same provision applies to judges *ad hoc*.

In accordance with custom, I shall first say a few words about the career and qualifications of each judge *ad hoc* before inviting them to make his solemn declaration.

M. Gilbert Guillaume, de nationalité française, est licencié en droit et diplômé d'études supérieures d'économie politique et de science économique de l'Université de Paris ; il est aussi diplômé de l'Institut d'études politiques de Paris et ancien élève de l'Ecole nationale d'administration. M. Guillaume est bien connu de la Cour, puisqu'il en a été membre de 1987 à 2005, et président du 6 février 2000 au 5 février 2003.

Avant de devenir membre de la Cour, M. Guillaume avait déjà à son actif une longue et brillante carrière, tant de magistrat que de haut responsable national et international. Il a ainsi été conseiller d'Etat et est maintenant membre honoraire de cette prestigieuse institution. Conseiller juridique de l'Organisation du Traité de l'Atlantique Nord de 1961 à 1967, il a aussi exercé les fonctions de représentant de la France au comité juridique de l'Organisation de l'aviation civile internationale et assuré la présidence de ce comité de 1971 à 1975. M. Guillaume a par ailleurs été directeur des affaires juridiques de l'Organisation de coopération et de développement économiques, ainsi que directeur des affaires juridiques au ministère français des affaires

étrangères. Il a en outre été agent de la France devant la Cour de justice des communautés européennes et la Cour européenne des droits de l'homme.

M. Guillaume a maintes fois exercé les fonctions de juge *ad hoc* à la Cour internationale de Justice. Il siège actuellement à ce titre dans l'affaire de la *Demande en interprétation de l'arrêt du 15 juin 1962 en l'affaire du* Temple de Préah Vihéar (Cambodge c. Thaïlande) *(Cambodge c. Thaïlande)*, dans celle relative à *Certaines activités menées par le Nicaragua dans la région frontalière (Costa Rica c. Nicaragua)* et dans celle relative à la *Construction d'une route au Costa Rica le long du fleuve San Juan (Nicaragua c. Costa Rica)*. Membre de la Cour permanente d'arbitrage depuis 1980, M. Guillaume a siégé en tant qu'arbitre dans plusieurs affaires. Il est aussi arbitre au Centre international pour le règlement des différends relatifs aux investissements (CIRDI), et a assuré à nombreuses reprises le rôle du président de tribunaux arbitraux. Il est membre de l'Institut de droit international, dont il a été vice-président, et l'auteur de nombreux ouvrages consacrés à un large éventail d'aspects du droit international. Il a par ailleurs enseigné à l'Académie de droit international de La Haye. En mars 2007, M. Guillaume s'est vu conférer l'insigne honneur d'être élu membre de l'Institut de France (classe des sciences morales et politiques).

Mr. Francisco Orrego Vicuña, of Chilean nationality, holds degrees from the University of Chile and the University of London. He has enjoyed a long and wide-ranging career in international law, in particular in dispute settlement mechanisms. Mr. Orrego Vicuña is presently a judge at the Administrative Tribunal of the International Monetary Fund and a former judge at the Administrative Tribunal of the World Bank, where he served for 17 years and was President from 2001 to 2004. Since 1995, he has been a Member of the Panels of Conciliators and Arbitrators of the International Centre for the Settlement of Investment Disputes (ICSID); in that connection, Mr. Orrego Vicuña has also acted as President of the Arbitral Tribunal of ICSID in a significant number of cases. In addition, he is a member of various other Arbitral institutions. He has also used his dispute settlement skills in the service of his country in bilateral negotiations and mediations and in the service of the Organization of American States.

In tandem with his activities in the field of dispute settlement, Mr. Orrego Vicuña has enjoyed an illustrious academic career. He is Professor of International Law at the Heidelberg

University Centre for Latin America, Professor (and former Director) of the Institute of International Studies of the University of Chile, and has taught law at numerous academic institutions around the world. He has also lectured at the Hague Academy of International Law.

Mr. Orrego Vicuña has represented his Government on a number of occasions including as Chairman and Vice-Chairman of the Chilean Delegation to the Third United Nations Conference on the Law of the Sea. He is a Member and former President of the *Institut de droit international.* He is the author of many publications in the field of public international law.

In accordance with the order of precedence fixed by Article 7, paragraph 3, of the Rules of Court, I shall first invite Mr. Gilbert Guillaume to make the solemn declaration prescribed by the Statute, and I would request all those present to rise.

M. GUILLAUME :

> «Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

The PRESIDENT: Merci. I shall now invite Mr. Orrego Vicuña to make the solemn declaration prescribed by the Statute.

Mr. ORREGO VICUÑA:

> «Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

The PRESIDENT: Thank you. Please be seated. I take note of the solemn declarations made by Mr. Guillaume and Mr. Orrego Vicuña and declare them duly installed as judges *ad hoc* in the case concerning the *Maritime Dispute (Peru* v. *Chile).*

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I shall now recall the principal steps of the procedure so far followed in this case.

On 16 January 2008, Peru filed in the Registry of the Court an Application instituting proceedings against Chile in respect of a dispute concerning the maritime boundary between the two States in the Pacific Ocean.

In its Application, Peru founded the jurisdiction of the Court on the provisions of Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948, known according to Article LX thereof as the "Pact of Bogotá".

In accordance with Article 40, paragraph 2, of the Statute of the Court, the Registrar immediately communicated the Application to the Government of Chile; and, pursuant to paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application.

Pursuant to the instructions of the Court under Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to the Pact of Bogotá the notifications provided for in Article 63, paragraph 1, of the Statute of the Court. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar moreover addressed to the Organization of American States the notification provided for in Article 34, paragraph 3, of the Statute of the Court. The Registrar subsequently transmitted to this organization copies of the pleadings filed in the case and asked its Secretary-General to inform him whether or not the Organization intended to present observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court. The Organization indicated that it did not intend to submit any such observations.

On the instructions of the Court under Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to Ecuador, as a State party to the 1952 Santiago Declaration and to the 1954 Agreement relating to a Special Maritime Frontier Zone, the notification provided for in Article 63, paragraph 1, of the Statute of the Court. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar also addressed to the Permanent Commission for the South Pacific the notification provided for in Article 34, paragraph 3, of the Statute of the Court with regard to the 1952 Declaration on the Maritime Zone and to the 1954 Agreement relating to a Special Maritime Frontier Zone and asked that organization whether or not it intended to furnish observations in writing within the meaning of Article 69, paragraph 3,

of the Rules of Court. The Permanent Commission indicated that, as provided for in the Commission's statutes, its Secretariat was not empowered to furnish constructions of international instruments.

By an Order dated 31 March 2008, the Court fixed 20 March 2009 and 9 March 2010, respectively, as the time-limits for the filing of the Memorial of Peru and the Counter-Memorial of Chile; those pleadings were duly filed within the time-limits so prescribed.

By an Order of 27 April 2010, the Court authorized the submission of a Reply by Peru and a Rejoinder by Chile, and fixed 9 November 2010 and 11 July 2011 as the respective time-limits for the filing of those pleadings. The Reply and the Rejoinder were duly filed within the time-limits so prescribed.

Referring to Article 53, paragraph 1, of the Rules of Court, the Governments of Colombia, Ecuador and Bolivia, respectively, asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties pursuant to that article, the Court decided to grant each of these requests.

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Having ascertained the views of the Parties, the Court decided, pursuant to Article 53, paragraph 2, of its Rules, that copies of the pleadings and the documents annexed would be made accessible to the public on the opening of the oral proceedings. Further, in accordance with the Court's practice, the pleadings without their annexes will be put on the Court's website from today.

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I note the presence at the hearing of the Minister for Foreign Affairs of Peru (the Minister for Foreign Affairs of Chile will attend the hearing on Thursday), Agents, counsel and advocates of both Parties. In accordance with the arrangements for the organization of the proceedings which have been decided by the Court, the hearings will comprise a first and a second round of oral argument.

The first round of oral argument will begin today and will close on Friday 7 December 2012. The second round of oral argument will begin on Tuesday 11 December 2012 and come to a close on Friday 14 December 2012.

In this first sitting, Peru may, if required, avail itself of a short extension beyond 6 p.m., in view of the time taken up by the opening part of these oral proceedings.

I now give the floor to H.E. Ambassador Allan Wagner, Agent of Peru. You have the floor, Sir.

Mr. WAGNER:

INTRODUCTION

1. Mr. President, Members of the Court, it is a great honour to appear before the International Court of Justice as Agent of the Republic of Peru in the case of the *Maritime Dispute* between Peru and Chile.

2. This case is of the utmost importance to the Government and people of Peru. At stake are the fundamental legal entitlements that international law accords to a coastal State such as Peru to the maritime areas lying off its coasts, and the delimitation of its maritime boundary with Chile in a manner that produces an equitable solution.

3. I should like at the outset to record Peru's admiration for the contribution that this Court has made, and continues to make, to the peaceful settlement of disputes and to the achievement of the objectives set forth in the Charter of the United Nations. Peru's confidence in the Court is demonstrated by its 2003 Declaration accepting the Court's compulsory jurisdiction. As you, Mr. President, said when you addressed the High-Level Meeting on the Rule of Law, "bringing a dispute before the Court usually contributes to defusing tensions between States, in particular in situations of competing claims to sovereignty or maritime zones"[1]. That perfectly describes Peru's object in bringing this case before the Court.

4. In this regard, I would also like to pay tribute to Judge José Luis Bustamante y Rivero, an illustrious President of my country and one of the most prominent figures of Peruvian democracy.

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[1]Statement by H.E. Judge Peter Tomka, President of the International Court of Justice, at the High-Level Meeting on the Rule of Law, New York, 24 Sep. 2012. Available at: <http://www.unrol.org/files/22006_Statement_ICJ.pdf> accessed 30 Nov. 2012.

Bustamante y Rivero was judge and became President of this Court, where he played an important role in contributing to the attainment of the aims and goals of the Court. He was also one of the founding fathers of the 200-nautical-mile thesis, an important step in the evolution of the modern law of the sea.

Why Peru has brought this case

(i) The absence of a maritime boundary

5. Mr. President, the case of Peru before this Court is that the maritime boundary between Peru and Chile has never been delimited and that, in the absence of such delimitation, that boundary remains to be determined by your Court. Contrary to the arguments advanced by Chile, there is no treaty, and no other agreement, that establishes a maritime boundary between Peru and Chile. In fact, what is striking about the arguments of our opponents is that Chile has failed to demonstrate where and when the maritime limit that it asserts was established.

6. Chile affirms in its Rejoinder that "[t]he Parties disagree about the legal foundation and character of a boundary line which has been in place for many decades and observed in the Parties' bilateral practice without incidents or reservation of position . . ." (RC, para. 1.2). This is not true. There is no pre-existing maritime boundary between the Parties, either conventionally or resulting from a *de facto* line, which ever established such a boundary.

7. In order to appreciate why Peru instituted these proceedings, it is necessary to understand the historical context which gave rise to the present dispute.

8. In 1947, Chile issued a declaration and Peru a Supreme Decree concerning the extension of their jurisdiction to a distance of 200 miles from the coast. These instruments were in line with the Truman Proclamations two years earlier, and reflected a common aim to protect each State's maritime entitlements in the face of increased foreign whaling and fishing off their coasts. Neither instrument was concerned with lateral boundaries with neighbouring States. Indeed, not a word was said in Peru's 1947 Supreme Decree about a lateral limit following a parallel of latitude or any other line.

9. In 1952, Peru, together with Chile and Ecuador, signed the Declaration of Santiago. This Declaration expressed a common policy of Peru, Chile and Ecuador towards the international

community in order to defend and protect their marine living resources that were being exploited by large foreign whaling and fishing fleets. These three States therefore proclaimed their jurisdiction up to a minimum distance of 200 nautical miles from their coasts.

10. As Peru's counsel will explain, the Santiago Declaration has nothing to do with lateral boundaries. It was concerned with the 200-mile extension of the three States' maritime zones in the face of predatory whaling and fishing by foreign fleets.

11. Notwithstanding this, Chile asserts that, by point IV of the Santiago Declaration, the Parties delimited their maritime boundary. However, point IV only concerns the maritime entitlements of islands. Point IV did not delimit the maritime boundaries between Peru and Chile or between Peru and Ecuador; it simply stated that where islands were situated within 200 nautical miles of the general maritime zone of another of the signatory States, the maritime zone of such islands would be limited by the parallel of latitude corresponding to the final point of the land boundary of the two States. This situation exists only in the vicinity of Peru and Ecuador due to the existence of islands near their coasts. And even with respect to the situation between Peru and Ecuador, their maritime boundary was not delimited by the Santiago Declaration, which only established a general principle to be applied eventually in the case of islands; it was delimited pursuant to a specific agreement concluded by an Exchange of Notes in May 2011.

12. Chile is fully aware that the plain language and ordinary meaning of the Santiago Declaration does not support its claim that the Parties agreed at that time on an all-purpose maritime boundary stretching out to 200 miles. It has therefore tried to reinforce its argument for the existence of a boundary delimited by the Santiago Declaration by having recourse to the subsequent conduct of the Parties, including the 1954 Agreement Relating to a Special Maritime Frontier Zone for policing of fishing in order to avoid friction between their respective fishing communities and the establishment of coastal lights in 1968-1969 for purposes of providing orientation to inshore artisanal fishermen. But that line of argument fails to reflect the actual facts. In such cases, the Parties adopted practical arrangements of a provisional nature for specific purposes in the sea areas lying close to their coasts.

13. Later, during the Third Conference on the Law of the Sea, Peru played an active role, particularly in Negotiating Group No. 7 which was tasked with elaborating rules of maritime

delimitation. Peru's position then, as it remains today, was that the basic goal of delimitation is the achievement of an equitable solution, and that equidistance constitutes the general rule for maritime delimitation unless there are special circumstances which justify a different boundary.

14. The 1982 Convention on the Law of the Sea recognized that the maritime entitlements of coastal States extend to a distance of 200 nautical miles from baselines, and thus vindicated Peru's and Chile's earlier claims to jurisdiction out to these limits. It also reinforced the principle that the overriding aim of maritime delimitation is to achieve an equitable solution.

(ii) Failure to negotiate a boundary

15. It was in the light of this situation that, soon after the adoption of the Convention, Peru requested Chile to start negotiations in order to establish by agreement the maritime boundary between them. The distinguished Peruvian Ambassador Juan Miguel Bákula, acting as special envoy, made an official presentation on this matter in 1986 to the Minister for Foreign Affairs of Chile, as stated in the Memorandum prepared by him at the request of the Chilean Minister. Chile's reaction was that it would study the matter and revert in due course.

16. Regrettably, Chile subsequently gave no indication that it was studying the matter or ready to discuss it with Peru. Instead, starting in the 1990s, Chile began to undertake a number of unilateral steps in order to create the impression that a maritime boundary already existed with Peru despite the complete absence of any agreement to that effect.

17. For example, Chile began for the very first time to issue maps purporting to show a maritime boundary with Peru, notwithstanding the fact that Chile had issued no such maps during the 40 years since the Santiago Declaration was signed. And, in 2000, Chile deposited charts with the United Nations which purported to depict a boundary running along the 18°21'S parallel of latitude. Peru was constrained to protest these activities and to emphasize that it had never signed any maritime delimitation agreement with Chile.

18. In 2004, Peru again formally proposed the initiation of bilateral negotiations to determine the maritime boundary. However, Chile rejected this initiative, arguing that ~~the~~ maritime boundary had already been established. In view of the impasse that emerged, the Foreign Ministers of both countries signed a Joint Communiqué on 4 November 2004 which recorded the fact that the two

States held different positions over the legal question of maritime delimitation between them. Further diplomatic exchanges between the Parties in 2005 made it clear that Chile had no interest in negotiating the delimitation of an all-purpose maritime boundary with Peru.

19. It was these circumstances which led Peru to commence these proceedings before the Court. Peru is a firm believer in the principle set out in Article 33 of the United Nations Charter that disputes should be settled by peaceful means, including judicial settlement when negotiations fail to achieve a solution. Peru therefore brought the present case under Article XXXI of the Pact of Bogotá, to which Peru and Chile are parties, in order to establish an equitable maritime boundary between them.

Peru's claims

20. In this case, Mr. President, Peru is requesting the Court to do two things: first, to delimit the respective maritime zones between the Parties on the basis of the principles and rules of international law articulated by this Court, starting from a point known as "Point Concordia" where the land boundary reaches the sea; second, to declare Peru's entitlement to exercise exclusive sovereign rights and jurisdiction over an area situated within 200 nautical miles of its baselines, but more than 200 miles from Chile's baselines. This is what is referred to as the "outer triangle" in Peru's pleadings.

(i) The maritime boundary and its starting-point

21. With respect to the delimitation of the maritime boundary, it is self-evident that that boundary must begin at the terminus of the Parties' land boundary where it meets the sea — a boundary that the Parties agree was fully delimited pursuant to the 1929 Treaty of Lima. This is Point Concordia, to which I have referred.

22. Peru was alarmed to see that Chile's Counter-Memorial took the position that the land boundary terminus is not located on the seashore at Point Concordia, but inland at the first boundary marker that was established pursuant to the demarcation of the land boundary in 1930. We have shown in our Reply that Chile's argument is untenable; it is in blatant contradiction with what the Parties agreed in the 1929 Treaty.

23. In its Rejoinder, Chile was therefore forced to resile from this position. However, it still asserts that a maritime boundary exists along the parallel of latitude passing through the first boundary marker and that the distance between this marker and Point Concordia is negligible. This argument is outrageous and contrary to the 1929 Treaty of Lima.

24. Peru has never agreed its maritime boundary with Chile, whether in the 1952 Santiago Declaration or otherwise. And Peru has certainly never agreed to a maritime boundary following a parallel of latitude or one that would start from the coast north of the actual land boundary terminus at Point Concordia in territory that is well inside Peru's exclusive sovereignty. Yet that is the upshot of Chile's position.

(ii) Peru's rights over the "outer triangle"

25. As for the "outer triangle", the plain fact is that this is a maritime area that falls within 200 nautical miles of Peru's coast but beyond 200 nautical miles from Chile's coast. How Chile can challenge Peru's sovereign rights in this area is impossible to understand. The modern law of the sea recognizes to every coastal State the right to exercise sovereign rights and jurisdiction in the maritime areas lying off its coasts up to a distance of 200 nautical miles. Nothing that Chile asserts to the contrary can negate these rights that vest in Peru.

Peru's respect for international law

26. Mr. President, on behalf of the Government of Peru, I wish formally to place on record Peru's commitment to the modern law of the sea as reflected in the 1982 United Nations Convention on the Law of the Sea. Peru's Constitution of 1993, its internal law, and Peru's practice are in full conformity with the contemporary law of the sea. The term "maritime domain" used in our Constitution is applied in a manner consistent with the maritime zones set out in the 1982 Convention; the Constitution refers expressly to freedom of international communication.

27. In short, Peru accepts and applies the rules of the customary international law of the sea as reflected in the Convention.

28. The plain fact is that Peru is asking for nothing more than that to which every coastal State is entitled under international law. Although Peru is not yet a party to the 1982 Convention on the Law of the Sea, both its Constitution and its domestic law and practice are consistent with

the principles and rules set out in the Convention, including the overall aim of maritime delimitation, which is to achieve an equitable solution.

29. Contrary to Chile's contentions, Peru is not violating the principle of *pacta sunt servanda* or the stability of boundaries. Peru strongly rejects this imputation made by Chile. No maritime boundary agreement has been concluded between the Parties. Throughout its history, Peru has always been committed to peace and the observance of international law.

30. The promotion of regional integration has consistently been among the main goals of Peru's foreign policy in order to contribute to the well-being, unity and co-operation among the American Republics.

31. I would also like to note that bilateral relations between Peru and Chile are good. There is an increasing flow of trade and investments between our two countries. Thousands of Peruvians have settled in Chile and thousands of Chileans cross the border every day to obtain goods and services from Peru. Both countries participate actively together in all the processes of regional integration and co-operation in Latin America.

32. Peru is confident that the decision rendered by this distinguished Court will resolve the last boundary issue between Peru and Chile, enabling our two countries to enjoy a common future of peace and well-being for our peoples.

The structure of Peru's oral pleadings

33. Mr. President, Members of the Court, Peru's oral pleadings in this first round are organized in the following way. This afternoon,

— Professor Alain Pellet will start by presenting an overview of Peru's case.

— He will be followed by Mr. Rodman Bundy, who will explain Peru's position on the course of the maritime boundary that achieves an equitable solution in this case. This is the line which we ask the Court to determine.

Counsel will then explain why Chile's assertion that there is already a maritime boundary between the Parties has no basis in fact or law, and the wholly inequitable nature of the line they assert.

— Professor Tullio Treves will begin by placing the 1947 Chilean and Peruvian instruments, and the 1952 Santiago Declaration, in perspective by considering these instruments in the light of the law of the sea as it stood at the time.

— Sir Michael Wood will then deal with Chile's reliance on instruments and events prior to the Santiago Declaration.

These pleadings will be continued tomorrow. And finally we shall deal with two distinct but important issues raised in Chile's written pleadings: the starting-point of the maritime boundary; and the "outer triangle".

34. Mr. President, Members of the Court, with this I end my presentation, and I would respectfully request, Mr. President, that Professor Alain Pellet be called to the podium. Thank you for your attention.

The PRESIDENT: Thank you, Ambassador. J'invite maintenant le professeur Pellet à faire la présentation générale de l'affaire au nom de la délégation du Pérou.

M. PELLET :

PRÉSENTATION GÉNÉRALE DE L'AFFAIRE

1. Monsieur le président, Mesdames et Messieurs de la Cour, rarement, un différend soumis à votre haute juridiction aura été marqué par une «opposition» aussi tranchée «de thèses juridiques»[2]. Sans caricaturer on peut dire que :

— le Pérou vous a soumis une affaire très simple de délimitation maritime, que

— le Chili tente de transformer en un litige assez insaisissable et fort complexe portant essentiellement sur le droit des traités.

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[2] Cf. C.P.J.I., *Concessions Mavrommatis en Palestine, arrêt n° 2, 1924,* p. 11; voir aussi : *Questions d'interprétation et d'application de la convention de Montréal de 1971 résultant de l'incident aérien de Lockerbie (Jamahiriya arabe libyenne c. Etats-Unis d'Amérique), exceptions préliminaires, arrêt, C.I.J. Recueil 1998,* p. 122-123, par. 21, *Certains biens (Liechtenstein c. Allemagne), exceptions préliminaires, arrêt, C.I.J. Recueil 2005,* p. 18, par. 24, *Activités armées sur le territoire du Congo (nouvelle requête : 2002) (République démocratique du Congo c. Rwanda), compétence et recevabilité, arrêt, C.I.J. Recueil 2006,* p. 40, par. 90, *Demande en interprétation de l'arrêt du 31 mars 2004 en l'affaire* Avena et autres ressortissants mexicains (Mexique c. Etats-Unis d'Amérique) *(Mexique c. Etats-Unis d'Amérique), mesures conservatoires, ordonnance du 16 juillet 2008, C.I.J. Recueil 2008,* p. 325-326, par. 53-57 et *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal),* arrêt du 20 juillet 2012, par. 46.

I. Une affaire simple de délimitation maritime

2. Au paragraphe 13 de sa requête, le Pérou demande à la Cour

> «to determine the course of the boundary between the maritime zones of the two States in accordance with international law ... and to adjudge and declare that Peru possesses exclusive sovereign rights in the maritime area situated within the limit of 200 nautical miles from its coast but outside Chile's exclusive economic zone or continental shelf»[3].

Et les conclusions du mémoire et de la réplique du Pérou précisent ces demandes sans les modifier[4].

3. Qu'il s'agisse du «triangle extérieur» visé par sa seconde conclusion ou, d'une manière générale, de la ligne de délimitation entre les espaces maritimes relevant respectivement des deux Parties, le Pérou vous prie, Mesdames et Messieurs les juges, de trancher le différend qu'il vous a soumis en appliquant les principes du droit de la mer, tels que la convention de 1982 les reflète et que la jurisprudence de la Cour et d'autres tribunaux internationaux les consacre.

4. Les articles 74 et 83 de la convention se bornent, chacun le sait, à indiquer que «[l]a délimitation du plateau continental [et de la zone économique exclusive] entre Etats dont les côtes sont adjacentes ou se font face est effectuée par voie d'accord ..., afin d'aboutir à une solution équitable». Faute d'accord, les Parties doivent recourir à un mode de règlement pacifique, ceci toujours afin de parvenir à une telle solution[5] ; parallèlement, elles sont incitées à faire «tout leur possible pour conclure des arrangements provisoires de caractère pratique»[6].

5. Faute d'accord de délimitation — ce que la déclaration de Santiago de 1952 n'est certainement pas, les deux Etats ont certes conclu des arrangements provisoires de ce genre mais, à la suite du refus chilien de négocier — malgré de premières velléités en ce sens[7], le Pérou a saisi la Cour de céans. C'est donc à elle de déterminer la solution équitable qui s'impose en appliquant la «méthode de référence»[8], maintenant solidement fixée et énoncée de façon limpide dans les

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[3] *Différend maritime (Pérou c. Chili), 2008,* par. 13.

[4] Voir. MP, p. 275, ou RP, p. 331.

[5] Cf. les articles 74, par. 2, et 83, par. 2, de la convention des Nations Unies sur le droit de la mer.

[6] Cf. les articles 74, par. 3, et 83, par. 3, *ibid.*

[7] RP, p. 206-208, par. 4.47-4.52.

[8] *Différend territorial et maritime (Nicaragua c. Colombie),* arrêt du 19 novembre 2012, par. 199.

derniers arrêts de la Cour — notamment dans votre décision de 2009 dans *Roumanie c. Ukraine*[9] et dans celle du mois dernier dans *Nicaragua c. Colombie*[10] ; méthode que le Tribunal international du droit de la mer a également mise en œuvre avec fermeté dans son arrêt du 14 mars 2012 dans l'affaire *Bangladesh/Myanmar*[11].

6. Je ne m'y attarde pas — et nous aurons bien sûr l'occasion d'y revenir. Il suffit de rappeler brièvement pour l'instant que :

— «La Cour a dit clairement et à plusieurs reprises que, en cas de chevauchement de droits à un plateau continental et à une zone économique exclusive, la méthode de délimitation qu'elle entendait employer normalement comportait trois étapes ([12])»[13].

— «Ces différentes étapes, présentées dans leurs grandes lignes dans l'affaire du *Plateau continental (Jamahiriya arabe libyenne/Malte*[14]), ont été précisées au cours des dernières décennies»[15] ;

— «Dans un premier temps, il s'agit pour la Cour d'établir une ligne de délimitation provisoire entre les territoires respectifs des Parties (y compris leurs territoires insulaires). Elle a recours pour ce faire à des méthodes à la fois objectives sur le plan géométrique et adaptées à la géographie de la zone»[16].

— «Cette tâche consiste à construire une ligne d'équidistance, lorsque les côtes pertinentes sont adjacentes, ou une ligne médiane entre les deux côtes, lorsque celles-ci se font face,

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[9] *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 61.

[10] *Différend territorial et maritime (Nicaragua c. Colombie)*, arrêt du 19 novembre 2012.

[11] TIDM, *Différend relatif à la délimitation de la frontière maritime entre le Bangladesh et le Myanmar dans le golfe du Bengale (Bangladesh/Myanmar)*,arrêt du 14 mars 2012.

[12] (*Plateau continental (Jamahiriya arabe libyenne/Malte), arrêt, C.I.J. Recueil 1985*, p. 46, par. 60 ; *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 101, par. 115-116).

[13] *Différend territorial et maritime (Nicaragua c. Colombie)*, arrêt du 19 novembre 2012, par. 190. Voir aussi *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 101, par. 115.

[14] *(Jamahiriya arabe libyenne/Malte) (arrêt, C.I.J. Recueil 1985*, p. 46, par. 60).

[15] *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 101, par. 116. Voir aussi TIDM, *Différend relatif à la délimitation de la frontière maritime entre le Bangladesh et le Myanmar dans le golfe du Bengale (Bangladesh/Myanmar)*, arrêt du 14 mars 2012, par. 233.

[16] *Différend territorial et maritime (Nicaragua c. Colombie)*, arrêt du 19 novembre 2012, par. 191. Voir aussi *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 101, par. 116 et TIDM, *Différend relatif à la délimitation de la frontière maritime entre le Bangladesh et le Myanmar dans le golfe du Bengale (Bangladesh/Myanmar)*, arrêt du 14 mars 2012, par. 233.

à moins que, dans un cas comme dans l'autre, des raisons impérieuses ne le permettent pas ([17])»[18].

— «A la deuxième étape, il s'agit pour la Cour de déterminer s'il existe des circonstances pertinentes qui pourraient appeler un ajustement ou un déplacement de la ligne d'équidistance (ou médiane) provisoire afin d'aboutir à un résultat équitable»[19].

— «La troisième et dernière étape consiste pour la Cour à vérifier si la ligne, telle qu'ajustée ou déplacée, a pour effet de créer une disproportion marquée entre les espaces maritimes attribués à chacune des Parties dans la zone pertinente, par rapport à la longueur de leurs côtes pertinentes respectives»[20].

[Projection n° 1 : Une délimitation équitable.]

7. Ce petit «collage» de citations extraites principalement de *Nicaragua c. Colombie* (dont on trouve l'équivalent dans *Roumanie c. Ukraine* et dans nombre d'autres affaires), ce copier-coller que je viens de faire décrit, je crois, de manière succincte mais suffisante, la méthode de référence couramment dénommée «méthode de l'équidistance-circonstances pertinentes». Juridiquement contraignante pour les Parties comme pour la Cour, elle permet de déterminer la ligne de délimitation maritime correspondant à la solution équitable exigée tant par les articles 74 et 83 de la convention de Montego Bay que par le droit coutumier. En l'espèce :

— aucune «raison impérieuse» ne s'oppose à recourir à une ligne d'équidistance (elle correspond d'ailleurs presque exactement à une bissectrice qui serait tracée dans l'angle que forme la côte adjacente aux deux Etats là où se termine leur frontière terrestre) ;

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[17] (Voir *Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes (Nicaragua c. Honduras), arrêt, C.I.J. Recueil 2007 (II)*, p. 745, par. 281).

[18] *Différend territorial et maritime (Nicaragua c. Colombie)*, arrêt du 19 novembre 2012, par. 191. Voir aussi *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 101, par. 116, *Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes (Nicaragua c. Honduras), arrêt, C.I.J. Recueil 2007 (II)*, p. 745, par. 281 et TIDM, *Différend relatif à la délimitation de la frontière maritime entre le Bangladesh et le Myanmar dans le golfe du Bengale (Bangladesh/Myanmar)*, arrêt du 14 mars 2012, par. 233.

[19] *Différend territorial et maritime (Nicaragua c. Colombie)*, arrêt du 19 novembre 2012, par. 192. Voir aussi *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 112, par. 155 et TIDM, *Différend relatif à la délimitation de la frontière maritime entre le Bangladesh et le Myanmar dans le golfe du Bengale (Bangladesh/Myanmar)*, arrêt du 14 mars 2012, par. 233 et 275.

[20] *Différend territorial et maritime (Nicaragua c. Colombie)*, arrêt du 19 novembre 2012, par. 193. Voir aussi *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 129, par. 210 et TIDM, *Différend relatif à la délimitation de la frontière maritime entre le Bangladesh et le Myanmar dans le golfe du Bengale (Bangladesh/Myanmar)*, arrêt du 14 mars 2012, par. 233 et 497.

— aucune circonstance spéciale ou pertinente n'impose un ajustement de la ligne d'équidistance lors de la deuxième étape ; et

— cette ligne non seulement n'entraîne pas de disproportion marquée entre les longueurs respectives des côtes pertinentes et les espaces ainsi répartis, mais elle réalise un partage pratiquement égal des espaces de chevauchement entre les deux Etats, dont les côtes pertinentes sont presque égales.

[Fin de la projection n° 1.]

II. Une affaire indûment compliquée par le Chili

8. Une affaire simple donc, Monsieur le président. Mais une affaire que le Chili, servi par le talent et l'imagination de ses avocats, s'emploie à compliquer très indûment. Au lieu de reconnaître l'évidence d'une absence de délimitation maritime entre les Parties, l'Etat défendeur s'efforce en effet de prouver, au prix de contorsions imposées au droit des traités et aux faits de la cause, qu'une ligne frontière a été adoptée conventionnellement en 1952 — par la déclaration de Santiago — et constamment mise en œuvre par la suite.

[Projection n° 2 : Point Concordia.]

9. Le traitement singulier que le Chili fait subir au droit conventionnel se manifeste d'emblée par la manière insolite dont il prétend appliquer — ou faire interpréter par la Cour — le traité de Lima de 1929 et le rapport final de la commission de démarcation du 21 juillet 1930. Aux termes de ce dernier : «La ligne frontière abornée part de l'océan Pacifique, à un point du littoral situé à dix kilomètres au nord-ouest du premier pont de la ligne de chemin de fer reliant Arica et La Paz, sur la Lluta.»[21]

Ceci est d'ailleurs la simple mise en œuvre de ce que prévoyait le traité lui-même : «la frontière entre les territoires du Chili et du Pérou, partira d'un point de la côte qui sera appelé «Concordia», à une distance de dix kilomètres au nord du pont de la Lluta»[22].

10. M[e] Bundy reviendra plus longuement sur ce point — qui est l'une de ses marottes —, mais il me semble qu'un croquis peut suffire à montrer que le point d'aboutissement de la frontière

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[21] MP, annexe 54.

[22] MP, annexe 45, art. 2.

terrestre — et donc le point de départ de la délimitation maritime — ne peut pas être situé là où le Chili prétend qu'il est — c'est-à-dire au parallèle 18° 21' 00" sud. Ce parallèle est la latitude de la dernière borne frontière, le *hito* n° 1, mesuré «selon le système géodésique de référence WGS84»[23], mais l'emplacement de cette borne ne correspond pas au point Concordia que décrivent les textes conventionnels applicables et qui se trouve à l'intersection de la frontière terrestre avec la côte.

[Fin de la projection 2.]

11. La conception insolite que se font nos contradicteurs des engagements conventionnels se retrouve dans leur présentation de ce qui constitue le cœur du différend soumis à la Cour. Mais là, il ne s'agit pas de revenir sur un engagement conventionnel, comme l'est celui fixant le point d'aboutissement de la frontière terrestre, mais d'en inventer un, qui n'a jamais été conclu entre les Parties et selon lequel elles se seraient entendues sur une délimitation maritime dont le résultat le plus clair serait de priver le Pérou de près de 67 000 kilomètres carrés d'espaces marins (autant que la superficie du Sri Lanka ou de la Géorgie), espaces marins sur lesquels le droit de la mer reconnaît au Pérou un titre exclusif à des droits souverains.

12. Ce résultat improbable serait la conséquence de la délimitation qu'aurait réalisée la déclaration sur la zone maritime signée à Santiago le 18 août 1952 — que l'on appelle pour faire court «déclaration de Santiago». Je laisse à mes éminents et savants collègues le soin de discuter la nature juridique incertaine de cet instrument. Qu'il me suffise à ce stade encore préliminaire de nos plaidoiries orales de vous rappeler le texte de sa disposition centrale — son point II (~~où la~~ déclaration est reproduite dans son intégralité à la fois en espagnol et dans ses traductions française et anglaise sous l'onglet n° 3 du dossier des juges) ; ~~cette disposition se lit~~ ainsi :

> «En conséquence, les Gouvernements du Chili, de l'Equateur et du Pérou fondent leur politique internationale maritime sur la souveraineté et la juridiction exclusives qu'a chacun d'eux sur la mer qui baigne les côtes de son pays jusqu'à 200 milles marins au moins à partir desdites côtes.»[24]

13. Je sais bien, Monsieur le président, que cette déclaration — dont l'objet était, selon son préambule, de permettre aux gouvernements des trois Etats de formuler des principes de nature à «conserver et assurer à leurs peuples respectifs les ressources naturelles des zones maritimes qui

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[23] CMC, p. 305.

[24] MP, annexe 47.

baignent leurs côtes», comporte également un point IV, dont le Chili fait grand cas. Je le lis en entier, Monsieur le président, pour prendre date — car le Chili n'affectionne cette disposition que tronquée[25] :

> «*S'agissant d'un territoire insulaire*, la zone de 200 milles marins s'étendra autour *de l'île ou du groupe d'îles. Si une île ou un groupe d'îles* appartenant à l'un des pays signataires de la présente [d]éclaration se trouve à moins de 200 milles marins de la zone maritime générale qui se trouve sous la juridiction d'un autre d'entre eux, la zone maritime *de l'île ou du groupe d'îles en question* sera limitée par le parallèle passant par le point où aboutit en mer la frontière terrestre des Etats en cause.»[26]

14. Cela se passe de commentaire, Monsieur le président : le point IV de la déclaration se borne expressément et strictement à établir l'extension maximale des espaces maritimes potentiels des territoires insulaires. En outre, il est plus que douteux qu'il se suffise à lui-même et puisse être mis en œuvre en l'absence d'accords ultérieurs en précisant la portée (et, de toute manière, il n'y a point d'îles devant être prises en considération dans la zone litigieuse). Quant au point II, que j'ai lu tout à l'heure, il ne concerne ni de près ni de loin la délimitation latérale de la zone ainsi revendiquée — inédite à l'époque — dont il proclame l'existence. C'est pourtant sur cette base fragilissime que le Chili se fonde pour tenter de vous convaincre, Mesdames et Messieurs de la Cour, de l'existence d'un accord de délimitation maritime entre les deux pays. Un tel accord n'existe pas.

15. Fort de ce postulat (peut-être devrais-je dire «faible de ce postulat» ?...), le Chili s'évertue ensuite à «démontrer» que la pratique ultérieure des Parties (et des tiers pour faire bonne mesure) a «confirmé» ou «mis en œuvre» l'introuvable délimitation conventionnelle de 1952[27]. Mais on ne peut confirmer ou appliquer qu'une délimitation qui a été effectivement adoptée — pas de délimitation en 1952, pas de confirmation ultérieure bien sûr. Et s'il peut être tenu compte de la pratique ultérieurement suivie pour interpréter un traité, la pratique ne peut pallier l'inexistence de tout traité ni, s'il en existe, se substituer à lui pour lui faire dire des choses qu'il ne dit nullement — ici, pour transformer un texte proclamant l'existence d'une zone de souveraineté et

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[25] Voir RP, p. 121, par. 3.62, p. 122-125, par. 3.63, p. 126, par. 3.68 et p. 127, par. 3.70. Voir aussi MP, annexe 47.

[26] Les italiques sont de moi.

[27] Voir parmi beaucoup d'autres exemples, CMC, p. 2, par. 1.4 ; DC, p. 212, par. 5.1 ; DC, p. 242, par. 6.9 ; ou DC, p. 283-284, par. 8.13.

juridiction maritime en un accord de délimitation de cette zone. La thèse du Chili, adroitement forgée[28] peu après que le Pérou eut suggéré, en 1986, l'ouverture de négociations entre les deux pays[29], est demeurée à quelques nuances près, celle qu'il défend aujourd'hui.

16. Bien entendu, Monsieur le président, nous n'esquiverons pas la discussion — mais je le dis d'emblée, c'est un faux débat : la déclaration de 1952 n'est pas un accord de délimitation ; et la pratique ultérieure invoquée par le Chili ne peut, par je ne sais quelle alchimie mystérieuse, l'avoir transformée en ce qu'elle n'est pas. Certes, il est exact qu'après 1952, les deux pays ont conclu des arrangements de caractère pratique pour réglementer provisoirement certaines activités dans la zone litigieuse — ou plutôt d'ailleurs, en général, dans *certaines parties* de la zone litigieuse ; mais ces arrangements étaient la plupart du temps limités au secteur le plus proche des côtes et à la seule colonne d'eau surjacente, à l'exclusion du fond de la mer et de son sous-sol ; ces arrangements, sectoriels et provisoires, n'avaient pas vocation à fixer une frontière maritime, ni polyvalente ni permanente, contrairement à ce que prétend le Chili.

[Projection n° 3 : Iniquité de la ligne chilienne.]

17. Et quelle frontière, Monsieur le président !

— une frontière qui, je l'ai dit, réduit la zone maritime sur laquelle le Pérou est en droit d'exercer des droits souverains de quelque 67 000 kilomètres carrés ;

— une frontière qui ampute radicalement l'accès du Pérou à la mer libre ;

— une frontière qui empêche celui-ci de projeter ses droits souverains et sa juridiction aussi loin vers le large que le lui permet le droit international[30] ;

— et au nom de laquelle le Chili entend au surplus priver le Pérou de ses droits exclusifs dans une zone dans laquelle il n'en peut, lui Chili, revendiquer aucun.

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[28] Voir notamment F. Orrego Vicuña, *The Exclusive Economic Zone: Regime and Legal Nature under International Law*, Cambridge UP, 1989, p. 206-207 (CMC, annexe 301) ; ou F. Orrego Vicuña, «International Ocean Developments in the Southeast Pacific: The Case of Chile», *in* J. P. Craven, J. Schneider et C. Stimson (eds.), *The International Implications of Extended Maritime Jurisdiction in the Pacific*, 1989, p. 221 (CMC, annexe 302).

[29] Voir le mémorandum diplomatique annexé à la note n° 5-4-M/147 du 23 mai 1986 adressée au ministère chilien des affaires étrangères par l'ambassade du Pérou (MP, annexe 76).

[30] Voir *Délimitation de la frontière maritime entre la Guinée et la Guinée-Bissau*, sentence du 14 février 1985, Nations Unies, *Recueil des sentences arbitrales (RSA)*, vol. XIX, p. 187, par. 104 ou par. 115.

18. Et tout ceci, Monsieur le président, sur la base d'une sorte de faisceau d'indices, adroitement agencés par les conseils du Chili, mais qui ni isolément ni ensemble ne peuvent constituer la preuve convaincante de l'accord de délimitation dont se prévaut l'Etat défendeur. Vous l'avez dit de manière nette et persuasive, Mesdames et Messieurs de la Cour : «L'établissement d'une frontière maritime permanente est une question de grande importance, et un accord ne doit pas être présumé facilement.» (*Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes (Nicaragua c. Honduras), arrêt, C.I.J. Recueil 2007 (II)*, p. 735, par. 253.)[31]

19. L'embrouillamini d'arguties juridiques soulevées par le Chili se prolonge au-delà de la zone maritime qu'il veut s'approprier aux dépens des droits péruviens, avec sa prétention de nier au Pérou la juridiction et les droits souverains qui lui appartiennent dans ce que nous avons appelé le «triangle extérieur». Ici encore, le Chili complique très indûment des données juridiques fort simples : les droits qu'il conteste au Pérou sont inhérents — au moins en ce qui concerne le plateau continental[32] ; et s'agissant des eaux surjacentes, le titre, l'*entitlement*, de l'Etat riverain est exclusif ; de toute manière, en l'espèce, le Pérou a proclamé «sa souveraineté et juridiction» sur l'ensemble de cette zone et de ses ressources[33].

20. Il ne s'agit au demeurant que de tirer la conséquence logique de la conclusion principale du Pérou qui porte sur le tracé de la frontière maritime entre les deux pays suivant la ligne d'équidistance : puisqu'il s'agit de deux Etats dont les côtes sont adjacentes, sans vis-à-vis, cette ligne se poursuit jusqu'à une distance de 200 milles marins des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale[34], les deux Etats ayant proclamé les droits souverains que le droit international reconnaît sur ces espaces.

21. Il est vrai que, sans soulever formellement d'exception d'irrecevabilité, le Chili a, dans son contre-mémoire, accusé le Pérou de demander à la Cour d'étendre son domaine maritime — *to*

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[31]. Voir aussi *Différend territorial et maritime (Nicaragua c. Colombie)*, C.I.J., arrêt du 19 novembre 2012, par. 219 ; ou *Différend relatif à la délimitation de la frontière maritime entre le Bangladesh et le Myanmar dans le golfe du Bengale (Bangladesh/Myanmar)*, TIDM., arrêt du 14 mars 2012, par. 95.

[32] Voir l'article 77 de la convention des Nations Unies sur le droit de la mer.

[33] Voir Constitution politique du Pérou du 12 juillet 1979 (MP, annexe 17), Constitution politique du Pérou du 29 décembre 1993 (MP, annexe 19), la loi n° 28621 du 3 novembre 2005 (MP, annexe 23) et le décret suprême n° 047-2007-RE du 11 août 2007 (MP, annexe 24).

[34] Articles 57 et 76, paragraphe 1, de la convention des Nations Unies sur le droit de la mer.

enlarge its maritime dominion[35] —, ce qui serait contraire à ce qu'autorisent les articles 74 et 83 de la convention de Montego Bay[36]. Comme nous l'avons fait remarquer dans la réplique[37], pour formuler cet argument, le Chili doit déformer la conclusion du Pérou, qui ne demande pas à la Cour de consacrer la notion de *dominion* maritime — une expression que l'on ne trouve nulle part dans les écritures péruviennes —, mais de reconnaître formellement ses droits souverains et sa juridiction dans la zone de 200 milles conformément aux règles contemporaines du droit de la mer.

22. Pour faire droit à la prétention chilienne, la Cour devrait :

1) décider que l'un des Etats signataires pourrait renoncer par un traité particulier à une zone maritime sur laquelle il bénéficie, en vertu du droit contemporain de la mer, d'un titre exclusif à des droits souverains, et que cette renonciation produirait ses effets vis-à-vis tant de la communauté internationale des Etats dans son ensemble que de l'autre ou des autres Etats contractants — qui n'y ont pourtant aucun droit particulier ; et
2) il vous faudrait aussi accepter que la déclaration de Santiago peut tenir en échec les dispositions des articles 74 et 83 de la convention de 1982 — dont les deux Parties s'accordent à reconnaître qu'ils reflètent le droit coutumier — et que cette déclaration a privé le Pérou des droits inhérents qu'il tient du droit contemporain de la mer ; une telle position jetterait plus que des doutes sur la validité de cet instrument — la déclaration de Santiago —, sur lequel le défendeur place pourtant tous ses espoirs dans la présente affaire.

23. S'apercevant sans doute qu'en invoquant l'irrecevabilité de la seconde conclusion du Pérou le Chili risquait fort de devenir l'arroseur arrosé, il a renoncé à y revenir dans sa duplique. Sage précaution, dont on peut déduire qu'il admet dorénavant que le Pérou est recevable à conclure à la reconnaissance de ses droits souverains dans la zone de 200 milles dans son ensemble — des droits que le droit international contemporain de la mer reconnaît, ni plus ni moins, ainsi que l'ambassadeur Wagner l'a réitéré très formellement il y a quelques instants. Tout comme le Chili, le Pérou a souhaité promouvoir, à la fin des années 1940 et au début des années 1950, une conception très extensive de ses droits maritimes ; tout comme le Chili, il accepte que le droit de la

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[35] Voir CMC, p. 22, par. 1.74.

[36] *Ibid.*

[37] Voir RP, p. 32-36, par. 1.34-1.40.

mer, tel qu'il a évolué (évolution dans laquelle les deux Etats ont joué un rôle majeur), limite ces droits à la fois géographiquement et substantiellement ; et le Pérou ne revendique certainement pas aujourd'hui une pleine souveraineté sur cette zone de 200 milles. Je le redis, Monsieur le président, le Pérou accepte le droit de la mer tel qu'il est et, comme l'a dit son agent, il ne demande rien de plus (mais rien de moins) que la reconnaissance des droits que celui-ci reconnaît à tous les Etats côtiers.

[Fin de la projection n° 3.]

24. Je vous remercie de votre attention, Mesdames et Messieurs les juges. Et je vous prie, Monsieur le président, de bien vouloir appeler à cette barre M[e] Rodman Bundy qui décrira, de manière moins sommaire que je viens de le faire pour les besoins de cette présentation très générale, la méthode à suivre en vue de fixer la frontière maritime unique entre les deux pays.

The PRESIDENT : Merci, Monsieur le professeur. And the Court is ready to listen to the pleading of Mr. Bundy. You have the floor, Sir.

Mr. BUNDY:

THE DRAWING OF PERU'S DELIMITATION LINE SO AS TO ACHIEVE AN EQUITABLE SOLUTION

Introduction

1. Thank you very much, Mr. President, Members of the Court. It is, as always, a great honour to appear before this Court; and it is also a privilege for me to represent the Government of Peru in a case that is of such importance to it.

2. In considering the law of maritime delimitation over the years, two principles stand out as having always played a dominant role. The first is that delimitation is to be effected by agreement on the basis of international law. The second is that the overarching aim of maritime delimitation is to achieve an equitable solution. These two principles lie at the heart of the present case.

3. As Professor Pellet pointed out, despite Chile's arguments to the contrary, Peru and Chile have never agreed the delimitation of their maritime boundary. This is a matter we shall return to later in our presentation. But it is precisely because of the absence of an agreed maritime boundary

that Peru instituted these proceedings in which it is requesting your Court to determine the course of that boundary on the basis of customary international law.

4. This is where the second principle I alluded to comes into play — the principle that the essential goal of maritime delimitation is to achieve an equitable solution. Because this principle is so central to an appreciation of the main issues that have been raised in the case, we believe that it will assist the Court if Peru sets out its position on the delimitation question early in its first round presentation.

5. And so my task this afternoon, Mr. President, Members of the Court, therefore, is to explain how the principles and rules of international law apply to the geographic circumstances characterizing the case in order to achieve a genuinely equitable solution. As I hope to demonstrate, this case presents a textbook example of a situation where a boundary delimited on the basis of equidistance produces such a result.

The applicable principles and rules

6. Let me start with the applicable legal principles. Since Peru is not a party to the 1982 United Nations Convention on the Law of the Sea, the maritime boundary between the Parties falls to be determined in accordance with customary international law[38].

7. I can reassure the Court that it is not my intention to rehearse the law of maritime delimitation at any length. I say this for three reasons. First, Peru described the relevant principles and rules in its written pleadings[39] and there is no need for me to repeat that exposition. Second, Chile has not taken issue with any of these principles in its written pleadings. We will see what they have to say before your Court later this week. Third, it has obviously been this Court that has contributed mainly to what is now a well-established body of law relating to maritime delimitation, including in the Judgment it handed down two weeks ago in the *Nicaragua-Colombia* case, and thus it is scarcely necessary for me to review the Court's jurisprudence in any detail and in any event my colleague, Professor Pellet has already highlighted the main points.

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[38]MP, para. 3.4; *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment of 19 November 2012,* para. 137.

[39]See, MP, paras. 6.3-6.18.

8. Let me simply recall, as the Court stated recently in *Nicaragua-Colombia* as well as in the *Black Sea* cases, that when it is called upon to delimit the continental shelf and the exclusive economic zone, the Court proceeds in three well-defined stages: first, the establishment of the provisional equidistance line between the territories of the Parties; second, consideration of whether there are any relevant circumstances that call for an adjustment to be made to the equidistance line so as to achieve an equitable result; and third, an assessment of the line resulting from the first two steps to verify that it does not produce a disproportionate result[40]. The same approach was obviously adopted by the International Tribunal for the Law of the Sea in the *Bangladesh/Myanmar* case[41], decided earlier this year. And it is the approach that is perfectly suited — ideally suited — to achieving an equitable solution in the present case.

9. Now as Professor Treves will explain tomorrow, throughout the United Nations Conference on the Law of the Sea, Peru adopted the same basic position. Peru's position then, as it remains today, was that the object of maritime delimitation is to reach an equitable solution, and that in the absence of any special circumstances, the maritime zones between adjacent States should be delimited by means of an equidistance line[42]. That was, in effect, no more than an articulation of the "equidistance/relevant circumstances" rule that has since come to play such a central role in the law of maritime delimitation.

The relevant coasts of the Parties and the relevant area

10. Having outlined very briefly the legal process which governs delimitation, let me now turn to the geographic context within which the principles and rules apply. Now as the Court stated in the *Romania/Ukraine* case: "The title of a State to the continental shelf and to the exclusive economic zone is based on the principle that the land dominates the sea through the projection of the coasts or the coastal fronts."[43] And it is therefore necessary to identify the relevant coasts of the

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[40] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Judgment of 19 November 2012, paras. 190-193; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, paras. 115-116; pp. 101-103, paras. 120-122; and p. 129, para. 211.

[41] *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal*, Judgment of 14 March 2012, p. 76, para. 240.

[42] See Reply of Peru (RP), Introduction, para. 19 and footnote 19, and para. 5.2.

[43] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 89, para. 77, citing *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 51, para. 96 and *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 73.

Parties which generate overlapping maritime entitlements, and the corresponding relevant area that falls to be delimited in this case.

(i) The relevant coasts

[Fig. 6.2 from Peru's Memorial on screen, but without the green and red highlighting of each Party's coast and without the black coastal front lines]

11. The map that is now going to be projected on the screen (tab 5 in the folders) shows the general geographic setting, the map which may be projected on the screen.

The PRESIDENT: Perhaps you can tell us whether the map is in the judges' folder?

Mr. BUNDY: The map is in the judges' folder. Could I suggest that the judges turn to tab 5? And we have now got it on the screen, I apologize for the delay. The map shows the general geographic setting and as Peru explained in its written pleadings — and this is an important point that I will come back to tomorrow — the land boundary between Peru and Chile starts — where that land boundary reaches the sea is at a point known as Point Concordia — which is being highlighted on the map and in your folders. And that is the point from which the maritime delimitation must begin [arrow pointing to Point Concordia].

12. Now what immediately stands out from this map is that Point Concordia lies almost exactly where the western coast of South America changes direction. You can see from the map that just to the south of the terminus of the land boundary at Point Concordia, Chile's coast can be seen to run in an almost due north-south direction. There are some minor undulations along that coast, but no major promontories or inlets, and no offshore islands. In contrast, north of Point Concordia, Peru's coast runs in a very different direction, adopting a south-east to north-west orientation. But, once again, there are no prominent coastal features that interrupt the general direction of Peru's coast, or islands that could arguably distort the course of an equidistance line.

13. Both Parties claim 200-nautical-mile entitlements extending from their respective baselines. Chile claims a 12-mile territorial sea and a 200-mile continental shelf and exclusive economic zone. Peru claims a 200-nautical-mile maritime domain comprising the sea, sea-bed and

subsoil pursuant to its 1979 and 1993 Constitutions[44], which, as the distinguished Agent recalled earlier this afternoon, Peru implements in accordance with the legal status of these areas as they are now enshrined in contemporary international law: and the limits of the Parties' collective 200-mile entitlements that are generated by their coasts can be seen on the screen by the white shading and the light blue interface.

14. For purposes of determining the relevant coasts of the Parties and the relevant area, it is worth recalling the Court's statement in the *Romania-Ukraine* case, which was also cited with approval in the recent *Nicaragua-Colombia* case: "the coast, in order to be considered as relevant for the purpose of the delimitation, must generate projections which overlap with projections from the coast of the other Party" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 97, para. 99; see also *Territorial and Maritime Dispute (Nicaragua* v. *Colombia),* Judgment of 19 November 2012, para. 150).

15. Given that both Peru and Chile claim maritime entitlements based on the 200-nautical mile distance criterion, Peru has identified the relevant coasts of the Parties as those coasts lying within 200 miles of the terminal point at Point Concordia, because it is those coasts which generate the 200-mile entitlements which overlap with each other, thus calling for delimitation.

~~[Add the red, green and black lines from Fig. 6.2 of Peru's Memorial to the map].~~

16. You will be able to see on your map in the folder (tab 5), if the system is not working, but in principle I wanted to project the map on the screen now which shows the relevant coasts. The relevant coast of Chile stretches 200 miles south of Point Concordia, as you can see on the map in the folders, to a place called Punta Arenas, which is in the vicinity of a location called Antofagasta — that is on the Chilean side, stretching 200 miles down its coast. Peru's relevant coast extends 200 miles north-west of Point Concordia up to the vicinity of Punta Pescadores.

(ii) The relevant area

17. It is on the basis of identifying these relevant coasts that project into the area to be delimited that I can turn to the relevant area: and the relevant area, as the Court described it in *Nicaragua-Colombia*: "*comprises that part of the maritime space in which the potential*

[44]MP, Ann. 17 and Ann. 19.

entitlements of the parties overlap" (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Judgment of 19 November 2012, para. 159; emphasis added). That part of the maritime space where the potential entitlements of the Parties overlap~~ped~~. Now this area of potentially overlapping entitlements is circumscribed by 200-nautical-mile arcs drawn from the nearest points on each Party's coast. ~~[Display Fig. 6.3 from Peru's Memorial on screen].~~ As you can see from the map that is displayed on the screen (tab 6 in the folders), Chile can have no maritime entitlements beyond the northern 200-mile arc labelled in green on the map — beyond that green line is further than 200 nautical miles from the closest Chilean coast; and Peru can have no entitlements beyond the — or to the south of the — southern arc labelled in red. The area defined by these lines therefore constitutes the area of overlapping maritime entitlements and, consequently, the relevant area within which the delimitation falls to be carried out. In that blue shaded area every point in that area is within 200 miles of both Parties' coasts — overlapping entitlements, the relevant area.

Plotting the equidistance line

18. Having identified the relevant coasts of the Parties and the relevant area, the next step is the plotting of the provisional equidistance line: and obviously, the identification of the course of the equidistance line depends on the base points that are used on each State's coast for plotting that line. In some cases, that issue can be controversial, particularly where you have a system of straight baselines ~~which~~ has been promulgated, or where there are small islands or low-tide elevations, or where those kind of features are involved, the process can be more complex. In the present case, however, there are no such complications. Both Parties' coasts on either side of the point where their land boundary meets the sea are relatively smooth; neither Party has adopted a system of straight baselines in the relevant area; and there are no islands that might arguably distort the course of an equidistance line if they were to be used as base points.

~~[Fig. 6.6 from Peru's Memorial on screen]~~

19. The next map appearing on the screen shows the course of the provisional equidistance line as well as the base points on the Parties' coasts that have been used for plotting that line, and it is under tab 7 of your the folders. The line starts from Point Concordia where the land boundary meets the sea, and extends generally in a west-south-westerly direction out to the 200-nautical-mile

limit of each Party's entitlements. The co-ordinates of the various turning points on the equidistance line have been provided by Peru on the figure, and they can also be found on the map that was included at page 224 of Peru's Memorial. And the fact that the equidistance line has no sharp turning points — it follows the same general direction throughout its course — is precisely due to the smooth nature of each Party's coast bordering the relevant area.

The absence of any relevant circumstances justifying a shifting of the equidistance line

20. Now the second step of the delimitation process involves assessing whether there are any relevant circumstances that justify shifting the equidistance line in order to achieve an equitable result. And, in this respect, the jurisprudence makes it clear that the Court's focus is on whether there are any geographic factors that constitute potential relevant circumstances, particularly in cases that involve the delimitation of both the continental shelf and the exclusive economic zone.

21. In the *Gulf of Maine* case, for example, the Chamber of the Court pointed to the fact that, with the gradual adoption by a majority of maritime States of an exclusive economic zone and, consequently, an increasingly general demand for the adoption of a single maritime boundary, preference should be given to criteria that are neutral in character[45]. And, as the Chamber observed:

> "it is, accordingly, towards an application to the present case of criteria more especially derived from geography that it feels bound to turn. What is here understood by geography is of course mainly the geography of coasts, which has primarily a physical aspect, to which may be added, in the second place, a political aspect." (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 327, para. 195.)

22. In the present case, there are no circumstances, such as a marked disparity in the lengths of the relevant coasts of the Parties or the presence of islands that warrant an adjustment being made to the equidistance line. ~~And, if~~ anything, the coastal geography between Peru and Chile in this case bordering the relevant area is even more straightforward than it was as between Cameroon and Nigeria, or between Romania and Ukraine, where the Court did not find that there were any

[45] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 327, para. 195.

factors calling for a modification of the equidistance line[46]. And, again, and in short, the geographic characteristics of the present case present a classic example of a situation where equidistance in itself produces a manifestly equitable result.

23. The one geographic factor that does stand out in this case is the change in direction of the coast that occurs in the vicinity of Point Concordia. Peru's coast trends in a south-east to north-west direction; Chile's coast runs almost due north-south. But the equidistance line takes this factor into account. Every delimitation involving neighbouring States involves some degree of cut-off or encroachment in the sense that neither party can enjoy unimpeded entitlements out to a distance of 200 miles from its coast that it would otherwise possess if it had no neighbour. In this case, application of the equidistance method deals with that cut-off effect in an equitable ~~manner~~ and balanced manner.

~~[Fig. 6.8 (right-hand figure only) from Peru's Memorial on screen]~~

24. If the Court looks at the map presently on the screen, which is tab 8 in your folders, it can be seen that, taking the projections from each Party's coastal front, the equidistance line results in a balanced cut-off effect for both Parties. For example, the distance between the town Vila Vila along Peru's coast and the equidistance line, measured perpendicular to the general direction of the coast, is some 51 nautical miles. The distance between a corresponding point along Chile's coast, to the south of the land boundary terminus and the same point on the equidistance line is 50.6 nautical miles. And, similarly, the distance between the town of Ilo along Peru's coast and the equidistance line is 168.7 nautical miles, while the distance between a corresponding point along Chile's coast and, again, the same point on the equidistance line, is 170.8 nautical miles. And it goes on, as the map displays.

25. As Professor Prosper Weil put it in his book *Reflections* on maritime delimitation, except in those special situations which require corrections: "equidistance allows the boundary to be fixed at the maximum distance from both States and so avoids any excessive amputation of their maritime projections"[47].

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[46] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, pp. 445-446, para. 297; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 117-118, para. 168.

[47] Prosper Weil, *The Law of Maritime Delimitation – Reflections*, Cambridge, Grotius, 1989, p. 60.

26. ~~And, t~~hat is precisely what equidistance does here — that is the situation we have here. Equidistance produces an equitable result in and of itself without the need for any adjustment. And, there are no other relevant factors that would justify shifting the provisional equidistance line, such as have been considered, and for the most part rejected, in other cases.

~~[Fig. 6.7 from Peru's Memorial on screen]~~

27. I would suggest that the equitable nature of the equidistance line is further confirmed if it is compared with the result that would be produced by application of the coastal bisector method based on the general direction of the two Parties' coasts. As the map that is now on the screen illustrates, the bisector line in fact tracks very closely the course of the equidistance line — it is not surprising, given the relatively smooth nature of the coast, and the bisector thus confirms the equitableness of an equidistance-based boundary.

Applying the disproportionality test

28. That, Mr. President, brings me to the last six or seven minutes of my pleading where I would like to address the third step — disproportionality — I am in your hands.

The PRESIDENT: Please proceed and complete your presentation.

Mr. BUNDY: Thank you very much. As I said, I now come to the third step in the delimitation exercise — the application of the disproportionality test. And, on this point, the Court has consistently held that proportionality, in terms of a direct division of the area in dispute proportional to the respective lengths of the coasts of the parties bordering the area to be delimited, is not a delimitation method in and of itself.[48] Rather, the role of proportionality — or disproportionality — is an *ex post facto* test — in other words, a means to verify the equitableness of a result arrived at by other means[49]. As your Court noted in its Judgment in the *Black Sea* case, it turns to the "disproportionality" test to check:

> "that the result thus far arrived at, so far as the envisaged delimitation line is concerned, does not lead to any significant disproportionality by reference to the

[48] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 323, para. 185.

[49] Case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 49, para. 66.

> respective coastal lengths and the apportionment of areas that ensue". (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 129, para. 210; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Judgment of 19 November 2012, para. 240.)

29. Now, this test has been systematically applied in situations where the delimitation is between States with adjacent coasts, and where the relevant area can be identified with reasonable accuracy without trespassing on areas claimed by third States. That was the situation in *Tunisia/Libya*, it was the situation in the *Black Sea* case, where the test was again applied, as well as in the *Bangladesh/Myanmar* case decided by ITLOS earlier this year and, of course, in the recent *Nicaragua-Colombia* case. In each of these cases, the disproportionality test was applied to verify whether the boundary line that was arrived at using other means produced an equitable, or not "disproportionate", result.

30. In the present case, the coastal geography of the Parties is such that the disproportionality test not only can be readily applied; it should be applied to verify the equitableness of each Party's claim line. The delimitation is between States with adjacent coasts; it is confined to a well-defined area of the western littoral of South America where the relevant area can be identified with a high degree of precision; there are no third States bordering the area whose interests could be affected by the decision of the Court. The proportionality or disproportionality test fits perfectly in such situations.

~~[Figure 6.9 from Peru's Memorial on screen]~~

31. The figure on the screen, which is in tab 10 of the folders, illustrates the position produced by a boundary line calculated on the basis of equidistance. The relevant area is shaded in the light purple. As I explained, that is the area within which the Parties have overlapping 200-nautical-mile entitlements. The relevant coasts are the coasts as I described them a few minutes ago. Now measured in a straight line as a coastal front, each Party's relevant coast ~~or~~ either side of Point Concordia is 200 miles long: a one-to-one ratio. If, on the other hand, one measures the coasts of the Parties according to all of their sinuosities, the figures are slightly different. Peru's relevant coast is 475 km long; Chile's is 446 km. This produces a coastal ratio of 1.06:1, very slightly in favour of Peru.

32. As you can see from the map on the screen, the equidistance line divides the relevant area into two parts, the areas of which also have a ratio of 1.06:1. We did not make this ~~out.~~ This

is what the geography produces in this situation because of the uncomplicated nature of the Parties' coasts. And that 1.06:1 difference is insignificant. And I would suggest that what is evident is that an equidistance line unquestionably satisfies the disproportionality test and produces an equitable result.

Conclusions

33. Mr. President, distinguished judges: one of the striking aspects of Chile's written pleadings is that Chile does not challenge what I have said. Chile has not taken issue with Peru's discussion of the relevant principles and rules of maritime delimitation that apply under customary international law. It has not disagreed with Peru's description of the relevant coasts of the Parties for delimitation purposes or the relevant area. It has not said a word about the manner in which Peru has calculated the equidistance line; nor has Chile contradicted Peru's demonstration that there are no relevant circumstances that justify an adjustment being made to that line. And Chile has made no attempt to argue that equidistance somehow fails to satisfy the disproportionality test or that it does not produce an equitable solution.

34. Chile's whole case rests on the proposition that the Parties have already delimited their maritime boundary along a parallel of latitude by means of the 1952 Santiago Declaration. And my colleagues will show that that is simply not the case.

35. But what I would add is that, if Chile's theory of a pre-existing boundary between the Parties delimiting both the sea-bed and subsoil and the column of water is wrong, as is the case, Chile has offered no alternative solution to the Court.

36. There can be little doubt that this reflects a deliberate litigation strategy on the part of our colleagues on the other side. Chile does not want to join issue with Peru on the matters I have discussed because it does not want to take the risk of refocusing attention to the real issues in this case out of fear that it would deflect attention from its sole — and erroneously conceived — argument that a boundary already exists. Now that is its choice. But at the same time, Chile is fully aware of the fact that an equidistance line obviously produces an equitable result between the relevant coasts of the Parties, while its parallel of latitude claim most assuredly does not. That is a matter Professor Pellet will come back to tomorrow.

37. Mr. President, Members of the Court, having laid out the justification for Peru's delimitation line, I would like to thank the Court for its attention and patience and perhaps after the customary break, ask that the floor be given to Professor Treves. Thank you very much.

The PRESIDENT: Thank you very much. The hearing is suspended for 20 minutes. We will resume at 5 o'clock sharp.

The Court adjourned from 4.40 to 5.05 p.m.

The PRESIDENT: Please be seated. The hearing is resumed and I invite Professor Tullio Treves to address the Court. You have the floor, Sir.

Mr. TREVES:

HISTORIC BACKGROUND

Introduction

1. Mr. President, Ladies and Gentlemen of the Court, it is a great honour for me to appear before this illustrious Court after about 20 years. I am profoundly grateful to the Government of Peru for giving me this opportunity.

2. Some of the key legal documents Chile alleges are relevant for the present case are 60 years old, like the Santiago Declaration, or even older, like the 1947 Peruvian and Chilean proclamations of 200 nautical miles maritime zones. As my colleagues will explain in some detail, none of those instruments, nor the combination of them, amount to international agreements on maritime boundaries.

3. The international law of the sea at the time these documents were adopted was very different from the law of the sea of today. Three United Nations Conferences on the Law of the Sea, judgments of the International Court of Justice and of arbitral tribunals, as well as intensive State practice and scholarly writings which have flourished during the last 60 years were yet to come.

4. In order to understand these documents it is necessary to move back the clock and look at them in the framework of the law of the sea and policies of the sea as they existed in the first decade after the Second World War.

5. To do so is consistent with the doctrine of the intertemporal law, often stated in the practice of the Court — for instance in the *Aegean Sea Continental Shelf* Judgment of 19 December 1978[50] — and of arbitral tribunals since the well-known dictum of Max Huber in the *Island of Palmas* case[51].

6. The purpose of the present pleading is not, of course, to lecture the Court on matters of merely historic interest. However, given that Chile tries to read documents from the middle of the last century through the eyes of contemporary international law of the sea, it seems necessary to engage in this look backwards and present to the Court the international law of the sea as it was in the middle of the twentieth century. Within this framework it will become easier to understand the position of the South American States facing the Pacific leading up to the Santiago Declaration of 1952, and to the meaning that can be attributed to the documents they subscribed to.

7. This will make evident to the Court that it would have been extraordinary if, as Chile claims, in the circumstances of 1952, Peru and Chile would have agreed on a legally-binding all-purpose international maritime boundary along a parallel of latitude that produced such inequitable results for one side, as will be illustrated ~~in~~ tomorrow by Professor Pellet ~~tomorrow.~~

International law of the sea in 1947-1952

8. The international law of the sea as it presented itself to Chile and Peru in 1947, when they adopted their 200-nautical-mile claims and when, together with Ecuador, they signed, in 1952, the Santiago Declaration, may be called the "traditional" law of the sea. It was the law of sea as it emerged in the inconclusive codification efforts conducted under the aegis of the League of Nations and in the doctrinal elaboration based on such efforts, in particular the monumental and influential treatise by Gilbert Gidel, *Le droit international public de la mer* (1932-34). Signs of

[50] *Aegean Sea Continental Shelf (Greece* v. *Turkey), I.C.J. Reports 1978*, p. 32, para. 75.

[51] United Nations, *Reports of International Arbitral Awards (RIAA), Island of Palmas* case (*Netherlands* v. *United States*) 4 April 1928, Vol. 2, p. 845. See also: *UNRIAA*, case concerning the *Delimitation of maritime boundary Guinea Bissau and Senegal*, Vol. 20, p. 151, para. 85.

change were, however, emerging. They consisted in the two Proclamations issued on 28 September 1945 by the United States President Truman.

The traditional law of the sea

9. Leaving aside internal waters, the "traditional" law of the sea was based on the recognition of two distinct maritime zones: the territorial sea, a narrow band of sea adjacent to the coast on whose width there was no general agreement, and the high seas. Subject to certain specified restrictions, States had sovereignty over the territorial sea, as already stated in 1928 by the Institut de droit international in Article 1 of its Stockholm resolution on the territorial sea.

10. On the high seas, the principle was that of freedom for all States.

11. Certain functional rights beyond the limits of the territorial sea were nonetheless recognized to coastal States. These were the right of hot pursuit and the right of enforcement concerning especially customs matters in a narrow zone contiguous to the territorial sea later to be codified in the Geneva Convention on the Territorial Sea and the Contiguous Zone of 1958.

12. There was no doubt, however, that the areas over which such functional rights could be exercised remained part of the high seas. And it was equally clear that contiguous zone rights could not apply to fisheries, as clearly stated by Gidel[52] and later, in light of the developments up to the 1958 Geneva Conference, by the Cuban jurist and diplomat Garcia Amador[53].

13. Already in the 1930s, some States recognized that sovereignty over the territorial sea was not sufficient to ensure the proper conservation of fisheries in the areas adjacent to it. There was nonetheless widespread reluctance to entrust the subject to the unilateral decisions of the coastal State. In Gidel's view, "extremist" and "arbitrary" measures would result[54].

The Truman Proclamations

14. The Truman Proclamations of 1945[55] mark a turning point.

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[52]Gidel Gilbert, *Le droit international public de la mer*, Vol. III, "La mer territorial et la zone contiguë", Paris, Recueil Sirey, 1934, p. 473.

[53]Garcia Amador, *The Exploitation and Conservation of the Resources of the Sea*,1959, p. 65.

[54]Gidel Gilbert, *Le droit international public de la mer*, Vol. III, p. 468.

[55]MP, Ann. 88.

15. The Truman Proclamation on the continental shelf, which you will find at tab 11 of your folders, is a claim that the natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States "appertain" to the United States, subject to its jurisdiction and control. It was a claim for exclusivity going beyond what had hitherto been accepted in international law.

16. The Truman Proclamation on coastal fisheries, to the contrary, although it sought to meet the "pressing need" for conservation of fisheries resources in high seas waters contiguous to the coasts of the United States, remained much closer to traditional international law. The claim to exclusivity was limited to regulation and control. It did not apply to the resources as such.

17. Both Proclamations underlined the "character as high seas" of, respectively, the waters above the continental shelf and the areas in which conservation zones are established and stated that "the right to their free and unimpeded navigation" was "in no way . . . affected".

The Latin-American claims

18. Seen from Latin America, the two proclamations were welcome as an opening to the extension of the coastal State's control over and protection of resources in the adjacent sea. It soon appeared, however, that the different régimes set out for essentially the mineral resources of the shelf and for the living resources of the waters adjacent to the coasts was lopsided and tailored to the needs of the United States, a country with a sizable continental shelf and important fishing activities along the coasts of other — especially Latin American — States.

19. Latin American States endowed with continental shelves, like Argentina[56] and Mexico[57], were quick to follow the United States in proclaiming sovereign rights in respect of their shelves. They also proclaimed similar rights on the waters above the continental shelf. This was the notion of the "epicontinental sea".

20. South American States with coasts on the Pacific had no extended "physical" continental shelves as the sea-bed adjacent to their coasts descended abruptly to the abyssal plains. When claims concerning the continental shelf and its resources became widespread, those States felt the

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[56]Decree No.14,708 concerning national sovereignty over epicontinental sea and the Argentine continental shelf, of 11 October 1946, MP, Ann. 90.

[57]Presidential Declaration with respect to the Continental Shelf, 29 October 1945, MP, Ann. 89 .

injustice of the lack of opportunity to exploit mineral resources that their situation entailed. They considered that they needed to be compensated and that it was urgent to preserve the biological richness of the sea adjacent to their coasts from predatory whale hunting and fishing by vessels that had moved south as a consequence of the Truman Proclamation on coastal fisheries. As explained by the well-known Peruvian Jurist Alberto Ulloa, the Head of Peru's delegation to the 1952 Santiago Conference and later to become the leader of the Peruvian delegation at the 1958 Geneva Conference, the 200-mile claims of Peru, Chile and Ecuador created a norm that was "just because it represent[ed] the compensation for the countries that do not have a continental shelf for what States that have such shelf receive and exploit"[58].

The 1952 Santiago Declaration

21. The main factors that triggered the 1947 proclamations of Chile and Peru, and the Santiago Declaration of 1952, were the need to react to the intensive foreign whaling and increasing foreign fishing in the waters adjacent to their coasts, as well as dissatisfaction with the 1946 International Whaling Convention which they signed but decided not to ratify once they found it favoured the larger whaling powers to the detriment of their own whaling industries[59]. As Ulloa stated in the general debate of the First Committee of the Geneva Conference, the Santiago Declaration "was of a defensive character and its sole object was the conservation of the living resources of the sea . . ."[60].

Unstabilized terminology and concepts

22. The terminology and the very concepts utilized in describing the 200-mile claims were tentative and variable. They cannot be read with the precise meaning that, after two major codification exercises, the international law of the sea now gives them.

23. The term "sovereignty" in the proclamations and in the Santiago Declaration was read by Chilean and Peruvian representatives at the Geneva Conference as meaning nothing more than

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[58]Alberto Ulloa, *Derecho internacional público*, Vol. I, 4th edition, 1957, p. 565. In the Spanish original: "Norma justa porque representa la compensaciòn para los paises que no tienen Plataforma de lo que reciben y usan los paises que tienen Plataforma."

[59]MP, para. 4.43.

[60]United Nations Conference on the Law of the Sea, Official Records, Vol. III, First Committee, p. 7; MP, Ann. 100.

rights to resources. Referring to this term, the Chilean representative Gutierrez Olivos noted that "the terminology used in international law was not uniform"[61]. Such lack of uniformity is confirmed in his own speeches. In the speech just quoted he refers not only to "sovereign rights for certain specified purposes" but also to "limited sovereignty over a 200-mile zone", while in another speech he refers to "sovereign rights to effect the protection of the living resources of the south Pacific"[62]. The Peruvian Representative and former Foreign Minister, Garcia Sayan, at the Geneva Conference of 1958, explained that: "the concept of sovereignty referred to in the proclamations of Peru and other States, . . . had no absolute meaning and was in fact identified with the notions of jurisdiction and control mentioned in President Truman's Proclamation of 1945"[63].

24. The instructions given by the Peruvian Foreign Minister for the signing of the Santiago Declaration are particularly relevant. The Minister clearly spelled out that the measures based on the Declaration would be taken "without implying full exercise of sovereignty"[64].

25. Similarly, the terminology used to preserve navigational rights in the 200-mile zone is not the same in the 1947 Proclamations and in the Santiago Declaration. While the former refer to "rights of free navigation on the high seas" — Chile — and to "free navigation of ships of all nations" — Peru — the Santiago Declaration refers to "innocent and inoffensive passage in the area indicated for ships of all nations".

26. In light of the not yet stabilized terminology of the time, it would not be correct to interpret the Santiago Declaration on the basis of the concepts of the international law of the sea as they are now understood. It would be incorrect and anachronistic to consider that, because they mentioned innocent passage, the signatories envisaged the 200-mile maritime zone as a territorial sea. Indeed, the Declaration was not so interpreted by its authors. This emerges from the agreed responses given in 1955 to the objections raised as regards the Santiago Declaration by the United States and the United Kingdom. Ecuador, Chile and Peru stated that with the Declaration they were "inspired in a defined and precise way by the conservation and prudent use of natural

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[61] United Nations Conference on the Law of the Sea, Official Records, Vol. III, First Committee, p. 33.

[62] *Ibid.*, p. 152.

[63] MP, Ann. 101.

[64] MP, Ann. 91.

resources", while safeguarding "the legitimate interest that other States could have for navigation and trade"[65].

27. In a declaration made in 1960 at the end of the Second United Nations Conference on the Law of the Sea, and commenting on its failure, the Chairman of the Peruvian Delegation confirmed that the rules adopted by his country in the exercise of its maritime jurisdiction continued in force "with the important provision that these rules do not hamper sea and air navigation for legitimate purposes and do not discriminate as between foreign fishermen who submit to our measures of regulation and control"[66].

The 200-mile claims and international law of the time

28. When adopting their proclamations and the Santiago Declaration, Chile, Peru and Ecuador were fully aware that their claims did not correspond to the established international law of their time. Their purpose was to open new ground, to start a process that, according to the wishes of the three States, would eventually lead to the general recognition of the novel rights that they claimed. The strong protests of 1948 by the United Kingdom and the United States[67] indicated that these States considered the claims of 1947 to go beyond what was permitted by international law. The International Court of Justice recently confirmed this assessment of the situation stating, in the *Romania* v. *Ukraine* Judgment, that in 1949 "[t]he concept of an exclusive economic zone in international law was still some long years away" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), I.C.J. Reports 2009*, p. 87, para 70).

29. Still at the time of the 1958 Geneva Conference, South American States with coasts on the Pacific were aware that the claims they had put forward did not correspond to international law. Speaking at the Geneva Conference, Ulloa recognized that the International Law Commission had not accepted the "new formulas" proposed by the South American countries. He acknowledged that: "It would be a long time before the slow process of the progressive development of international law absorbed such new principles."[68]

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[65]MP, para. 4.108, and Ann. 58, para. *(d)*.

[66]MP, Ann. 103.

[67]MP, Anns. 61 and 62.

[68]MP, Ann. 100.

30. Similarly, in the joint Statement they made on 27 April 1958, the last day of the Geneva Conference, the Chairmen of the delegations of Chile, Ecuador and Peru recognized that the positions held by their countries did not correspond to what was acceptable to the States convened at the Conference[69].

31. The conclusions we can draw regarding the 200-mile claims of Chile, Ecuador and Peru, made in a context in which lack of precision in terminology and in concepts and uncertainty about the future of the law prevailed, are:

(a) That the three States claimed new rights to living resources on the high seas adjacent to their coasts;

(b) That such rights would not be such as to establish a 200-mile territorial sea;

(c) That the claims would not prejudice the freedom of navigation;

(d) That the rights were claimed in full recognition that they did not correspond to customary law as it existed at that time.

Maritime delimitation

32. Mr. President, Members of the Court, in this light, we have to look at the question of delimitation.

33. In the 1930s, States did not consider delimitation as particularly important notwithstanding the precedent of the *Grisbadarna* arbitration[70]. In the discussions leading to the 1930 Codification Conference there was some consideration of lateral delimitation of the territorial sea, but the matter was not included in the "Bases of Discussion" for the Hague Conference.

34. The observations that follow will show what was the law concerning delimitation at the time the Declaration of Santiago was signed. The conclusions reached on this point will make it clear that the Declaration can hardly be read as meaning that the signatories had, by implication, agreed on the line of the parallel, as argued by Chile.

35. In 1952, the practice of claiming extensive maritime zones going beyond the limits of the territorial sea was just beginning. As remarked by the International Court of Justice in the *North*

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[69]MP, Ann. 102.

[70]United Nations, *RIAA* (Norway/Sweden), 23 October 1909, Vol. XI, p. 212 ff., p. 155.

Sea Continental Shelf Judgment, at that time, "[a]s regards boundaries, the main issue was not that of boundaries between States but of the seaward limit of the area in respect of which the coastal State could claim exclusive rights of exploitation" (*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969,* p. 33, para. 48).

36. At the time of the Santiago Declaration, there were no real precedents concerning the delimitation of maritime areas extending further seaward than the territorial sea. Two documents may nonetheless be recalled, one to be found in a bilateral agreement and the other in a unilateral proclamation. It must be stressed that neither document refers to a 200-mile zone.

37. The first of these documents is the Treaty of 1942 between the United Kingdom and Venezuela "to make provision for and to define as between themselves their respective interests in the submarine areas of the Gulf of Paria" laying between Trinidad and Venezuela[71]. (You may find it at tab 12 of your folders.)

38. The Anglo-Venezuelan Treaty was the first treaty concerning the sea-bed and subsoil beyond the territorial sea (which was at that time for both parties of 3 miles). It purports to define the respective interests of the contracting parties in the oil-rich Gulf of Paria. The two States assume the obligation not to "assert any claim to sovereignty or control" over sea-bed areas beyond a certain line, and to recognize the other's sovereign rights already acquired or to be lawfully acquired on these areas. The line drawn has effects corresponding to those of a delimitation one. It is, however, limited to the sea-bed, and certainly is not an all-purpose line, as the notion of an all-purpose delimitation emerged only after the exclusive economic zone had become generally accepted.

39. The method adopted to draw the line is not spelled out. However, I kindly invite the Court to look at the map on the screen and at tab 13 of the folders, showing the agreed line in the Gulf of Paria proper (segments A to B) and the hypothetical equidistance line. It appears from it that the straight A to B line agreed leaves to Trinidad to the east a sizable area that would have belonged to Venezuela on the basis of equidistance, and to Venezuela a roughly equivalent area to the west which, following equidistance, would have belonged to Trinidad. While the parties

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[71]Treaty between Great Britain and Northern Ireland and Venezuela relating to the Submarine Areas of the Gulf of Paria , Caracas, Venezuela, 26 February 1942, League of Nations, *Treaty Series* (*LNTS*), Vol. 205, p. 122.

considered it expedient to draw a straight separating line, they took care to draw it in such a way that the area each would obtain would not be very different in size from that they would have obtained applying equidistance. An equal, and, even more so, equitable sharing of resources was what they strived for.

40. The second document is the Truman Continental Shelf Proclamation of 1945 (which you may find in your folders, at tab 11)[72]. It envisages the question of delimitation, albeit only as regards the continental shelf. It states: "in cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles".

41. It can hardly be concluded from these two documents that in 1952 there existed an international law rule concerning delimitation of the continental shelf or of maritime areas extending beyond the limits of the territorial sea. Two quite different and isolated precedents are obviously insufficient to build a customary rule, especially with respect to new maritime zones whose compatibility with general international law was, as already noted, not yet widely accepted by States generally.

42. The documents I have discussed are not, however, without significance. They show that equity was seen as playing an important role. Equitable principles were referred to in the Truman Proclamation, and the way the line was drawn in the Gulf of Paria Agreement indicates that an equitable sharing of resources was intended.

43. At the time of the Santiago Declaration, and even later, States did not consider it essential or urgent to provide for delimitation of their maritime areas. For instance, the United States and Mexico, two neighbouring States that proclaimed maritime zones beyond the territorial sea even before the Santiago Declaration, started to conclude delimitation agreements between them only in the 1970s, and continued the process until the year 2000[73]. Similarly, the attitude of

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[72]MP, Ann. 88.

[73]Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary, 23 November 1970, entry into force 18 April 1972; Maritime Boundary Agreement Effected by Exchange of Notes on 24 November 1976; Treaty on Maritime Borders (Caribbean Sea and Pacific Ocean) 4 May 1978, entry into force 13 November 1997; Treaty on the Delimitation of the Continental Shelf in the Western Gulf of Mexico beyond 200 miles, 9 June 2000, entry into force 17 January 2001.

Chile and Peru, at the time of the Santiago Declaration, was characterized by the lack of urgency, not to say of any feeling of necessity, to deal with lateral maritime boundaries.

44. In the absence of a specific general international law rule concerning delimitation, general principles of international law could play a role.

45. At the time of the Santiago Declaration, the applicable principles were that of State sovereignty and the consequential one of avoiding interference with the neighbouring State's sovereignty. In the notion of sovereignty were included the rights on maritime areas a State has, or may claim, on the basis of the exercise of its power on the territory. In light of these principles, in 1952 the question of delimitation between overlapping maritime claims was to be resolved applying the concept of the maximum extension of one State's sovereignty compatible with the maximum extension of the sovereignty of the neighbouring State.

46. In proclaiming together in the Santiago Declaration as a "norm" of their maritime policy that they each possess "sovereignty and exclusive jurisdiction up to a minimum distance of 200 miles from their coasts", each of the signatory States did not mean anything different than that its sovereignty and jurisdiction would reach the maximum extent possible.

47. Equidistance broadly corresponds to the application of these principles. Equitable considerations also had an important role to play, as indicated by the two precedents to which I have referred.

Conclusion

48. The criterion of maximum extension with minimum overlap cannot be claimed to be established as a technical rule on delimitation of maritime areas at a time in which there were no such rules. But it existed as a legal principle, as the result of the combination of State sovereignty and of good neighbourliness. The last aspect seems particularly relevant as between the three States concerned, as they were engaged together in formulating, and defending, before a sceptical and suspicious world, a totally new maritime policy.

49. That in formulating such policy one of the parties would accept — or, worse, could be deemed to have accepted — a delimitation so clearly unfavourable to its interests as that of the parallel cannot be assumed. This applies in general terms and also in the specific context of the

Santiago Conference, a conference to which — as will be shown by Professor Lowe — Peru was invited in order to deal with whale protection in presence of abusive foreign hunting. How can Peru in this context, be presumed to have accepted, without specific discussion, without particular formalities, lateral limits that fell short of the requirement of the maximum extension of its sovereign rights and jurisdiction compatible with that of its neighbours?

Thank you, Mr. President, ladies and gentlemen of the Court, for your patience. May I kindly request you to give the floor to Sir Michael Wood, the next speaker for Peru.

The PRESIDENT: Thank you, Professor Treves, for your pleading and I give the floor to Sir Michael Wood. You have the floor, Sir.

Sir Michael WOOD:

CHILE'S RELIANCE UPON EVENTS PRIOR TO THE 1952 SANTIAGO DECLARATION

I. Introduction

1. Thank you very much, Mr. President, Members of the Court, it is an honour to appear before you on behalf of Peru.

2. As Mr. Bundy has explained, the maritime boundary between Peru and Chile runs along the equidistance line, beginning at the terminus of the land boundary, and continuing for 200 miles in a west/south-westerly direction. That line is identified by applying the three-stage methodology described most recently in your *Nicaragua* v. *Colombia* Judgment[74].

3. It is Chile's case, however, that point IV of the 1952 Santiago Declaration somehow constitutes an international maritime boundary agreement, which fixed a permanent all-purpose maritime boundary between the two States. They seek to bolster this claim by reference to diverse elements of what they term "practice". As we shall show, Chile's case is simply not credible.

4. Let me briefly recall the requirements of international law for the establishment of a maritime boundary. The burden of proving the existence of a maritime boundary agreement lies on

[74] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Judgment of 19 November 2012, paras. 190-193.

Chile. And it is a heavy burden, as this Court, and — earlier this year — the Hamburg Tribunal[75], have made clear. As you said in *Nicaragua* v. *Honduras*, "[t]he establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed" (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 735, para. 253; see also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 86, para. 68; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Judgment of 19 November 2012, para. 219). As Mr. Lowe will explain later, to establish a maritime boundary one cannot simply take individual instances of the exercise of authority by a Government and say that each must count to determine which of two States has the better claim. That is the approach Chile would have you adopt. It is fundamentally misconceived. Nothing in Chile's extensive written pleadings gets anywhere near to establishing the existence of a maritime delimitation agreement binding on the two Parties. Chile has failed to discharge the burden upon it.

5. Mr. President, Chile's case, as we understand it from the written pleadings, stands or falls on whether an international maritime boundary agreement between Peru and Chile is to be found at point IV of the 1952 Santiago Declaration[76]. Mr. Lowe will address that matter tomorrow morning. My task is to cover in the next few minutes the events prior to the 1952 Declaration that are relied upon by Chile. I shall deal in particular with the two 1947 instruments: Chile's declaration of 23 June, and the Peruvian Supreme Decree of 1 August ~~1947~~. As I shall explain, these two instruments do not have the significance that Chile seeks to place on them.

II. Two general points

6. I begin with two general points. First, as Professor Treves has just explained, in order properly to understand the significance of the various instruments and events relied upon by Chile, it is necessary to step back in time and consider them in the light of the circumstances prevailing in the 1940s and early 1950s. As he has shown, the law of the sea looked very different then. There was virtually no practice of maritime boundary delimitation. The continental shelf doctrine was not

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[75] *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012* (to be published), 14 March 2012, para. 95.

[76] RC, paras. 1.6 and 2.1.

established law. The idea of 200-mile zones, which was beginning to appear in the Americas, was revolutionary. It would not be consolidated in treaty for another quarter century. The claims made by Chile and Peru in 1947 were far ahead of their time. As such, they were necessarily tentative. They had followed claims by the United States -- the Truman Proclamations, Mexico, also in 1945, and Argentina in 1946[77]. The 1947 claims were a response to the impact of increased activities of foreign vessels on fishing and particularly whaling resources in the south-east Pacific[78]. And as Professor Treves has just recalled, the two 1947 instruments provoked strong reactions on the part of certain States.

7. The second general point is this. The burden upon Chile, as it scratches around to show the existence of an agreement, is particularly heavy, given the obvious and dramatic inequity of the line of the parallel that it claims. [Sketch on screen showing the parallel and equidistance lines] As Professor Pellet will explain, by no stretch of the imagination does a parallel produce an "equitable solution" between Peru and Chile. The inequity is obvious just from looking at the general direction of the coasts, these form a clear angle near the endpoint of the land boundary: south-east/north-west in the case of Peru's coast; north-south in the case of Chile. As can be seen on the screen, a parallel would have a dramatic cut-off effect on Peru's south-~~east~~ facing coast. [Slide 4, with proportionality figures] It would lead to a division of the relevant area in a proportion of 0.39:1 in favour of Chile, while the relevant coasts of the Parties are virtually equal in length. [Slide 5, with area figures] To compound matters, Chile also argues that Peru has forfeited a further area of over 28,000 sq km south of the parallel and outside any potential claim by Chile. It is frankly inconceivable that, at the same time as claiming a new 200-nautical-mile zone, Peru would have surrendered large parts of that claim. [Sketch off]

III. Chile's arguments concerning the 1947 instruments

8. Mr. President, I now turn to Chile's declaration of 23 June 1947 and the Peruvian Supreme Decree that was issued on 1 August. The essential point to note is that, in each case, the purpose was to assert control, vis-à-vis the world at large, over an area of sea out to 200 nautical

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[77]MP, paras. 4.11-4.44.

[78]CMC, paras. 2.22-2.26.

miles or more. Neither the declaration nor the Supreme Decree was concerned with setting lateral boundaries between neighbouring States.

9. Mr. President, it is not easy to discern the precise role that the 1947 instruments play in Chile's legal argument. Chile's arguments are vague and shifting. At one point, Chile asserts that "[t]he primary significance of the 1947 proclamations to this case is as *antecedents* to the Parties' maritime boundary agreement"[79]. Elsewhere, and equally vaguely, it refers to them as "the predicate for the Santiago Declaration"[80]. Chile has even suggested that, since — as it asserts — lateral boundaries were unilaterally proclaimed in 1947, "[t]he question of lateral boundaries could be, and was in fact, dealt with *in summary terms* in the Santiago Declaration"[81].

10. In our Reply, we sought to tease out and understand Chile's legal arguments concerning the relevance of the 1947 instruments, by quoting Chile's own words from the Counter-Memorial[82]. Regrettably, Chile made no effort in the Rejoinder to clarify its position[83], though it did at least acknowledge that the 1947 instruments did not amount to an international maritime boundary agreement between Peru and Chile[84]. That much now seems to be common ground.

11. But, elsewhere in the Rejoinder, Chile added further twists to its argument based on the 1947 documents. It claims, for example, that they are "relevant to this case insofar as they constituted unilateral declarations by Chile and Peru to each other, and by each of them to the international community, of their claims to 200M maritime zones"[85]. Again, the exact meaning is unclear. Is Chile claiming that they were unilateral declarations capable of creating legal obligations? Perhaps so, since they go on to refer at some length to the *Nuclear Tests* case[86]. But if so, what legal obligations, in Chile's eyes, did the instruments create? As the Court stated in *Nuclear Tests,* "when it is the intention of the State making the declaration that it should become bound according to its terms", that intention confers on the declaration the character of a legal

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[79]RC, para. 2.4.

[80]RC, para. 2.5.

[81]CMC, para. 4.57.

[82]CMC, para. 1.3, cited in RP, para. 3; CMC, para. 4.1, cited in RP, para. 6.

[83]RC, paras. 2.3-2.11.

[84]RC, para. 2.3.

[85]RC, para. 2.5.

[86]RC, para. 2.5.

undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration" (*Nuclear Tests (Australia v. France), I.C.J Reports 1974,* p. 267, para. 43; *Nuclear Tests (New Zealand v. France), I.C.J Reports 1974,* p. 472, para. 46). The Court reaffirmed this in *Burkina Faso/Mali (Frontier Dispute, Judgment, I.C.J. Reports 1986*, at p. 573, para. 39), where it noted that the circumstances were radically different from those in *Nuclear Tests.* In *Burkina Faso/Mali* "there was nothing to hinder the Parties from manifesting an intention to accept [certain conclusions] by the normal method: a formal agreement on the basis of reciprocity" (*ibid.*, para. 40). In the case of the 1947 Peruvian Decree, there was clearly no intention to become bound vis-à-vis any other State. Equally, there was nothing to hinder the conclusion of an agreement had the parties so wished. This is also concordant with Chile's own position, which does not seem to claim that the 1947 instruments established obligations as regards a lateral boundary[87]. But then why did they cite *Nuclear Tests*?

12. Again in the Rejoinder, Chile claims that in 1947, the maritime zones of Peru and Chile "abutted, but did not overlap" and that the "[d]elimitation of the maritime zones generated by continental coastlines was therefore a straightforward and uncontroversial exercise when it was done in 1952". Chile goes on to assert that the "delimitation consisted of confirming the dividing line of their non-overlapping unilateral claims"[88]. In other words, Chile seems to be suggesting that, in 1952, the Parties, by some sort of implicit agreement — there was certainly nothing explicit — adopted as their common maritime boundary a line that each had unilaterally declared in 1947. That argument involves two propositions, neither of which is correct. The first, that in 1947, Peru and Chile had each unilaterally determined the lateral boundaries of their respective maritime zones. That is just not so and I shall show that. And second, that in the Santiago Declaration, Peru and Chile agreed on an international maritime boundary along the unilaterally determined boundary. Mr. Lowe will show that that also is wrong.

13. In yet another twist in its argument, Chile claims that the 1947 instruments, in some unexplained way, "constitute circumstances of the conclusion of the Santiago Declaration" and of

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[87]RC, paras. 2.5-2.9.

[88]RC, para. 2.4.

the 1954 Agreement, which — and I quote from Chile's pleadings — are "particularly apposite to their interpretation, in accordance with Article 32 of the Vienna Convention"[89].

14. [VCLT Art. 32 on screen] Article 32 is now on the screen. It is at tab 15 and we all know it by heart. In the Counter-Memorial, Chile only referred to that part of Article 32 which speaks of confirming a meaning that results from the application of the general rule of interpretation in Article 31[90]. [Text "Meaning ambiguous or obscure" highlighted on screen (sketch 8)] It did not invoke Article 32 on the basis that the interpretation of the 1952 Declaration, according to the general rule in Article 31, left the meaning ambiguous or obscure. That is entirely understandable. Chile can hardly admit that the meaning of the Santiago Declaration is ambiguous or obscure, and at the same time claim that it constitutes an international maritime boundary agreement. [Text "Manifestly absurd or unreasonable" highlighted on screen (sketch 9)] Similarly, Chile cannot be seen to take the position that the interpretation of the Declaration according to the general rule leads to "a result which is manifestly absurd or unreasonable". [Text "Circumstances of the conclusion" is highlighted (sketch 10)] So they are left with seeking to use the 1947 instruments merely as "circumstances of the conclusion" of the Declaration to "confirm" what they say is its meaning. [VCLT off screen] It is far from obvious how instruments from 1947 could count as circumstances of the conclusion of an instrument adopted five years later. The 1947 instruments are not mentioned in the Declaration. Moreover, Chile does not explain how the two 1947 instruments could be relied upon to interpret what was, after all, a Declaration with three signatories. Ecuador had not issued any equivalent instrument to those of 1947.

15. Mr. President, Chile also seeks to pray in aid what it terms prior instances of the use of parallels of latitude in the practice of American States[91]. It refers to two lines of parallel from the Canada-United States land boundary on the Atlantic and the Pacific that were used for the construction of the 1939 Neutrality Zone established by the Declaration of Panama, and to an Ecuadorean line for the same purpose. [Sketch on screen] The Neutrality Zone is now on the screen. It is perfectly obvious that these lines have no connection whatsoever with maritime

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[89]RC, para. 2.12.

[90]CMC, para. 4.54.

[91]CMC, para. 2.44-2.49.

claims. They concern emergency defence arrangements. [Image on screen shows Gulf Maine line (slide 16)] They have no relevance ~~for~~ precedents for delimitation of areas of sovereign rights and jurisdiction between States. The one maritime boundary actually in place between Canada and the United States, one determined by a Chamber of this Court[92], does not, of course, follow a parallel. [Sketch off]

A. Chile's Declaration of 23 June 1947

16. Mr. President, Members of the Court, I would now like to take you to the texts of the two 1947 instruments. First, to Chile's declaration of 23 June, which is at tab 17 in the folders. As we explained in some detail in our Reply, this was not — quite deliberately not — an instrument with legal force[93]. It was an expression of political will. It was published in a newspaper, *El Mercurio*, not in Chile's *Official Gazette*, which is a requirement for instruments with legal force. It was inconsistent with existing Chilean legislation.

17. [Sketch on screen] Chile's declaration says nothing about lateral boundaries with adjacent States — and let us not forget that there are two coastal States adjacent to Chile — Argentina as well as Peru — and, as you can see on the screen, it is far from clear how Chile's interpretation of the document to establish a boundary along a parallel of latitude could apply in the different, and more complex, geographical configuration between Chile and Argentina. [Sketch off]

18. As you will see, in paragraph (1) of the declaration, the President of Chile recorded that the Government proclaimed its sovereignty over "all the continental shelf adjacent to the continental and island coasts of its national territory". Paragraph (2) proclaims sovereignty over "the seas adjacent to its coasts ..., within those limits necessary in order to reserve ... the natural resources ... found on, within and below the sea". Neither paragraph set forth any limit, even an external one, to the open sea. Paragraph (3) then looked forward to what would be in effect a provisional demarcation of the protection zones for whaling and deep-sea fishing to be made at some point in the future, "at any moment which the Government may consider convenient, such

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[92] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 246.

[93] RP, paras. 3.18-3.27.

demarcation to be ratified, amplified, or modified in any way to conform with the knowledge, discoveries, studies and interests of Chile as required in the future". Hardly a description of a permanent fixed boundary. Paragraph (3) goes on to proclaim protection and control "over all the seas contained within the perimeter formed by the coast and the mathematical parallel projected into the sea at a distance of 200 nautical miles from the coasts of Chilean territory". Like Peru's Decree, the Declaration also makes provision for the maritime zones of islands — measuring 200 nautical miles from their coasts. I note that Chile's declaration did not foreshadow point IV of the Santiago Declaration, which itself, of course, only set forth a principle regarding the maritime zones of certain islands.

19. Paragraph (4) says that the "declaration of sovereignty" "does not disregard the similar legitimate rights of other States on a basis of reciprocity" — no hint here that Chile intended to lay down a border with adjacent States. The language throughout the Chilean declaration is, unsurprisingly, tentative and general.

20. Chile has highlighted the reference in paragraph (3) of the Declaration to a "perimeter". This, while obscure, is in fact quite interesting, since it contrasts with Peru's Supreme Decree and the Santiago Declaration itself, neither of which contain any reference to the notion of a "perimeter".

21. Chile's declaration also refers to a "mathematical parallel". This is equally, if not more, obscure. Unlike a parallel of latitude, it has neither legal nor technical meaning.

22. To sum up on Chile's declaration, Mr. President, it did not establish a lateral boundary with adjacent States — that is, with Peru and Argentina. Nor did it, as a matter of internal law, have legal effect.

B. Peru's Supreme Decree No. 781

23. I now turn, very briefly, to Peru's Supreme Decree of 1 August 1947[94] (tab 19 in the judges' folders). Unlike the Chilean declaration, the Peruvian Supreme Decree had internal legal effect, being a form of instrument provided for in the Constitution which has a level below that of a law. It was published in Peru's Official Journal, *El Peruano.*

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[94]MP, Vol. II, Ann. 6.

24. It is clear from paragraphs 1 and 2 that the Supreme Decree did not have as its purpose to fix lateral limits. It was an assertion, in general terms, of the extension seaward of jurisdictional competences, and — as in the Chilean declaration — even the outer limits were expressed to be subject to modification "in accordance with supervening circumstances which may originate as a result of further discoveries, studies or national interests which may become apparent in the future". The Supreme Decree said nothing about lateral boundaries with neighbouring States.

25. You will find the language relied upon by Chile in the middle of paragraph 3. The first part of paragraph 3 makes it clear that Peru reserved the right to establish, in the future, the limits of the newly proclaimed zones of control and protection, and to modify them as necessary in the light of new circumstances. To that extent, what followed was essentially provisional. In the second part of the paragraph, Peru declared that, at the same time, it would exercise such control and protection "on the seas adjacent to the Peruvian coast over the area covered between the coast and an imaginary parallel line to it at a distance of two hundred (200) nautical miles measured following the line of the geographical parallels".

26. In its Rejoinder, Chile picks up these concluding words, and asserts:

> "This conception of seaward projection meant that the southern limit of the Peruvian maritime zone was the parallel of latitude passing through the point where Peru's land boundary with Chile reached the sea."[95]

27. Here, as in the Counter-Memorial[96], Chile distorts and misquotes Peru's Supreme Decree. According to paragraph 3 it is the "imaginary parallel line" to the coast — the *tracé parallèle*, the outer limit -- that is "measured following the line of the geographical parallels". The fact that the geographical parallels were employed in order to construct a *tracé parallèle* in no sense meant that the parallels were themselves intended to become international boundaries. The parallels were no more than geometric construction lines. This part of paragraph 3 of the Supreme Decree is concerned exclusively with drawing, by the *tracé parallèle* method, an outer limit of 200 miles. As we said in the Memorial, it points to the manner in which the seaward limit of the

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[95]RC, para. 2.4.

[96]CMC, para. 4.56.

initial zone would be constructed cartographically[97]. Even that limit was a provisional one given the possibility, foreshadowed earlier in the paragraph, of modifying it at any time.

28. In summary, as regards the Peruvian Decree:

— *First*, there was no intention, in 1947, to delimit the newly proclaimed zone vis-à-vis adjacent States. The intention was to proclaim an outer limit of 200 nautical miles towards the open sea.

— *Second*, this intention was entirely consistent with the actual language of the Supreme Decree. The geographical parallel was used as a means of drawing the *tracé parallèle*, and for no other purpose.

— *Third*, Chile appears to claim, in its Rejoinder[98], that the Supreme Decree was a unilateral declaration binding the State internationally such as that at issue in *Nuclear Tests*. Yet the Supreme Decree was an instrument of internal law. There was no intention to make a unilateral declaration binding on the State, as regards lateral delimitation with neighbouring States.

— *Fourth*, the *tracé parallèle* itself was not seen as a definitive solution. As I shall explain in a moment if I may, it was quickly superseded by the "arcs-of-circles" method.

29. Mr. President, I have about another five or ten minutes.

The PRESIDENT: Please proceed.

IV. Peru's petroleum law of March 1952

30. Mr. President, in March 1952, the Peruvian Congress enacted the petroleum law[99], which was published in the *Official Gazette*[100]. You will find an extract at tab 20 in your folders. This law, which, as a law, has a higher legal status than the Supreme Decree of 1947, is important because, in its definition of the 200-mile outer limit of Peru's continental shelf, it used the arcs-of-circles method, not the *tracé parallèle*. For the purposes of the law, its Article 14 divided

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[97]MP, para. 4.58.

[98]RC, paras. 2.5-2.9.

[99]MP, paras. 4.60-4.61 and Ann. 8; PR, para. 3.60.

[100]*El Peruano*, 14 March 1952.

Peru into four "zones", the fourth of which was the "Continental Shelf Zone". And this was defined as:

> "the zone lying between the western limit of the Coastal Zone [on the coast] and an imaginary line drawn seaward *at a constant distance of 200 miles from the low-water line along the continental coast*".

31. Thus, the Petroleum Law abandoned the outmoded and impractical *tracé parallèle* method, and used in its place the "arcs-of-circles" method. The difference is considerable, as can be ~~shown~~ from the sketch now appearing on the screen. [Show on screen Fig. 4.1 from MP.] As you will see, the outer limit drawn according to the "arcs-of-circles" method, which is marked in red, is much smoother, and further from the coast throughout its length than that drawn by the *tracé parallèle*. The "arcs-of-circles" method also negates any possible claim that parallels of latitude are being employed, even for determining the outer limit. [Sketch off]

32. The Petroleum Law was adopted just five months before the Santiago Conference. It drew no protest from Chile. So, by the time of the Conference, Peru — but not Chile — had drawn the outer limit of its 200-mile zone using the arcs-of-circles method. Chile, on the other hand had only proclaimed an intention to have a 200-mile zone, and referred in this connection to establishing it using "mathematical parallels".

33. In Appendix A of its Rejoinder[101], Chile presents you with a learned, but somewhat partial, description of what it terms "historical developments of techniques to measure the outer limit of maritime zones". It does so in an effort to persuade you that, as they put it, in August 1952, when the Santiago Declaration was adopted, "the arcs-of-circles method (promoted by geographers and hydrographers) . . . was less well-known than the *tracé parallèle* method (promoted by lawyers and diplomats) . . ."[102], and that "[t]here can be no doubt that in 1952 the outer limit of a distance-based zone of jurisdiction follow[ing] the sinuosities of the coast — *tracé parallèle* — remained in the mainstream of legal thinking"[103]. Whether or not this was so, the Santiago Declaration adopted the arcs-of-circles method, already used in Peru's Petroleum Law.

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[101] RC, Vol. I, pp. 286-304.

[102] *Ibid.*, para. A.3.

[103] *Ibid.*, para. A.47.

This Court itself had only the year before noted the important differences between the two methods in its Judgment in the *Anglo-Norwegian Fisheries* case[104].

34. The method for determining the outer limit was not considered in detail prior to the 1930 Hague Codification Conference. General references such as "following the sinuosities of the coast"[105] do not point to a particular method. As Boggs — with whom Gidel essentially agreed[106] — put it in his influential article of 1930, it was "not clear how the sinuosities of the coast are to be followed"[107]. The true position was described by Boggs in the following terms: "The first method [that is, the *tracé parallèle*] . . . is occasionally suggested in the literature. It is utterly impracticable, however, and was not proposed at the Hague Conference."[108] Nor, contrary to Chile's assertion[109], was the *tracé parallèle* method necessarily "implied" by the text drawn up by the Sub-Committee II of the Second Committee of the 1930 Conference. What was proposed at the Hague Conference by the United States Government was the "arcs-of-circles" method, the method that was favoured by the Committee of Experts that met in 1953, by the International Law Commission, and eventually by the Law of the Sea Conference in 1958.

V. Conclusion

35. Mr. President, Members of the Court, in summary, Chile's assertions regarding the 1947 instruments are far-fetched. It seems now to be common ground between the Parties that neither of the 1947 unilateral instruments was intended to, or did, establish an international boundary between the extended maritime zones then tentatively claimed by Peru and Chile. Both were essentially — and only — provisional instruments, aimed at establishing extended maritime zones out to 200 nautical miles.

36. Mr. President, Members of the Court, that concludes my statement, and I thank you for your attention and patience.

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[104] *Fisheries (United Kingdom* v. *Norway), Judgment, I.C.J. Reports 1951*, pp. 128-129.

[105] RC, Vol. I, paras. A.6-A.21.

[106] G. Gidel, *Le droit international public de la mer*, Vol. III, pp. 153-192, cited in RC, Vol. I, paras. A.32-A.33.

[107] S. Whittemore Boggs, "Delimitation of the Territorial Sea: The Method of Delimitation Proposed by the Delegation of the United States at the Hague Conference for the Codification of International Law", 24 *AJIL* 541 (1930), reproduced in RC, Ann. 188, at p. 543.

[108] *Ibid.*, at p. 543.

[109] RC, Vol. I, para. A.26.

The PRESIDENT: Thank you very much, Sir Michael. Your statement brings to an end today's sitting. Oral argument in the case will resume tomorrow, 4 December, at 10 a.m., in order for Peru to continue its first round of oral argument.

Thank you, the sitting is closed.

The Court rose at 6.05 p.m.