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YEAR 2012

Public sitting

held on Friday 14 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 vendredi 14 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
Yusuf
Mmes Xue
Donoghue
M. Gaja
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MM. Guillaume
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The PRESIDENT: Please be seated. Good afternoon. The sitting is open. The Court meets this afternoon to hear the conclusion of Chile's second round of oral argument. I shall now give the floor to Mr. Samuel Wordsworth. You have the floor, Sir.

Mr. WORDSWORTH:

THE FRAMEWORK FOR EVALUATING THE STATES' PRACTICE

1. Introduction

1. Thank you, Mr. President. Mr. President, Members of the Court, it is an honour to appear before you, and a privilege to have been asked by Chile to pull together the threads of the acts of the Parties that post-date the agreements reached in 1952 and 1954, placing these in their appropriate legal framework.

2. Peru has approached the practice of the Parties on the basis of two principles: and you now know them well — first, that there is a heavy burden of proof in terms of establishing the existence of a maritime boundary, and second, that practice must be concordant, common and consistent.

3. The first point can be dealt with very speedily. Peru has belatedly recognized that Chile does not have a tacit agreement case[1], and that its repeated reference to the *dicta* from *Nicaragua* v. *Honduras* is inapposite[2].

4. But that is not quite the end of burden of proof — because Peru has its own positive case on the existence of an agreement between the Parties, an agreement that supposedly establishes a practical and provisional arrangement with respect to a fishing line[3].

5. Where, one might ask, is that agreement to be found? And where is the practice that is consistent with it, or that establishes a tacit agreement to the same effect? Peru has to meet the burden in that respect, and must do so against the backdrop of Article IV of the Santiago Declaration and also Article 1 of the Special Maritime Frontier Zone Agreement where, and

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[1]CR 2012/33, p. 32, para. 4.

[2]*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007,* para. 253; cf. *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009,* para. 68.

[3]See e.g. CR 2012/33, p. 27, para. 109; p. 36, para. 19; p. 43, para. 41.

beyond any shadow of doubt, the Parties saw fit to refer to their existing maritime boundary in express and carefully thought through language. And, if I can take a leaf out of Peru's pleadings for one moment, the existence of a provisional fishing line agreement in this case is certainly not easily to be presumed.

2. Article 31 (3) *(b)* of the Vienna Convention

6. Moving on to the question of the threshold to be met for practice to be material for the purposes of Article 31 (3) *(b)* of the Vienna Convention, there are six points to be made; and, in making these, I will be addressing the points on Article 31 (3) *(b)* that Sir Michael Wood made on Tuesday.

7. First, both in its written pleadings[4] and in its submissions last week[5], Peru sought to characterize the 1954 Agreement on the Special Maritime Frontier Zone as forming part of the Parties' practice for the purposes of Article 31 (3) *(b)*. That is as defensive as it is misconceived, and nothing more need be said on the point.

8. Secondly, when one comes to the actual practice, the Parties are naturally agreed that, to come within Article 31 (3) *(b)*, the practice must establish the agreement of the Parties on interpretation. However, the Court has also heard from Peru that "great caution is required when looking at practice in order to confirm or establish boundary agreements, in particular international maritime boundary agreements"[6], — a proposition made by Sir Michael in the first round. He said that "the situation in the present case is like that described" in the *Land, Island and Maritime Frontier Dispute* case, and quoted a passage on how the Parties' practice could not prevail over the absence from the treaty of any specific reference to the term delimitation. And the passage was apparently so on point that it was worth a repeat on Tuesday[7].

9. But, and I suspect the Court will already have this point, the passage relied on concerns the interpretation of a *compromis* by which the two Parties had referred their dispute to the Court.

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[4]RP, Chap. IV, paras. 4.1-4.2, and then 4.3 *et seq*.

[5]See CR 2012/28, pp. 26-28.

[6]CR 2012/28, p. 27, para. 5, referring to *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 586, para. 380.

[7]CR 2012/33, p. 32, para. 14.

The passage has nothing whatsoever to do with interpretation of a boundary agreement. It so happened that there was no express request in that *compromis* to carry out a delimitation exercise, and the Court continued in the very next sentence after the passage on which Sir Michael relied: "Whenever in the past a special agreement has entrusted the Court with a task related to delimitation, it has spelled out very clearly what was asked of the Court . . ."[8] So, the context could not be more different and, however many times it is repeated, this passage is of no assistance at all to the Court in the current case — which, of course, concerns a maritime boundary and not the scope of the Court's jurisdiction under a special agreement.

10. Thirdly, Sir Michael referred to Sir Ian Sinclair's formulation on concordant, common and consistent practice and, no doubt with the due deference owed by one former Foreign Office legal adviser to another, added a further qualification of his own — that the practice should be clear[9]. In fact, Sir Ian, who was at the Vienna Conference, merely said that: "The value and significance of subsequent practice will naturally depend on the extent to which it is concordant, common and consistent. [And he continued] A practice is a sequence of facts or acts and cannot in general be established by one isolated fact or act or even by several individual applications."[10]

11. That is entirely as would be expected, and I should add that Sir Ian's formulation itself originated in the Hague Academy lectures of Mustafa Yasseen, whose emphasis was on the practice being "concordante, commune et d'une certaine constance"[11]. And that qualification — "d'une certaine constance" — makes obvious sense, as there are no absolutes here. What matters is whether the practice overall establishes an agreement on interpretation. On the facts then before it, the Court held that this was not the case in *Kasikili/Sedudu Island*[12], which Sir Michael took you to; but any comparison of (i) the decades of positive affirmations in this case, by both States, of the existence of their maritime boundary with (ii) the limited practice of Namibia and the predominant silence of Botswana in *Kasikili/Sedudu Island* is pure wishful thinking.

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[8] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 586, para. 380.

[9] CR 2012/33, p. 32, para. 15.

[10] Sinclair, The Vienna Convention on the Law of Treaties, p. 137.

[11] Yasseen, *Recueil des cours* 1976, p. 48.

[12] *Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999 (II)*, p. 1087, para. 63.

12. Fourthly, it was said that "virtually all" of the practice in this case was ruled out because it was not in application of the Santiago Declaration[13]. But this implies a requirement that the practice must, in order to establish agreement on interpretation, expressly refer to a given treaty. There is no such requirement either stated or to be inferred from *Kasikili/Sedudu Island*, which you were taken to. There, the test applied by the Court was whether the facts relied on constituted "subsequent practice by the parties in the interpretation of the treaties"[14].

13. And to take an example close to home, as it were, in the *Beagle Channel* case, the relevant acts of Chile did not expressly refer to the Boundary Treaty of 1881 then in issue. They were nonetheless held by the tribunal — which, of course, comprised five judges or former judges of this Court — to be material to its interpretation, the critical factors being that the acts were "public and well-known to Argentina, and that they could only derive from the Treaty"[15].

14. This case, however, is much stronger: the relevant acts are acts of *both* Chile and Peru — acting in public, in a way well known to each other, not least because they were actually writing to each other on issues relating to the maritime boundary as well as acting bilaterally in certain instances. And the relevant acts were such that they could only derive from the Santiago Declaration and its confirmation in 1954. In this respect, Peru has been wholly unable to put before you some other tenable legal basis on which the Parties might have been acting — there is no agreement for the establishment of a provisional fisheries line, and Peru has been unable to make any plausible case that there was.

15. It would have been positively unusual if, each time Chile or Peru referred to their agreed boundary in the decades of practice before you, they had also referred to the 1952 Declaration and/or the 1954 agreements. Of course, there are various examples in the practice where the Parties do explicitly refer to these treaties[16]; but the maritime boundary between Chile and Peru is a long-settled juridical fact, and was regarded as such by both States. They repeatedly acted upon

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[13]CR 2012/33, p. 34, para. 11.

[14]*Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999 (II)*, p. 1087, para. 80.

[15]*Dispute between Argentina and Chile concerning the Beagle Channel*, Award of 18 February 1977, United Nations, *RIAA*, Vol. 21, para. 169. See also *Border and Transborder Armed Actions (Nicaragua/Honduras), Judgment, I.C.J. Reports 1988*, para. 40.

[16]CMC, Vol. III, Ann. 134, p. 843, Art. 1; RC, Vol. II, Anns. 53, 59-63 and 65-67; MP, Vol. II, Anns. 31 and 32; CMC, Vol. IV, Ann. 167.

the basis of that juridical fact in their unilateral and bilateral practice — as has been demonstrated with notable clarity by Mr. Petrochilos. In short, the concordant practice can *only* be explained on the basis that the two States regarded their maritime zones as delimited by the parallel they agreed to in the Santiago Declaration and confirmed in 1954.

16. My fifth point is that it is inappropriate, as well as plain inaccurate, for Peru to characterize the practice post-1954 as a "montage of clippings"[17]. The different elements of practice must be considered individually and taken into account according to the extent that such "constitutes objective evidence of the understanding of the parties as to the meaning of" Article IV of the Santiago Declaration[18]. Chile has not advocated a "global view" of practice as Sir Michael suggested[19], and while Chile recognizes that the task of the Court in going through the details may be unenviable, it is nonetheless regarded by Chile as essential.

17. And, to make the obvious point, the acts in question cover a broad spectrum. The acts of the two States in agreeing the 1968-1969 materialization of the parallel of the maritime frontier, which causes Peru so much difficulty, fall for consideration under Article 31 (3) *(a)* of the Vienna Convention, as an agreement in application of the 1952 Declaration. At a different point on the spectrum, and of particular weight within Article 31 (3) *(b)*, a good part of the relevant practice is contained in bilateral exchanges that expressly refer to and are predicated upon the existence of the maritime boundary. To take two examples, Mr. Petrochilos has taken you to the negotiations of the mid-1950s and 1961 on an agreement to permit the two States' fishermen to fish on either side of the frontier line, and he has also taken you to Chile's proposal to Peru in 1975 that Bolivia should be granted its own "maritime territory between the parallels of the extreme points of the coast that will be ceded"[20].

(a) So far as concerns the former, Peru itself was expressly recognizing the existence of the frontier line in negotiations with Chile.

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[17]CR 2012/28, p. 25.

[18]*Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999 (II)*, p. 1087, para. 49.

[19]Cf. CR 2012/33, p. 35, para. 18.

[20]RC, Vol. II, Ann. 26, p. 141.

(b) So far as concerns the latter, this was precisely a communication "such as called for some reaction, within a reasonable period, on the part of the [Peruvian] authorities", to borrow the well-known formula from the *Temple of Preah Vihear* case[21].

(c) Peru's failure to object undoubtedly has probative value, in particular when taken alongside Peru's practice in support of the existence of the agreed maritime boundary over the preceding two decades. The situation was analogous to that in the *Guatemala-Honduras Boundary Arbitration*, where the tribunal found:

> "If it had been considered that... Guatemala was asserting authority over territory which was, or prior to independence had been, under the administrative control of Honduras, it can hardly be doubted that these assertions by Guatemala would have roused immediate antagonism and would have been followed by protest or opposition on the part of Honduras."[22]

18. Just so here. And as this makes clear, and as indeed has been long established, unilateral acts will also suffice if they reveal the agreement of the parties on interpretation[23].

19. In such circumstances, the unilateral acts must of course be visible to the other concerned party or parties, and must be such as to require a response, but these criteria are readily met. In his two presentations, Mr. Petrochilos has taken you to ample examples of Chilean laws and regulations, or to industrial fishing permits published in the official gazette, or to acts of arrest or escorting of Peruvian vessels back to the maritime boundary line, including in certain cases hand over to the Peruvian authorities[24].

20. The after-the-event suggestion that Peru was exercising restraint, in its failure to protest , and is, with respect, not serious ~~but it~~ bears no relation to the legal and factual context of the *Jan Mayen*

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[21] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 23.

[22] *Guatemala-Honduras Boundary Arbitration*, Award of 23 January 1933, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. 2, p. 1324. See also *Dispute between Argentina and Chile concerning the Beagle Channel*, Award of 18 February 1977, United Nations, *RIAA*, Vol. 21, para. 169.

[23] See United Nations Conference on the Law of Treaties — First and Second Sessions: Documents of the Conference, 1968-1969, para. 15:

> "Such agreement may be expressed through their joint or parallel positive activity, but it may also be ascertained from the activity of only one of the parties, where there is assent or lack of objection by the other party. As is remarked by the International Law Commission, it is sufficient that the other party accepts that practice."

[24] See for example CR 2012/31, pp. 53-54, paras 50-51; pp. 56-57, paras 58-61; pp. 57-58, para. 63 (Petrochilos).

case that was relied on[25]. It certainly bears no plausible relation to the facts of this case, not least given that Peru has itself invoked or referred to the maritime boundary on near countless occasions.

21. As my sixth and final point on this topic, it is also to be noted that practice may still be of relevance to the Court even where it does not meet the requisite threshold of Article 31 (3) *(b)*. Thus, in the *Kasikili/Sedudu* case, the Court found that certain acts, while not constituting subsequent practice by the parties in the interpretation of the 1890 Treaty, nevertheless supported the conclusions which the Court had reached through interpretation in accordance with ordinary meaning[26], while the tribunal in the *Ethiopia/Eritrea* case found that: "practice or conduct may affect the legal relations of the Parties even though it cannot be said to be practice in the application of the Treaty or to constitute an agreement between them"[27].

3. Application of the legal principles to the parties' respective cases on practice

22. How, then, against this legal backdrop, do the Parties' respective cases on practice stand up to scrutiny?

23. In his first speech last week, Professor Lowe introduced the image of the jigsaw puzzle, and suggested that Chile was trying to fit together pieces that in fact came from different puzzles[28].

24. The image is not an unhelpful one, as the Court does now have a set of pieces before it, and the question is whether, when the pieces are fitted together, they reveal the words "Maritime boundary agreed in 1952, confirmed in 1954", which is of course Chile's case, or "No maritime boundary; agreement on a near-shore provisional fishing line only", which is the starting-point for Peru's claim. And the strength of the arguments on the practice can readily be tested by identifying the pieces of the puzzle that simply will not fit so far as concerns the parties' respective cases. Those pieces will demonstrate to what extent practice has been inconsistent, or lacked concordance.

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[25]CR 2012/33, p. 36.

[26]*Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999*, para. 80.

[27]*Decision regarding delimitation of the border between Eritrea and Ethiopia,* Award of 13 April 2002, United Nations, *RIAA*, Vol. 25, para. 3.6.

[28]CR 2012/29, p. 21.

Chile's case

25. First then, Chile's case. As matters have turned out over the past two weeks, we see that Peru has an A, B, C of pieces that it says do not fit into Chile's case — that is, Argentina, the two Bs of Bázan and Bákula, and then the C, which is Chile's conduct, in particular in relation to the supposed lacunae in terms of Chilean legislation and Chilean maps.

26. Mr. Petrochilos has already dealt with the issue on Argentina when it came to ratification of UNCLOS, and Mr. Colson will return later to the points Peru seeks to make by reference to the form of Chile's 1984 Treaty with Argentina. On Mr. Bákula's memorandum, I need only add that, in particular when taken with Foreign Minister Wagner's comments recognizing the existence of an established maritime boundary, this could not be characterized as a communication such as called for some reaction on the part of the Chilean authorities[29]. Peru had in no sense made an affirmative claim to Chile's maritime zone. And of course Peru's subsequent practice bears this out.

27. However, as we have now been taken to task for not focusing on the 1964 Bázan opinion[30], I am going to deal with this in a little detail.

28. And like all the documents that Peru has taken you to, we invite the Court to read the Bázan Opinion in its entirety[31]. It is at tab 167 of your judges' folder, and I invite you to turn to that.

(a) At the top of the first page of the translation, which is at page 3 of tab 167 and now appearing on the screen, you will see the heading, which reflects the ultimate conclusion of the opinion. It reads: "The maritime delimitation between Chile and Peru is the parallel that passes through the point at which its land frontier touches the sea." And that seems clear enough.

(b) Turning to page 5 of the tab, at the bottom, you will see the passage that Peru has emphasized — "it is possible to state such an agreement exists". You were not taken to the remainder of the sentence[32], which makes clear that no equivocation was intended. Mr. Bazan considered that consequently the agreement "must be followed".

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[29]CR 2012/28, p. 25.

[30]CR 2012/33, p. 36.

[31]RC, Vol. II, Ann. 47.

[32]CR 2012/28, p. 43.

(c) Likewise, at the top of page 7 of the tab, one sees the reference to Article IV of the 1952 Declaration as "a provision that, although it does not constitute an express pact for determining the lateral boundary of the respective territorial seas, starts by assuming that this boundary coincides with the parallel . . .". Peru did not, however, take you to Mr. Bazan's concluded view on Article IV, lower down on page 7, which is that: "the aforementioned number IV unquestionably reveals that, for the contracting parties, what delimits their territorial seas is neither the prolongation of the land frontier, nor a perpendicular to the coast, nor the median line, but a geographic parallel". And one can readily see how Peru might skip over that as it tries to claim Mr. Bazan for one of its own.

(d) At the bottom of page 7, Mr. Bazan starts to consider the 1954 Agreement on the Special Maritime Frontier Zone and notes how its Article 1 contains an explicit recognition of the maritime boundary. We agree. The passage continues onto page 9, and leads to a passage that Peru took you to, out of its context[33]. But the analysis — the Declaration limits itself to reaffirming, in an emphatic and positive manner, a pre-existent fact upon which Chile, Peru and Ecuador are in agreement. The fact that the boundary between their territorial seas is a geographic parallel, that is an analysis that clearly supports the existence in 1954 of an agreed maritime boundary, and not some practical and provisional arrangement.

(e) Notably, Peru also did not take you to Mr. Bazan's overall conclusion, at page 11 of the tab, that

> "the maritime boundary between Chile and Peru follows the parallel that passes through the point at which the land frontier reaches the sea, because they have so arranged in the exercise of their sovereignty through an agreement whose scope and characteristics they themselves indicated in the international instruments referred to above".

(f) You will also recall being shown the sketch-map that accompanies the opinion, which shows the geographic parallel, but also a median line and a perpendicular line. You were not, however, taken to the relevant passage in the text — which is just above the conclusion on page 11 of your tab — where this sketch is introduced. Mr. Bazan explains that if any other delimitation than a parallel had been applied, "our 200-mile zone would have been truncated

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[33]CR 2012/33, p. 37.

from Iquique or from Pisagua to Arica, while the Peruvian zone would have advanced towards the south of this port and place itself between the waters subject to our sovereignty and the high seas". Thus, he continued, in words that in fairness you might have been taken to: "The attached drawing shows more clearly the *inadmissibility* of the situation that would have resulted" (emphasis added). In other words, the sketch-map shows precisely the two lines other than the parallel that Chile would never have agreed to.

29. So much, then, for what Mr. Bazan in fact said. There are three short points:

30. First, the Note contains the views of a past legal adviser, contained in an advice given for internal purposes, but in so far as weight attaches to it, it is in support of Chile's case. The conclusion on the existence of a maritime boundary is unequivocal, and the differences in his legal reasoning may stem from the fact that he does not refer to, and may not have considered, the 1952 and 1954 Minutes.

31. Secondly, when the advice was subsequently published in the annual Memoria of Chile's Foreign Ministry, Peru did not raise any hint of concern, including with the key conclusion — that the maritime boundary followed a parallel of latitude.

32. Finally, the Bazan opinion is dated 15 September 1964. When it comes to the Parties' bilateral relations, this evidently was not perceived as calling into question the existence of an agreed maritime boundary; and how could it? In the next major step in terms of the material practice, Chile and Peru set about the task of "the installation of leading marks to materialise the parallel of the maritime frontier" — that, of course, is a quote from Peru's letter to Chile of 5 August 1968[34].

33. I move very briefly on from the As and Bs to the Cs, that is Chilean conduct.

34. The supposed lacunae did not exist, as Mr. Petrochilos has shown. Chile's legislation does not reflect the gap that Peru would wish for, whilst Peru's case on maps is dependent on the Bakula memorandum, the supposed importance of which has now fallen away. The bare fact remains that Chile published several maps showing the maritime boundary — to which Peru did not protest until eight years after publication of the first map.

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[34]MP, Vol. II, Ann. 47.

Peru's case

35. To return, then, to Professor Lowe's analogy, it is very obvious when one comes to the comparison that there are, by contrast, multiple pieces that Peru cannot fit into the jigsaw that it has put before you. These start from the need to give meaning to the key wording of Article IV of the Santiago Declaration, and then go forward through the various sets of Minutes, the 1954 Agreements, the 1955 Supreme Resolution of Peru, which of course expressly refers to the Santiago Declaration and which Peru's Minister of External Relations took the care of lodging with the United Nations legislative series by Note Verbale dated 22 August 1972[35], and then there are the 1968-1969 agreements on materialization of the maritime boundary, and then the further abundant practice.

36. Peru has done what it can, but it cannot explain these away — neither by reference to the facts, nor by reference to the applicable legal principles.

37. In this respect, it is useful to pause, to imagine just what Peru's conduct would have been in these decades if it had truly believed that there was no maritime boundary in place and that the agreed line was truly just a provisional line for fishing purposes. In such a case, you would have been shown:

(a) First, the language of provisional nature and practical arrangement and near-shore application that Peru's counsel seeks belatedly to read into the Agreement on a Special Maritime Frontier Zone, not to say an Agreement with a rather different title;

(b) Second, equivalent language of reservation in the 1968-1969 agreements on the materialization of the maritime boundary, not to say a final Act of August 1969, with a title that did not refer expressly to the *"limite maritimo"*[36];

(c) Third, Peru would have relied on the absence of Acts where Peru has invoked or referred to the maritime boundary — so, for example, no 1955 Supreme Resolution and no lodging of that Resolution with the United Nations;

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[35]CMC, Vol. IV, Ann. 164, p. 990 at fn. 1.

[36]CMC, Vol. II, Ann. 6, p. 34.

(d) Fourth, you would have been shown a long series of protests by Peru in response to the occasions on which Chile has invoked the maritime boundary in its relations with Peru and, likewise, so far as concerns Ecuador's invocation of the boundary[37];

(e) Fifth, you would have seen some opposition or reaction by Peru where other States have referred to the maritime boundary, whether before this Court[38], or in their publications such as those of the United States of America or China that Mr. Crawford took you to in opening[39];

(f) And, finally, you would have been shown some form of reaction to the judicial views of President Bustamante y Rivero[40], or to the clearly expressed views of President Jiménez de Aréchaga[41], and other commentators[42].

38. But of course none of this exists. The evidence is all to the contrary.

4. Conclusion

39. Mr. President, Members of the Court, the reality is that this is a case where both Parties have, through their practice, recognized the existence of the maritime boundary, and that practice was always precisely as would be expected, given that both were recognizing an agreed maritime boundary. Peru is seeking belatedly to deconstruct practice that readily satisfies the criteria for Article 31 (3) *(b)*, and is also both coherent and comprehensive.

40. As to the competing jigsaw puzzles, there is a simple reason why the Peruvian pieces cannot be fitted into the case it has brought before you. It is that, until very recently and until Peru's case was conceived some five or ten years ago, the completed puzzles of both Parties read "maritime boundary agreed in 1952, confirmed in 1954".

Mr. President, Members of the Court, I thank you for your kind attention and ask you please to call Professor Dupuy to the floor.

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[37]CMC, Vol. IV, Ann. 212.

[38]See CMC, paras. 2.230-2.234; RC, paras. 5.7-5.8.

[39]CMC, Vol. IV, Anns. 216, 219, 220 and 222; CMC, Vol. VI, fig. 13; CMC, Vol IV, Ann. 218; CMC, Vol. VI, fig. 14.

[40]*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969,* separate opinion of President Bustamente y Rivero, p. 61, para. 6 *(b)*.

[41]CMC, Vol. V, Ann. 280.

[42]See CMC, paras. 2.237-2.262; RC, paras. 5.16-5.17.

The PRESIDENT: Thank you, Mr. Wordsworth. Je passe la parole au professeur Dupuy. Vous avez la parole, Monsieur.

M. DUPUY :

L'ATTITUDE DE L'EQUATEUR

1. Monsieur le président, mardi dernier, le conseil du Pérou, étant intervenu sur cette question, a tenté de vous persuader de deux choses — il s'agit de l'attitude de l'Equateur. D'abord, qu'étaient imaginaires les affirmations du Chili selon lesquelles le Pérou avait fait toute une série de concessions à l'Equateur à propos de l'existence de la frontière maritime entre les deux pays ; ensuite, que cette frontière n'avait en réalité été fixée que tout récemment, le 2 mai 2011, preuve, selon lui, que, jusque-là, elle n'existait pas. Le conseil du Pérou voulait ainsi, fût-ce implicitement, vous conduire à la conclusion que l'Equateur partageait la thèse du Pérou sur la nouveauté de cette délimitation.

2. Cela nous impose de recadrer le débat, Monsieur le président. Le point de fait et de droit qui est d'importance pour la Cour n'est pas à ce stade de savoir quelle est la thèse du *Pérou* à l'égard de sa frontière maritime avec son voisin du nord ; ce qui est en cause à présent est ce que pense et ce qu'a toujours pensé l'*Equateur*, troisième Etat partie aux accords de 1952 et de 1954. L'Equateur a-t-il toujours considéré que les frontières maritimes entre les trois pays, donc aussi les siennes avec le Pérou, avaient été fixées dès le 18 août 1952 ? Ou bien partage-t-il la conception du Pérou d'après laquelle cette frontière serait encore flambant neuve, puisqu'elle ne daterait que du 2 mai 2011 ?

3. Dans le second cas, la thèse du Pérou en sortirait renforcée. Dans le premier au contraire, la Cour devrait constater que deux sur trois des Etats parties à la déclaration de Santiago, le Chili et l'Equateur, partagent la même interprétation à l'égard du contenu de la déclaration de Santiago, puisque la nature conventionnelle de celle-ci est désormais admise par le Pérou. La position de l'Equateur est donc tout simplement déterminante dans la présente affaire ; ceci explique, ainsi que je l'ai montré la semaine dernière, pourquoi le Pérou s'est donné tant de mal pour que vous ne puissiez entendre dans cette salle la réponse du grand absent.

4. Dans ces conditions, la meilleure façon d'utiliser ce second tour, fût-ce au prix de certaines répétitions des faits déjà rapportés dans ma plaidoirie de la semaine dernière, à laquelle aucun des éléments n'a subi de contestation véritable, est de revenir sur les manifestations successives de la constance de l'Equateur. Ceci constituera la première des deux parties de ma plaidoirie. La seconde sera consacrée au réexamen de la ligne frontière qui figure sur la carte annexée à l'échange de notes entre le Pérou et l'Equateur du 2 mai 2011.

I. La chronologie des manifestations de l'interprétation équatorienne de la déclaration de Santiago

5. Monsieur le président, nous avons préparé pour les membres de la Cour un document de travail sous forme d'un tableau. Vous le trouverez aux onglets n^{os} 170 et 171 de votre dossier. Le premier d'entre eux est en anglais, le second en français. Ce tableau est constitué de la façon suivante. Dans la première colonne en partant de la gauche, vous trouverez des dates ; celles auxquelles les actes ou, selon les cas, des faits juridiques sont intervenus. Ils ont tous un point commun. Ils émanent du même auteur. Cet auteur, c'est l'Equateur[43].

6. Dans la seconde colonne, toujours en partant de la gauche, vous trouverez la description du texte chaque fois considéré, qu'il s'agisse de résolutions ou communiqués, unilatéraux ou conjoints, de notes diplomatiques, de communiqués de presse émanant du ministère des affaires étrangères équatorien, de cartes marines ou de rapports de commissions parlementaires.

7. Dans la troisième colonne, vous pourrez lire le passage pertinent du document en cause et vous constaterez ainsi ce qu'il dit explicitement. Enfin, dans la dernière colonne sur la droite de ce tableau, vous trouverez les références des annexes dans lesquelles l'intégralité de ces textes peut être retrouvée.

8. La consultation d'un tel tableau est très instructive. Tous ces documents, tous, Monsieur le président, Mesdames et Messieurs de la Cour, disent deux choses. La première, c'est que pour l'Equateur les frontières maritimes entre les trois Etats ont été fixées dès 1952. La seconde, c'est que le texte à l'origine de cette détermination est toujours le même. C'est la

[43] A l'exception de l'annexe 79 au contre-mémoire du Chili, qui émane du Pérou mais qui rapporte les propos de l'Equateur.

déclaration de Santiago — ce qui, dois-je le rappeler, fut aussi jusqu'à 2005 la position que partageait le Pérou.

9. Le temps étant important dans cette histoire comme dans bien d'autres, pour bien réaliser que l'Equateur dit la même chose *avant* et *après* le 2 mai 2011, vous pourrez de plus consulter à l'onglet n° 173 de votre dossier une échelle chronologique sur laquelle sont rapportées les dates d'émission des mêmes documents que ceux recensés dans le tableau qui la précède, eux-mêmes déjà classés dans l'ordre chronologique.

10. Alors, je pourrais m'arrêter là et vous laisser étudier ce tableau dans vos bureaux respectifs, tant il parle de lui-même. J'aurais pu m'en tenir là, d'autant que vous auriez peut-être préféré entendre à ce propos une plaidoirie plus colorée pour animer l'argumentation chilienne, avec fleurs de rhétorique et effets de manche, les miennes étant assez grandes pour cela !

11. Hélas, non, Monsieur le président ! Il faut ici se confronter aux faits, rien qu'aux faits. C'est eux, eux seuls qui vous diront, qui vous rediront quelle est, aujourd'hui comme hier, la position intangible de l'Equateur à propos de la date de création de sa frontière avec le Pérou et du choix du parallèle géographique comme son vecteur fondamental.

12. Je vais toutefois faire en sorte de ne pas solliciter de façon excessive votre attention, étant entendu que vous aurez tout le loisir de consulter à nouveau ce document pour les besoins de la préparation du jugement que vous rendrez dans la présente affaire. Pour ce faire, je me permettrai de faire une sélection parmi ces documents même si *tous* — j'insiste — sont également pertinents.

13. Je vous avais déjà parlé dans ma plaidoirie de la semaine dernière de la loi équatorienne sur les lignes de base de 1971, à laquelle le Pérou n'a jamais objecté[44] ; je reviendrai plutôt sur le quatrième document dans le tableau qui vous est présenté. Faisant suite à la résolution du Congrès national équatorien adoptée quinze jours plus tôt, c'est la déclaration conjointe des présidents de l'Equateur et du Chili en date du 1er décembre 2005 ; ils y réaffirment l'un et l'autre la pleine validité des frontières maritimes établies par la déclaration de 1952 et leur plein accord relatif à la zone frontalière maritime spéciale. Rappelons que cette prise de position commune est destinée à

[44] CR 2012/32, p. 15, par. 14 (Dupuy) ; CMC, vol. IV, annexe 212, p. 1263.

contrer les prétentions manifestées par le Pérou, celui-ci se décidant alors à contester ouvertement l'existence de ces frontières[45].

14. Je dirigerai ensuite votre attention sur un document mentionné sur la deuxième page de votre tableau. Il s'agit de celui qui précise, le 7 février 2008, que la déclaration de Santiago et le traité précité de 1954 ne se contentent pas de fixer de simples critères de délimitation mais qu'ils établissent bien cette délimitation elle-même. L'Equateur insiste là-dessus car il se défie des seuls «critères» dont parle à ce propos le Pérou[46], notion par définition revisable et peu compatible avec la stabilité des frontières existantes.

15. Toujours en page 2 du tableau, outre le communiqué conjoint du 6-7 septembre 2009 publié une fois encore par l'Equateur et le Chili qui reprend la désignation des traités de 1952 et de 1954 comme fondement d'une délimitation effective, vous retrouverez en particulier le communiqué du président Correa, le président équatorien, datant du 11 octobre 2010 que je citais aussi vendredi dernier[47]. Souvenez-vous. Ce document est une mise en demeure sinon une menace adressée par lui au Pérou. C'est celui dans lequel le président de l'Equateur dit :

> «si les frontières sont légalement ratifiées en accord avec la charte nautique — il s'agit de la charte IOA 42 — il n'y aurait pas besoin d'une intervention dans la procédure ; mais si la charte nautique est contestée par le Pérou, nous envisagerions sérieusement la possibilité d'intervention de l'Equateur dans la procédure ouverte à La Haye».

16. On constate que cette déclaration, émanant d'un homme politique qui n'est pas juriste de formation, n'est pas parfaitement rigoureuse au regard de la terminologie, le terme «ratifica» est ici techniquement inapproprié. Il n'en demeure pas moins que ce document reste de la première importance. C'est lui qui place le Pérou devant ses responsabilités. Ou il accepte la frontière existante ou l'Equateur demande à intervenir devant vous.

17. Or, on sait ce qui s'en suivit. Le Pérou obtempéra et accepta la charte IOA 42, celle-là même qui comporte la vignette que M. Bundy semble avoir oubliée, et sur laquelle sont reportées les références explicites aux traités de 1952 et 1954 comme étant à l'origine de la frontière

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[45] CR 2012/32, p. 16, par. 18 (Dupuy).

[46] DC, vol. III, annexe 108, par. 2.

[47] CR 2012/32, p. 22-23, par. 47 (Dupuy) ; DC, vol. III, annexe 144.

existante, constituée, comme on le voit sur la charte, par le parallèle géographique qui remonte bel et bien au 18 août 1952.

18. Nous sommes alors le 11 octobre 2010, soit cinquante-huit ans *après* l'adoption de la déclaration de Santiago et encore huit mois *avant* l'échange de lettres du 2 mai 2011 entre Quito et Lima.

19. Quoi qu'il en soit, le Pérou obtempère. Il ne dit mot et il consent à reconnaître la charte, alors même qu'elle porte cette mention dont le conseil du Pérou s'est bien gardé de reparler : celle qui réfère la ligne de parallèle entre les deux Etats non à leur accord à venir mais aux traités existants ; mention réitérée, comme on s'en souviendra, dans la carte géographique officielle que nous vous avons présentée dans le dossier qui vous était présenté lors des plaidoiries chiliennes du 7 décembre[48].

20. Le dernier document vers lequel je vous invite à diriger votre attention est le dernier dans le tableau, il figure en page 3 et c'est le plus récent puisqu'il remonte aux 25 et 26 juillet derniers, date de l'adoption par le conseil réunissant cette fois les ministres *du Chili* et de l'Equateur. Il confirme que les uns et les autres sont une fois de plus d'accord pour se référer aux accords de 1952 et 1954 comme origine des frontières maritimes entre les trois Etats. Or, nous sommes cette fois-là quinze mois *après* l'échange de notes intervenu entre le Pérou et l'Equateur. Ainsi, que l'on se situe avant ou après l'échange de notes, rien n'a changé quant à la position équatorienne.

21. Je pourrais ainsi continuer à pointer du doigt toutes les pièces de ce tableau dont encore une fois *chacun* des éléments est également probant de la constance de la position équatorienne comme des absences de protestation du Pérou, celui-ci sachant bien, depuis la déclaration du président Correa, quelle serait pour lui la sanction s'il soutenait explicitement face à son voisin du Nord ce qu'il affirme à l'égard du Chili, à savoir qu'il n'y aurait pas de frontière maritime.

22. On voit donc bien que l'affirmation péruvienne tendant à accréditer la thèse selon laquelle l'accord entre l'Equateur et le Pérou ne remonterait qu'au 2 mai 2011 est, pour dire le

[48] CR 2012/32, p. 20, par. 36-37 (Dupuy).

moins, erronée. Venons-en alors au réexamen de la ligne de délimitation retenue dans cet échange de notes.

II. Le tracé de la ligne frontière attaché à l'échange de notes entre l'Equateur et le Pérou du 2 mai 2011

23. Le conseil du Pérou a fait semblant de croire que les termes de l'échange de notes intervenu le 2 mai 2011 nous embarrasseraient[49]. Fort bien ! Examinons les donc, les termes de cet échange de notes : mon ami, M. Bundy, estime déterminant que le paragraphe 2 de l'échange de notes comporte le terme «*shall* extend along the line». Pourtant, tout aussitôt après, il vous a donné lui-même la clef de ce futur de l'indicatif dont il entendait pourtant tirer l'idée que l'accord intervenu établissait une frontière nouvelle. Il y a là, certes, une nouveauté par rapport à la situation précédente, mais je l'ai déjà signalée vendredi dernier[50]. C'est que le point d'aboutissement de la frontière maritime *glisse* sur la ligne du parallèle, toujours le même, pour être désormais déplacé vers l'ouest, et j'en redirai les causes dans un instant. Vous retrouvez ici la carte produite devant vous le 7 décembre.

24. Ce déplacement latéral de la frontière maritime ne place nullement l'Equateur, quant à lui, en porte-à-faux par rapport à la constance de sa position renvoyant à la déclaration de 1952 comme source du parallèle de latitude et axe de délimitation. La déclaration de Santiago définissait en effet la frontière avec certitude ; mais ses trois cosignataires avaient entendu préserver l'avenir et conserver la possibilité d'une extension de la projection de leur zone de juridiction au-delà des 200 milles nautiques, auxquels, finalement, ils se sont arrêtés, préfigurant ainsi la largeur de la zone économique exclusive. On en voit la preuve dans la formulation de l'article II de la déclaration qui parle d'une distance *minimale* de 200 milles nautiques.

25. Ce qui compte, en l'occurrence, et qui garantit la cohérence de la position de l'Equateur avec celle qu'il a toujours retenue, c'est que le parallèle géographique est bien celui-là même qui résultait depuis toujours de l'application de la déclaration de Santiago.

26. Revenons alors à la *cause* de la translation vers le large du point d'aboutissement de la frontière maritime qui explique l'emploi du futur dans la note du 2 mai 2011. Cette cause,

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[49] CR 2012/33, p. 62, par. 9-10 (Bundy).

[50] CR 2012/32, p. 21, par. 39 (Dupuy).

Monsieur le président, je l'ai illustrée dans ma plaidoirie de vendredi dernier[51] : elle est constituée par l'ultime concession faite par le Pérou aux aspirations que l'Equateur avait de longue date exprimées. Celle de fermer l'entièreté du golfe de Guayaquil par des lignes de base droites, non plus seulement du coté équatorien, c'est-à-dire au nord du parallèle, comme cela existait depuis la loi équatorienne de 1971, mais au sud, le Pérou acceptant désormais de s'aligner c'est le cas de le dire, sur les lignes de base droites équatoriennes.

27. Dès lors, et ceci, en effet, pour l'avenir, d'où l'emploi du futur, c'est-à-dire à partir de cet échange de notes du 2 mai qui, mais dans cette seule mesure, constitue un nouvel accord. Seulement c'est un accord qui se place, au sens le plus spatial du terme, toujours sur le rail du parallèle déjà existant, puisqu'il résultait de la déclaration de Santiago, ce que l'Equateur a rappelé sur sa charte nautique, mais que le Pérou se garde de reconnaître officiellement.

28. Cela n'a nullement empêché l'Equateur de réaffirmer sans risque de contradiction, cette fois dans le cadre de la rencontre du conseil interministériel chiléno-équatorien des 25 et 26 juillet derniers, son fidèle attachement aux accords de 1952 et 1954.

29. Ainsi, pour nous résumer, Monsieur le président, ce qui s'est passé avec l'échange de notes du 2 mai 2011 entre Quito et Lima, c'est bel et bien le ralliement du Pérou aux positions toujours défendues par l'Equateur. Cet accord réalise la rencontre sur le parallèle géographique de deux diplomaties, c'est-à-dire, aussi, de deux arrière-pensées. La ligne de parallèle est confortée, mais Lima veut affirmer qu'elle est nouvelle cependant que Quito considère qu'elle n'a jamais changé, puisqu'elle existait depuis le 18 août 1952. Le Pérou a pu ainsi «sauver la face», si j'ose m'exprimer ainsi, en n'ayant pas besoin de dire expressément qu'en reconnaissant la charte nautique, laquelle renvoie aux accords de 1952 et 1954, il en est revenu au parallèle issu de la déclaration. Et l'Equateur, quant à lui, n'a rien à changer à ses convictions ; il n'a pas eu besoin de le réitérer puisqu'il l'avait déjà dit sur ses cartes de 2010, désormais acceptées par le Pérou, condition dont le président Correa avait dit que, si elle était remplie, elle lui permettrait de renoncer à intervenir dans la présente affaire.

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[51] CR 2012/32, p. 20-21, par. 39 (Dupuy).

30. Monsieur le président, il me resterait à vous redire combien le tracé prolongé vers le large, de la frontière maritime glissant ainsi sur le rail du parallèle est parvenu au point B. Ceci, je vous le rappelle, apporte la preuve que, contrairement aux termes de l'échange de notes, le point terminal de la frontière maritime vers l'ouest ne résulte pas d'une lecture de l'article IV de la déclaration qui s'appuierait exclusivement sur la présence des îles, laquelle l'aurait fait seulement parvenir au point A. Je me permets à cet égard de vous adresser à ma plaidoirie du 7 décembre dernier[52] ainsi qu'à la carte qui l'accompagnait à l'onglet 75 aujourd'hui.

31. Qu'il me soit seulement permis pour finir de vous signaler ici qu'en ce qui concerne l'application de l'article IV de la déclaration de Santiago, les distingués défenseurs du Pérou n'ont pas pris le temps d'accorder leurs violons ! Lors de la même session de plaidoiries, celle du matin de mardi dernier, notre éminent collègue Vaughan Lowe vous expliquait que cette disposition ne pouvait se comprendre que si l'on poursuivait le parallèle bien au-delà des 200 milles nautiques, jusqu'à rencontrer la zone maritime rayonnant autour du groupe des Galapagos[53] ; cependant que M. Bundy voulait quant à lui voir dans l'accord réalisé par l'échange de notes du 2 mai 2011 l'application des principes d'un article IV qui s'appliquerait non plus à l'archipel lointain des Galapagos mais aux îles toute proches des côtes[54].

J'en ai ainsi terminé, Monsieur le président avec cette présentation de la constance de la position équatorienne. Je vous remercie de votre attention et je vous prie de passer la parole à M. Colson.

Le PRESIDENT : Je vous remercie, Monsieur le professeur. And I give the floor to Mr. Colson.

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[52] CR 2012/32, p. 19, par. 32.

[53] CR 2012/33, p. 18, par. 45.

[54] CR 2012/34, p. 19, par. 55.

Mr. COLSON:

Alta mar

1. Thank you, Mr. President, Members of the Court. To begin, I would note for the Registry and the translators that paragraph 7 of the statement that they have in front of them is being deleted from this presentation. This presentation will respond to what Professor Pellet said about the *alta mar*/Outer Triangle issue, and there are a few additional points to make.

1. Two essential points of agreement between the Parties

2. I believe that at this stage we can say that Professor Pellet and I are in agreement on two essential points: first, that similar situations to the *alta mar*/Outer Triangle issue are present in State practice; and secondly, that international law allows for delimitation even where there is no overlap of the arcs of circles describing the outer limits of neighbouring 200-nautical-mile zones.

3. Professor Pellet in his second round, moved away from the refrain we heard in the first round where he said that Chile was preventing Peru from having this area — even by force, he said[55]. In the second round, his technique changed and he asked the rhetorical question as to why Peru would have agreed to a boundary with Chile that has such a large *alta mar* area. I cannot answer the rhetorical question — I was not there. But I expect it has something to do with President de Aréchega's observation that the Pacific States of South America looked upon themselves as having a "direct and linear projection" into the sea[56]. Overlapping 200-nautical-mile arcs and wrap-around zones have no place in that conception.

4. The fact that the *alta mar* is bigger than other *alta mar*s is itself of no legal consequence.

5. So there is no difference of legal principle here; the question is only whether the agreement of the Parties fully delimited both Chile and Peru's 200-nautical-mile zones.

6. I would like to turn to a few observations about what Professor Pellet said about three of the State practice examples we used last week.

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[55]CR 2012/29, p. 46, para. 6 (Pellet).

[56]CMC, Ann. 280, p. 794.

2. Grisbådarna[57]

7. [Start graphic 1] Professor Pellet drew attention to the map we produced, which recorded the fact that the parties had extended their boundary in subsequent agreements, and he drew attention to the fact that the subsequent 1968 Continental Shelf Agreement[58] applied the equidistance method. I agree, but what I would like to emphasize is a different point. And that point is that when these parties extended their zones and reached new delimitation agreements, the boundary line established by the award in the *Grisbådarna* tribunal was not altered. Just as Norway could not claim the *alta mar* area because of the *Grisbådarna* award, it has remained unavailable to Norway in these subsequent agreements. It is on the Swedish side of the boundary line and it has always remained so. [End graphic 1/Start graphic 2]

3. Colombia-Ecuador

8. The second observation concerns the Colombia-Ecuador boundary[59]. As we recall, this Agreement establishes the parallel of latitude of the land boundary terminus as the Colombia-Ecuador maritime boundary, and it has an *alta mar* area. And as Professor Dupuy noted last Friday[60], when this Agreement was ratified, the explanation given before the Colombian Congress was that the delimitation by the geographic parallel from the land boundary terminus "was in particular chosen by the signatory countries of the Santiago Declaration for delimiting their respective maritime jurisdictions" and that record went on "[i]t is evident that, in the Pacific Ocean, this line [of parallel] constitutes a clear, fair and simple frontier, which meets the interests of the two countries adequately"[61]. Peru's case has taken us into a twilight zone: the 1975 Colombia-Ecuador boundary Agreement, once thought to be the last in time of the boundary agreements amongst the Santiago Declaration States, has become, in Peru's rendition of history, the first delimitation agreement amongst those States.

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[57]*The Grisbådarna Case (Norway v. Sweden)*, Award 23 October 1909 (unofficial English translation available at: http://www.pca-cpa.org/showpage.asp?pag_id=1029).

[58]Agreement between Sweden and Norway Concerning the Delimitation of the Continental Shelf, 24 July 1968 (entry into force 18 March 1969) 968United Nations, *Treaty Series (UNTS)* 241.

[59]Agreement between Colombia and Ecuador, 23 August 1975 (entered into force 22 December 1975), 996 *UNTS* 239.

[60]CR 2012/31, p. 26, para. 9.

[61]CMC, Vol. IV, Ann. 214; see also Ann. 215.

9. But let us take a minute to look over this agreement and to test it against Mr. Bundy's five-point guide to boundary treaties[62]. There is of course no such guide or checklist in the Law of the Sea Convention, and what we will see is that in the practice of States they may not have known of, or made use of, Mr. Bundy's checklist.

10. The agreement is on the screen now — it is at tab 178 of your folders. Mr. Bundy's first point was that a maritime boundary agreement should refer to the fact that the subject-matter concerns the maritime boundary — and you can see here that Article 1 refers to the "limit between their . . . marine and submarine areas"[63]. So we will give this agreement a passing grade on this point.

11. His second criterion is that a boundary agreement should specify the zones that are being delimited. This agreement is vague in that regard: it refers to "sovereignty, jurisdiction or supervision" in general terms[64]. We are tough graders so we are going to fail the agreement on this point.

12. His third criterion is that the starting-point be specified with co-ordinates. This agreement clearly fails to meet that standard. The 1975 Agreement contains no co-ordinates, and it was not until this year of 2012 that these parties agreed on the precise co-ordinates of the boundary parallel[65]. In Mr. Bundy's test, the agreement fails this criterion, but Colombia and Ecuador need not fear because, as you noted in *Cameroon* v. *Nigeria* in speaking to delimitation in the Lake Chad area, the fact that an agreement may "have some technical imperfections and that certain details remain[] to be specified" (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 34, para. 50) does not mean that a boundary agreement is not in place.

13. Mr. Bundy's fourth criterion is that the entire course of the boundary, including the endpoints, should be specified, either by co-ordinates or by stating exactly how far out to sea the boundary extends from its starting-point. Here again the agreement fails. The parties intend that

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[62]CR 2012/29, pp. 15-16, para. 61 (Bundy).

[63]Agreement between Colombia and Ecuador, 23 August 1975 (entered into force 22 December 1975), 996 *UNTS* 239.

[64]*Ibid.*, Art. 3.

[65]Joint Declaration of the Foreign Ministers of the Republics of Ecuador and Colombia, published 13 June 2012, Ann. CH-2.

the parallel serves for all purposes and that the line continues to divide new claims[66]. [End graphic 2/Start graphic 3] There is no specified endpoint. Indeed, at the time of the agreement, Ecuador had a 200-mile zone, but Colombia had not declared one, and did not do so for three years, declaring it on 4 August 1978, but the intent of the parties is clear: the parallel governs for all purposes and, of course, the parallel now delimits the 200-nautical-mile zones of both countries. And we can see there is an *alta mar* area on the map that we have prepared, depicting the agreement, now on the screen (tab 179).

14. Finally, Mr. Bundy's fifth criterion is that the agreement include a map. Here, the map on the screen is our map. There is no map annexed to this treaty.

15. This agreement fails on four of the five criteria Mr. Bundy laid out. But I believe he would agree that the 1975 Colombia-Ecuador Treaty is a boundary treaty. [End graphic 3/Start graphic 4]

4. The 1984 Chile-Argentina Treaty

16. My third observation concerns the 1984 Chile-Argentina Treaty[67]. And we can see this now on the screen. It has a relatively large *alta mar* area (tab 180). Professor Pellet referred to the historical context of this agreement. His references as to why and how this agreement came about[68] are not exactly how Chile sees it, but I think we can both agree that the 1984 Treaty between Argentina and Chile arose out of circumstances of an arbitration result that was not well-received by the Argentine Government of the time, near war, mediation by the Pope, leading to a broad and comprehensive set of understandings. These circumstances are vastly different from those associated with the Santiago Declaration. Yet Peru has consistently tried to make something out of the differences in the ~~the~~ texts ~~of~~ the 1952 Santiago Declaration and the 1984 Chile-Argentina Treaty[69], even though there are 32 years of State practice, numerous international judicial and arbitral decisions dealing with the subject and three Law of the Sea Conferences between the two

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[66]Agreement between Colombia and Ecuador, 23 August 1975 (entered into force 22 December 1975), 996 *UNTS* 239, Art. 1.

[67]Treaty of Peace and Friendship between Chile and Argentina, signed at Vatican City on 29 November 1984 (entered into force on 2 May 1985), 1399 *UNTS* 89, CMC, Vol. II, Ann. 15.

[68]CR 2012/34, p. 23, para. 7 (Pellet).

[69]CR 2012/29, pp. 15-16, paras 61-62 (Bundy).

events. And, Peru agrees, the circumstances in which these agreements were reached are vastly different. [End graphic 4]

17. Peru's argument is somewhat similar to two arguments Denmark made in the *Jan Mayen* case that the Court dismissed. There Denmark sought to hold Norway to standards of conduct applied elsewhere. In one case, Denmark argued it should receive similar treatment to that Norway had given to Iceland in a Norway-Iceland delimitation agreement (*Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway), Judgment, I.C.J. Reports 1993*, pp. 75-76, para. 83). On this point the Court said, at paragraph 86 of the Judgment:

> "By invoking against Norway the Agreements of 1980 and 1981, Denmark is seeking to obtain by judicial means equality of treatment with Iceland . . . But in the context of relations governed by treaties, it is always for the parties concerned to decide, by agreement, in what conditions their mutual relations can best be balanced." (*Ibid.*, p. 77, para. 86.)

18. If that is true for delimitation method, it certainly must be true for the texts in which delimitation agreements are recorded.

19. The second argument made by Denmark concerned Norway's Bear Island, and the internal delimitation established by Norway between the Exclusive Economic Zone of the Norwegian mainland and the fisheries protection zone around Svalbard. In that internal delimitation, Norway gave Bear Island less than full effect so its maritime area would not cut into the full 200-nautical-mile zone off the Norwegian mainland. And Denmark wanted the same for Greenland. This Danish argument again was dismissed by the Court. The argument was about delimitation, it was not about the form of the agreement, but what the Court said about the argument is informative. It said:

> "So far as Bear Island is concerned, this territory is situated in a region unrelated to the area of overlapping claims now to be delimited. In that respect, the Court would observe that there can be no legal obligation for a party to a dispute to transpose, for the settlement of that dispute, a particular solution previously adopted . . . in another context." (*Ibid.*, p. 76, para. 85.)

20. Again, if that is the principle that relates to delimitation method itself, it must certainly apply to the form of a delimitation agreement adopted by the same State 32 years apart and in vastly different geographical and historical circumstances.

21. Thus, the debating point contrasting the Peru and Argentina situations is no more than that. The fact that there is a difference in the legal texts of the Santiago Declaration and the 1984 Chile-Argentina Treaty is irrelevant.

22. Mr. President, Members of the Court, the all-purpose maritime boundary delimiting the full 200-nautical-mile zones of Chile and Peru has served them well for 60 years. That there is an *alta mar* area available to the international community is not unusual in the practice of States. Here, it is simply the result of a delimitation of the full 200-nautical-mile zones of Chile and Peru that respects each State's direct and frontal projection into the sea.

Thank you, Mr. President. I thank the Court for its attention and I ask that you call upon Professor Crawford.

The PRESIDENT: Thank you, Mr. Colson. Professor Crawford, it is now your turn. You have the floor.

Mr. CRAWFORD:

CONCLUDING REMARKS

1. Introduction

1.1. Mr. President, Members of the Court, you already have firmly on board the point that this is not a tacit agreement case — this is not *Nicaragua* v. *Honduras*, and Peru now accepts that[70]. Nor is Chile's case to be equated with other cases in which one party argued that there was an existing boundary agreement:

(a) It is not a case involving an attempt to apply to maritime boundaries an agreement covering division of territorial sovereignty, as in *Nicaragua* v. *Colombia*, first phase[71].

(b) It is not a case based on the application of an agreement defining "State borders" to the EEZ and continental shelf, as in *Romania* v. *Ukraine*[72].

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[70]CR 2012/33, p. 32, para. 4 (Wood).

[71]*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 34, para. 115.

[72]*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 25, paras. 64 and 70.

(c) It is not a case based on conduct, either relating to fisheries[73] or oil concessions[74], as in *Gulf of Maine*, *Jan Mayen*, and *Cameroon* v. *Nigeria*.

1.2. Nor is this a case of an agreement derived from use of a line for "specific, limited purposes", as Professor Lowe would have you believe[75], or a line representing a "provisional arrangement of a practical nature", as he and Sir Michael would have you believe[76]. Chile's case rests on actual agreements between the Parties, applied and observed for 60 years: no reservations, no without-prejudice provisions, no indication of interim, provisional or limited application. It is for the Court to interpret those agreements[77], which are specific to this case.

2. Historical continuity: the enduring 200-mile zones

2.1. The Parties agree that they were making history with their 200-mile zones. But they ended up, after a fashion, making law as well. The key point is that those claims came to be accepted, and came to form part of general international law. The zones established in 1952 are historically continuous with those that exist today — in Chile's case modulated by its accession to the 1982 Convention. They were never withdrawn or denounced — in Peru's case they were never modified — to this day Peru maintains its "dominion" over its air space above its maritime zone, although subject to a right of "innocent passage"! But the point for present purposes is that Chile, Peru and Ecuador stood together in defence of their zones, and their eventual prize was general acceptance.

2.2. Now Peru argues that the fact that these States were the first to claim 200-mile zones — with perimeters — makes the fact that they did exactly that "very difficult to conceive"[78]. Peru even goes so far as to hint that they *could* not do so — that by the time their 200-mile zones were

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[73] *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway), Judgment, I.C.J. Reports 1993*, p. 56, para. 40.

[74] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, pp. 310-311, paras. 150-151; and *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 447, para. 304.

[75] CR 2012/29, p. 20, para. 17 (Lowe).

[76] CR 2012/28, p. 29, para. 11 (Wood); CR 2012/29, p. 20, para. 17 (Lowe); CR 2012/33, p. 27, para 109 (Lowe); and p. 28, para. 112 (Lowe).

[77] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 86, para. 68.

[78] CR 2012/33, p. 53, para. 8 (Treves).

accepted by the international community, a new boundary agreement was required to delimit those zones.

2.3. In support of this argument, Professor Treves referred to your decision in *Romania* v. *Ukraine*[79]. He argued "a delimitation agreement concerning the territorial sea could not apply to the continental shelf and the exclusive economic zone, as the parties 'would be expected to conclude a new agreement for this purpose'".[80] The last phrase is, of course, taken from your Judgment in *Romania* v. *Ukraine*. But the key point in *Romania* v. *Ukraine* was that the agreements dealt exclusively with the border of the territorial sea, to 12 nautical miles, as you held. On distance grounds alone, those instruments could not be said to be concerned with the EEZ and the continental shelf. In such circumstances, the parties "would be expected to conclude a new agreement" to delimit their claims to 200 miles, as you noted. There is nothing in the decision which supports a conclusion that States with existing delimited 200-mile zones, declared at a time when such zones were disputable, would have to re-delimit them once the zones became compatible with general international law. On that basis the Gulf of Paria Treaty needs to be renegotiated. That would be fundamentally contrary to the principle of stability of boundaries, reflected in Articles 74 (4) and 83 (4) of the Law of the Sea Convention and applicable to boundaries concluded before the Convention was itself concluded. Boundary agreements last for centuries: they must be able to survive changes in custom to be stable, and this is true — one might say, *a fortiori* — if the agreements are at the origin of the change. In international law it is possible to do something for the first time.

2.4. Professor Treves sought support from the decision of the Arbitral Tribunal in *Guinea Bissau* v. *Senegal*[81]. The Tribunal there was asked to determine whether a 1960 Agreement applied to create a single maritime boundary out to 200 nautical miles[82]. That Agreement purported to effect a delimitation of the territorial sea, the contiguous zone and the continental

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[79]CR 2012/33, p. 56, para. 24 (Treves).

[80]*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), I.C.J. Reports 2009*, p. 87, para. 69.

[81]CR 2012/33, pp. 55-56, para. 23 (Treves).

[82]*Guinea-Bissau* v. *Senegal*, Award, 31 July 1989, English translation in 83 *ILR* 1, para. 29 (citing Arbitration Agreement, Art. 2).

shelf[83]. The Tribunal concluded that the Agreement had the force of law only with respect to those zones, but not with respect to the EEZ. In contrast to the Santiago Declaration, there was no suggestion that either Guinea Bissau or Senegal, or their colonial predecessors, had purported to exercise authority over an EEZ as such. In contrast, the international recognition of 200-mile zones in 1982 was heralded by Chile, Ecuador and Peru as vindication of the claims they had been making for 30 years. Those three States proudly announced to the 1982 Conference that "[t]he universal recognition of the rights of sovereignty and jurisdiction over the coastal State within the 200-mile limit . . . is a fundamental achievement" for the Santiago Declaration States[84]. There was no need for them to declare new zones, of the same breadth and essentially the same content, just as there was no need to re-delimit them.

3. Equity ≠ equidistance

3.1. Peru has not quite had the courage explicitly to admit that it agreed its maritime boundary and to ask you to replace it with a new one consistent with modern equidistance methodology. It says instead that it could not possibly have agreed such a boundary which was so obviously inequitable[85]. Why was it inequitable? Because it did not follow an equidistance line. For Peru's logic to be correct, the delegates in Santiago in 1952 would have had to be aware of the equidistance methodology as a means to delimit the maritime zones of adjacent States and regarded that methodology as a way to achieve equity. Neither option applies, the first because the Technical Commission advising the ILC did not explain the equidistance methodology until some time later[86]; the second because even by 1969 equity was held by your Court not to be synonymous with equidistance[87].

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[83] *Guinea-Bissau* v. *Senegal*, Award, 31 July 1989, English translation in 83 *ILR* 1, para. 85 (citing Arbitration Agreement, Art. 2).

[84] MP, Vol. III, Ann. 108, pp. 632. See also CMC, Vol. II, Ann. 50, p. 447; and Ann. 51, p. 451.

[85] See, e.g., CR 2012/34, p. 39, paras. 42-43 (Pellet); CR 2012/33, p. 52, para. 4 (Treves).

[86] CMC, Vol. IV, Ann. 233, p. 1377.

[87] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 41, para. 69.

3.2. Peru does say that it would have been "highly unlikely" for the delegates in Santiago to have delimited their extended zones[88]. But I remind you that in 1954 those very same States, for the most part the very same delegates, explicitly agreed that:

> "A special zone is hereby established, at a distance of 12 nautical miles from the coast, extending to a breadth of 10 nautical miles on either side of *the parallel which constitutes the maritime boundary between the two countries.*"[89]

The best evidence of what they thought they were doing is what they expressly said, two years later, that they had done.

4. Peru's putative claims in 1954: the history that did not happen

4.1. Mr. President, Members of the Court, it is an insult to their memory to say that they did not know their own interests, or rather the interests of the States they represented. [Start graphic] Imagine if Peru had attended the 1954 conference claiming the Ecuador boundary they showed you the other day, and the boundary they now claim against Chile! Imagine if they had come to 1954 with those claims on the table. You can see them on the screen now (tab 182). After what had happened at Santiago, Peru would have been told, very firmly by both delegations, not to be ridiculous. Indeed, we know as a fact from the Bazan opinion, that Mr. Wordsworth has just taken you to, that that would have been Chile's reaction. If Peru had persisted in its claims, the Lima Conference would have failed, would have broken up in disarray. The supporters of distant water fishing States would have exulted. Consensus amongst the three States which stood at the time *contra mundum* would have been shattered. [End graphic/start next graphic]

4.2. Nothing of the sort happened. Instead they agreed on protecting "the parallel which constitutes the maritime boundary between the two countries", a parallel identified with Hito No. 1. And great benefits flowed to them, and notably to Peru, which became the second-most prolific producer of fish products in the world. And they did not know their own interests. [End graphic]

5. Stability of boundaries

5.1. Mr. President, Members of the Court, in the final moments of his submissions on Tuesday, having put to you the last of Peru's changeable arguments, Professor Pellet told you that

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[88]CR 2012/33, p. 52, para. 4 (Treves).

[89]MP, Vol. II, Ann. 50, p. 276, Art. 1; emphasis added.

this case offered an opportunity to impose an equitable solution[90]. Peru asks you to pretend that you may do so on a blank canvas. This is to disregard the principal rule for maritime boundaries: and that is agreement.

5.2. I spoke last Friday, admittedly rather briefly, about the legal basis of the fundamental principle of stability of boundaries. Peru has not challenged this, except to say that you have an opportunity to replace a stable arrangement with one it finds more equitable. And where would that leave matters in unsettling this agreed boundary[91]? The short answer is — it would create a legal landscape characterized by serious uncertainty, at two levels:

(a) First, in the context of the present case, States would have all along been acting on a false basis whenever they relied on an agreed maritime boundary which was not an equidistance line. I am not just thinking of the parties to the Declaration itself, but to the express reference to the Declaration in establishing a maritime boundary, by third States[92]; of reliance upon the Declaration by States in argument in cases before you[93], and by judges of this Court[94]; and of reliance by States in cases before arbitral tribunals[95], with express reference to establishing maritime boundaries along parallels of latitude[96]. And then, of course, there are also the

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[90]CR 2012/34, p. 39, para. 43 (Pellet).

[91]See RC, Chap. V.

[92]See, e.g., CMC, Vol. IV, Ann. 216; and CMC, Vol. IV, Ann. 218.

[93]In *North Sea Continental Shelf (Federal Republic of Germany/Denmark)*, see Reply submitted by the Federal Republic of Germany on 31 May 1968, Annex "International and Inter-state Agreements concerning the Delimitation of Continental Shelves and Territorial Waters", Chile-Peru-Ecuador, *I.C.J Pleadings*, Vol. I, p. 437; Rejoinder submitted by the Kingdom of Denmark and the Kingdom of the Netherlands on 30 August 1968, *I.C.J. Pleadings*, Vol. I, p. 496, para. 68; in *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, see Memorial of the United States submitted on 27 September 1982, *I.C.J. Pleadings*, Vol. II, p. 101, para. 265; Counter-Memorial of Canada submitted on 28 June 1983, *I.C.J. Pleadings*, Vol. III, p. 239, para. 639; Annex to the Reply of Canada submitted on 12 December 1983, *I.C.J. Pleadings*, Vol. V, p 182; in *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, see Counter-Memorial submitted by Libya on 26 October 1983, *I.C.J. Pleadings*, Vol. II, p. 110, footnote 5; Expert Opinion by Dr. J.R.V. Prescott, Ann. 4 to the Reply submitted by Malta on 12 July 1984, *I.C.J. Pleadings*, Vol. I, p. 245: see Table 4, p. 267; in *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway)*, see Memorial submitted by the Kingdom of Denmark on 31 July 1989, *I.C.J. Pleadings*, Vol. I, para. 364.

[94]*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 41, para. 69; see also separate opinion of President Bustamante y Rivero, *ibid.*, p. 61, para. 6 *(b)*.

[95]*Guyana* v. *Suriname, Verbatim Record of the Hearing*, 14 December 2006, pp. 872 and 874.

[96]*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, I.C.J. Verbatim Record of the public sitting held on 16 March 2007, CR 2007/10, p. 31, para. 150.

instances of express reliance on the maritime boundaries established by the Santiago Declaration by States engaged in their own delimitation negotiations in the region[97].

(b) [Start graphic] Secondly, Peru's approach would inevitably call into question other settled boundary agreements in the region. This could be so where they are based entirely or in part on parallels of latitude, such as those commonly used in the practice of American States[98]. It could be so for agreed boundaries based on meridians of longitude[99], or indeed any other boundary not based on the equidistance line. One can already imagine the arguments from States that may now perceive themselves to have been disadvantaged by a settled boundary — to the effect that agreed delimitations were in fact not agreed, or were merely temporary or provisional or practical or inshore arrangements.

5.3. And in the specific context of the boundary between Chile and Peru — two States with, let us say, a troubled history — there has been peaceful coexistence on either side for more than half a century. You will hear from the Agent about the importance of the boundary to the local community, which has developed in reliance upon it.

Quieta, Mr. President, Members of the Court, *non movere*. [End graphic]

Thank you for your patient attention. Mr. President, could you now call upon the Chilean Agent to conclude Chile's submissions.

The PRESIDENT: Thank you very much, Professor Crawford. And I invite the Agent for Chile to make concluding remarks and to present final submissions. You have the floor, Ambassador.

Mr. van KLAVEREN STORK:

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[97]See, for example, CMC, Vol. II, Ann. 9, p. 65; CMC, Vol. IV, Ann. 214, p. 1277; see also CMC, Vol. IV, Ann. 215, p. 1285.

[98]See tab 120 of judges' folders.

[99]See CMC, paras 2.44-2.49; see also agreements between Gambia and Senegal, J. I. Charney and L. M. Alexander (eds.), *International Maritime Boundaries*, Vol. I, 1993, Report 4-2; Kenya and Tanzania, *ibid.*, Report 4-5; The Netherlands (Antilles) and Venezuela, *ibid.*, Report 2-12; Colombia and Panama, *ibid.*, Report 2-5; and CMC, Vol. II, Ann. 9, p. 65.

1. Introduction

1.1. Mr. President, Members of the Court, it is an honour to address you once again, this time to conclude Chile's second round in this case. Chile is a country committed to the peaceful settlement of disputes and the rule of law in international relations. In this spirit, my distinguished counterpart, Ambassador Allan Wagner, graciously recognized Chile's participation as a Guarantor State in the peace process between Peru and Ecuador. Our shared values, coupled with mutual respect, have facilitated co-operation on several fronts. For example, after a complex process involving numerous negotiations and setbacks, in 1999 we concluded an Agreement related to port facilities for Peru in Arica, in accordance with the Treaty of Lima. No pending boundary issues remained; that was our belief.

2. The existing maritime boundary

2.1. In 1952, Chile, Peru and Ecuador opened "entirely new ground in the Law of the Sea by making their 200-nautical-mile (n.m.) claims"[100]. In the words of the Santiago Declaration, we asserted "exclusive sovereignty and jurisdiction" over the sea-bed, subsoil and water column[101]. Together, we instituted a regional system of delimitation premised on "the parallel at the point at which the land frontier of the States concerned reaches the sea"[102]. This method of delimitation became the practice of States on the west coast of South America.

2.2. In 1954, Chile, Ecuador and Peru concluded several agreements, including the Agreement on a Special Maritime Frontier Zone, based explicitly on our pre-existing maritime boundary[103]. And in 1968 and 1969, Chile and Peru decided "physically to give effect to the parallel that passes through Boundary Marker number one" to "signal the maritime boundary"[104]. The Parties jointly determined and marked Hito No. 1, as the farthest seaward point on the coast in 1929 and 1930[105]. Hito No. 1 has always served as the reference point for the start of the maritime boundary. Peru's own 2001 Law on Territorial Demarcation of the Province of Tacna expressly

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[100]CMC, Vol. V, Ann. 279, p. 286.

[101]MP, Vol. II, Ann. 47, Arts. II and III.

[102]MP, Vol. II, Ann. 47, Art. IV.

[103]MP, Vol. II, Ann. 50.

[104]CMC, Vol. II, Ann. 6.

[105]MP, Vol. II, Ann. 45; MP, Vol. II, Ann. 54; MP, Vol. II, Ann. 55.

recognized the position of Hito No. 1 as the starting-point of the land boundary. Article 3 states, and I quote, "The boundary starts at Boundary Marker No. 1 (Pacific Ocean) . . ."[106] End of quotation. The land boundary was fully settled and falls outside the Court's jurisdiction.

2.3. Mr. President, Members of the Court, over the course of these proceedings, Chile has clearly demonstrated the existence of a maritime delimitation agreement. And the subsequent practice confirming the existing maritime boundary is nothing short of overwhelming. Peru, on the other hand, has been unable to establish its case.

2.4. There is no need for the Court to delimit a maritime boundary between Chile and Peru. The maritime boundary has long been settled. That is why Peru objected neither to descriptions of the maritime boundary, nor to its enforcement, for over half a century. That is why Peru and Chile have respected the parallel constituting the maritime boundary. That is why Peru has never exercised jurisdiction to the south of the parallel, including the "alta mar", and Chile did not exercise jurisdiction to the north.

2.5. And that is why the people of Arica and Iquique would be substantially affected by a disruption of the stable maritime frontier. The port of Arica is just 15 km from the boundary with Peru. A significant proportion of the country's small and medium sized fishing vessels, of crucial importance to the economy of the region, are registered at Arica, and at the next port to the south, Iquique. The local population — close to half a million — has developed in reliance on the settled boundary. Arica also serves the interests of Peru and Bolivia, providing key facilities to those countries.

3. The consequences of overturning a settled maritime boundary

3.1. Mr. President, the consequences of overturning a maritime boundary over half a century old are grave. The parallel of Hito No. 1 constitutes a functioning, stable, clear and peaceful maritime boundary. At this very moment, vessels are crossing the parallel by sea and air. Nobody, not the captains, not the pilots, not even the Government of Peru, can deny that Peru applies its law to the north of the parallel, while Chile does so to the south. And nobody can deny that Ecuador

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[106]CMC, Vol. IV, Ann. 191, Art. 3. Peru amended its law the day after filing its Application in this Court.

and Peru, too, have exercised jurisdiction to the north and south of a boundary parallel derived from the 1952 Santiago Declaration.

3.2. Five years have elapsed since Peru filed its Application to initiate these proceedings. Chile has defended its existing maritime boundary with Peru with the determination and vigour that such a serious endeavour requires. Boundaries, after all, establish the reach of a State's sovereign powers. And the good faith observance of existing treaties is at the heart of peaceful relations among States. Chile looks forward to a reaffirmation of the stable maritime boundary between Peru and Chile, and the continuation and deepening of friendly relations with the people and Government of Peru.

4. Conclusion and submissions

4.1. Chile would like to express its sincere gratitude to you, Mr. President, and distinguished Members of the Court, for your patience and attention throughout the written and oral proceedings. I would like to express my deep appreciation, as well, to the Registrar, M. Philipe Couvreur, and his staff, the interpreters, and everyone else who supports the work of this venerable institution.

4.2. I would like to thank our distinguished team of advocates, advisers, experts and other members of the Chilean delegation. And I am especially grateful to the co-Agents for their unwavering dedication. Allow me also to acknowledge and reciprocate the kind words of my colleague and friend, Ambassador Allan Wagner.

4.3. Mr. President, Members of the Court, based on the facts and arguments set out in Chile's Counter-Memorial, Rejoinder and during these oral proceedings, Chile respectfully requests the Court to:

(a) dismiss Peru's claims in their entirety;

(b) adjudge and declare that:

(i) the respective maritime zone entitlements of Chile and Peru have been fully delimited by agreement;

(ii) those maritime zone entitlements are delimited by a boundary following the parallel of latitude passing through the most seaward boundary marker of the land boundary between

Chile and Peru, known as Hito No. 1, having a latitude of 18° 21' 00" S under WGS84 Datum; and

(iii) Peru has no entitlement to any maritime zone extending to the south of that parallel.

Mr. President, Members of the Court, thank you for your generous attention. Chile's oral pleadings are now at an end.

The PRESIDENT: Thank you very much, Ambassador van Klaveren Stork.

The Court takes note of the final submissions which Your Excellency has now read on behalf of the Republic of Chile.

This indeed brings an end to the oral proceedings. I should like to thank the Agents, counsel and advocates for the Parties for the excellence of their arguments and statements and for maintaining a courteous and mutually respectful spirit during these proceedings.

In accordance with practice, I shall request the Agents of the Parties to remain at the Court's disposal to provide any additional information it may require. With this proviso, I now declare closed the oral proceedings in the case concerning the *Maritime Dispute (Peru* v. *Chile)*.

The Court will now retire for deliberation. The Agents of the Parties will be advised in due course of the date on which the Court will deliver its Judgment at a public sitting. As the Court has no other business before it today, the sitting is closed.

The Court rose at 4.30 p.m.