DECLARATION OF JUDGE GAJA

1. The present declaration refers to the issue decided by the Court in the first operative paragraph of the Judgment.

With regard to the maritime delimitation between the maritime zones generated by islands and those generated by the continental coasts, the Santiago Declaration refers to the parallel running through the point where the land frontier reaches the sea *(punto en que llega al mar la frontera terrestre)*. For the reasons given in the joint dissenting opinion, the same parallel is relevant, according to the Santiago Declaration, also when the delimitation concerns the maritime zones generated by the continental coasts of adjacent States. This implies the need to identify the precise point where the land frontier between Chile and Peru reaches the sea.

2. Chile contends that the Court does not have jurisdiction under the Pact of Bogotá to settle a dispute on the interpretation or application of the 1929 Treaty of Lima which established the land boundary between the Parties. This would preclude a decision by the Court which would have the object of determining where the land frontier runs. However, it does not prevent the Court from referring to that Treaty for the purpose of defining the starting-point of the maritime boundary.

3. According to Article 2 of the 1929 Treaty of Lima, "the frontier between the territories of Chile and Peru shall start from a point on the coast to be named 'Concordia', ten kilometres to the north of the bridge over the river Lluta" *(un punto de la costa que se denominará "Concordia", distante diez kilómetros al Norte del puente del Rio Lluta)*. In 1930, the members of the bilateral Mixed Commission competent for demarcation were given identical instructions by their respective Governments. The delegates had to trace "an arc with a radius of ten kilometres . . . its centre being the aforementioned bridge, running to intercept the seashore", the starting-point of the land frontier being the "intersection point of the traced arc with the seashore" *(punto de intersección del arco trazado, con la orilla del mar)*. A marker had to be erected "as close to the sea as allows preventing it from being destroyed by the ocean waters" *(lo más próximo al mar posible, donde quede a cubierto de ser destruido por las aguas del océano)*.

It seems clear from these texts that the starting-point of the land frontier was regarded to be the intersection of the arc with the seashore, not the marker.

4. The question that arises in the present case is whether the starting-point of the maritime boundary is the intersection of the arc with the seashore or the point where the parallel running through the marker closest to the sea ("Hito No. 1") reaches the low-water line. The Parties hold

opposite views on this question, Chile arguing in favour of the latter solution and Peru of the former. The submissions of each Party reflect these diverging opinions.

As we have seen, the point where the land frontier reaches the sea, to which the Santiago Declaration refers for identifying the relevant parallel, is the starting-point of the land boundary, hence the intersection of the arc with the seashore. The Chilean view would prevail only if it could be shown that, for the purpose of defining the maritime boundary, the Parties had reached an agreement to use the parallel running through the marker ("Hito No. 1"). There is evidence that this marker has been used for the purpose of identifying the maritime boundary, especially in the context of the building of two lighthouses in the years after 1968, when the Parties agreed, upon the proposal of a bilateral commission, to "materialize" the parallel that runs through "Hito No. 1". However, this choice may be explained by practical reasons, also in view of the very short distance between the points involved. There is no evidence that the Parties reached an agreement by which they would have adopted, for the purpose of their maritime delimitation, a starting-point other than the one that they had agreed in the Santiago Declaration: namely, the starting-point of the land boundary according to the Treaty of Lima.

Moreover, the coincidence between the starting-point of the land boundary and the starting-point of the maritime boundary avoids creating a situation in which, albeit for a limited stretch of the coast, the adjacent territorial sea would be under the sovereignty of a State other than the one to which the coast belongs. This type of situation is not inconceivable but is seldom resorted to in State practice.

(Signed) Giorgio GAJA.